



City of Nedlands

Planning and Development Reports

Committee Consideration – 5 December 2017

Council Resolution – 19 December 2017

Table of Contents

Item No.		Page No.
PD59.17	(Lot 53) No. 6 Croydon Street, Nedlands – Short-Term Accommodation	2
PD53.17	(Lot 46) No. 154 Adelpa Road, Dalkeith – Two-Storey Single House with Under Croft.....	7
PD54.17	(Lot 207) No.3 Lupin Hill Grove, Nedlands – Two-Storey Single House	17
PD55.17	Dalkeith Road, Nedlands – Fencing for Nedlands Golf Course	23
PD56.17	(Lot 12) No. 7 Nidjalla Loop, Swanbourne – Privacy Screen	28
PD57.17	Municipal Inventory and Heritage List.....	33
PD58.17	Perth Flying Squadron Yacht Club Inc. – Proposed Development and Public Access Foreshore	39

Council: 19 December 2017

PD59.17	(Lot 53) No. 6 Croydon Street, Nedlands – Short-Term Accommodation
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Committee	5 December 2017
Council	19 December 2017
Applicant	C Rees
Landowner	C Rees
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/238
Previous Item	Item PD50.17 – November 2017
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Photograph of the property 2. Proposed management plan from the applicant

1.0 Executive Summary

Development approval is being sought for a portion of the existing building at the property to be used as short-term accommodation.

The application was advertised for comment due to the use ‘short-term accommodation’ not being listed under Table I (Use Class Table) of Town Planning Scheme No. 2 (TPS 2). During the advertising period 2 objections and 1 non-objection were received.

At the last Council meeting in November 2017, Council considered the proposal, but no decision was made. Council is requested to determine the application.

It is recommended that the application be approved as it is not considered to have a significant adverse impact on the local amenity.

2.0 Recommendation to Committee

Council approves the development application for (Lot 53) No.6 Croydon Street, Nedlands, to be used as use not listed (short-term accommodation), received on 14 August 2017, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. The approved management plan being complied with at all times to the City’s satisfaction.**
- 3. All car parking associated with the short-term accommodation being contained on site.**

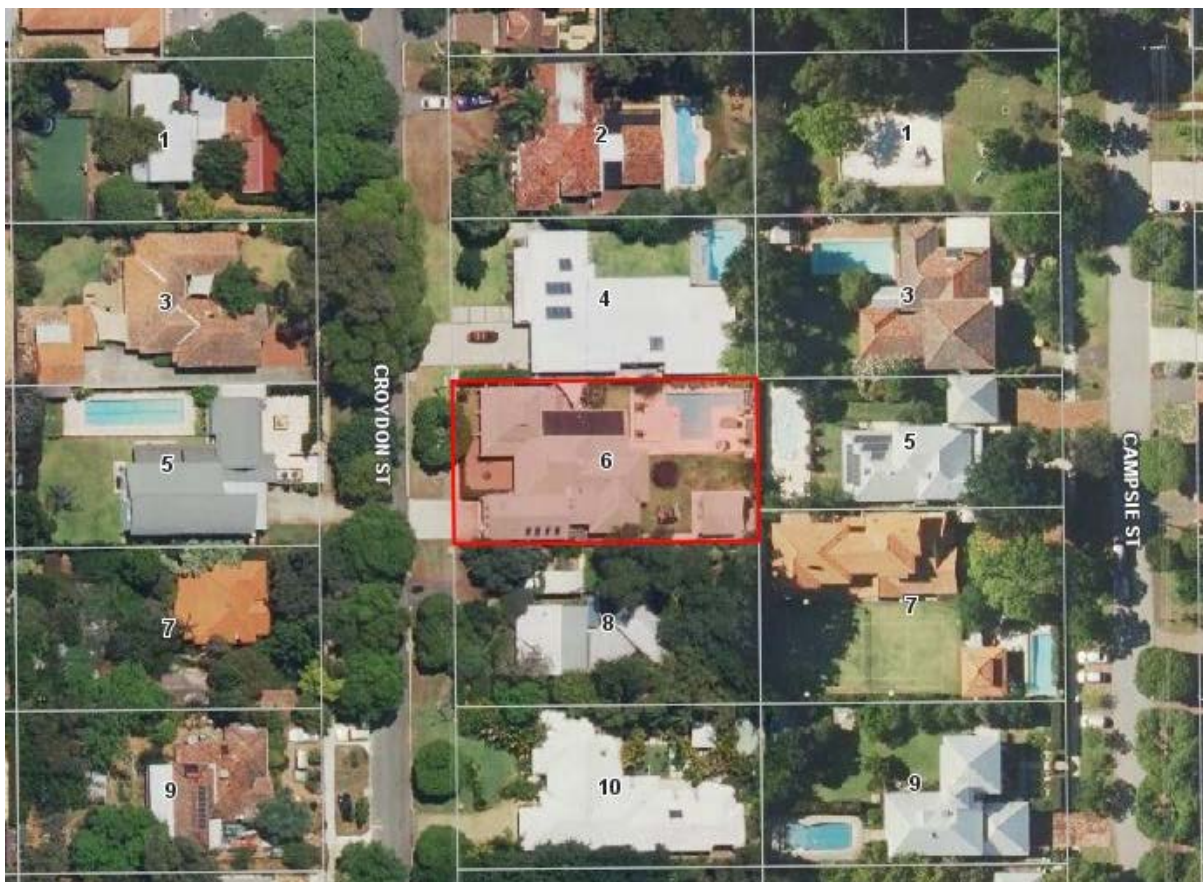
Advice Notes specific to this approval:

- 1. Noise levels are to comply with the *Environmental Protection (Noise) Regulations 1997*.**

3.0 Site Details

Parent lot area	1,115m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those surrounding contain single dwellings and associated outbuildings, as shown in the aerial image below.



4.0 Specific Application Details

The applicant seeks approval for the northern western corner of the dwelling to be used as short-term accommodation, whilst the remainder of the building will be used as a dwelling.

Up to 3 adults, or 2 adults and 2 children are proposed to be accommodated in the portion of the building proposed to be used as short-term accommodation. The remainder of the building will be occupied by the landowner.

A management plan has been prepared by the applicant (refer to Attachment 2) which outlines the conditions which those residing at the property will be required to comply with if the application is approved by Council.

By way of justification in support of the proposal, the applicant has provided the following justification:

“It is expected that the apartment will provide convenient short-term accommodation for people visiting the local hospitals or UWA.

Additionally the area is well serviced by public transport, providing easy access to Perth City and Fremantle. With Kings Park within walking distance, the apartment is also suitable for holiday makers.

It is expected that there will be no adverse effect on neighbours or the amenity of the surrounding area and that the period of any short-term stays will vary from one night to several weeks.”

5.0 Consultation

Two (2) objections and 1 non-objection were received during the advertising period.

The following is a summary of the concerns received:

- The proposal would potentially change the character of the area from purely being residential to partially commercial.
- The number of persons staying on a relatively small property.
- Vehicles parking along the street where restrictions exist.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) of the Regulations stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

“in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”

In accordance with provisions (n) of the *Planning and Development (Local Planning Schemes) Regulations 2015* clause 67, due regard is to be given to the likely effect of the proposal on the local amenity, traffic generation, parking availability and the proposed means of access and egress from the property.

Concerns received during the advertising period were in relation to the proposal potentially changing the character of the area if approved by Council, and vehicles parking where restrictions exist. In response to the concerns the following is advised:

- As mentioned under section 5.0 of this report, a Management Plan has been prepared by the applicant which outlines the conditions which those residing at the property will be required to comply with if the application is approved by Council.

Based on the management plan the use will be relatively small in scale. The number of guests proposed to be accommodated, being a maximum of 4, will likely mean that the local amenity will not be significantly impacted upon by cars parking and/or noise if approved by Council. The additional traffic volumes and movements generated as a consequence of the proposal are likely to be minimal.

- There is space for up to 6 cars to park on the property, including space on the adjoining portion of verge for one vehicle. The size of the property and the proposed maximum number of guests means that there is an adequate amount of space for all vehicles to park on site.

Car parking restrictions along the section of Croydon Street nearest to the property mean that vehicles can park on the verge, not on the road. Despite this, it is administration's preference that vehicles associated with the use only park on site so as to have less of an impact on nearby residents.

If the application is approved by Council, it is recommended that a condition be included requiring vehicles be parked on site.

According to the management plan, guests will be directed to park within the carport on the property, or one behind the other if they have 2 vehicles, to ensure that they have unrestricted access to and from a car parking space.

- If noise complaints are received by the City they will be investigated, and enforcement action taken, if necessary, in accordance with the *Environmental Protection (Noise) Regulations 1997* as with any residential noise complaint.

Considering the above, the proposal is unlikely to have a greater impact on the local amenity compared with if the dwelling was resided in on a permanent basis.

7.0 Other Matters of Concern

During the advertising period concerns were also received regarding the number of people on a relatively small property.

In total up to 6 people are proposed to reside at the property. This does not breach any legislation administered by the City other than requiring a development application under TPS 2.

8.0 Conclusion

The proposal is unlikely to have a significant adverse impact on the local amenity due to its residential nature and scale.

For these reasons it is considered that the use of portion of the building as short-term accommodation is unlikely to have a greater impact on the local amenity in terms of noise, car parking or traffic generation, compared with if it was resided in on a more permanent basis.

Accordingly, it is recommended that the application be approved by Council.



RECEIVED
10/10/17

10/10/2017

City of Nedlands

Planning Department.

RE: Application and management plan for short term accommodation - 6 Croydon Street Nedlands.

Kate Bainbridge,

Approval is sought to rent out a portion (the 'apartment') of the main residence at 6 Croydon St. Nedlands for short term accommodation. The rooms that form the apartment are denoted with stars in the attached house plan.

The space consists of

- A master bedroom with a King size bed suitable for two people.
- A living area with a couch that converts to a double bed, suitable for 1 adult or 2 children.
- A kitchen/dining room with table and seating for 4 guests.
- A bathroom/laundry.

The apartment has its own entry off of the front verandah and is shut off from the main house via a deadlocked door. Check in times shall be from 2pm and checkout times shall be 10am.

The accommodation is suitable for at most 3 adults or 2 adults and 2 children having only one bedroom and a sofa bed in the lounge room.

The renting of the property shall be managed by myself, the owner via websites such as Airbnb, Stayz, etc.

The following rules will be stipulated in the listings.

- Maximum occupancy of 3 adults or 2 adults and 2 children
- No pets allowed.
- No smoking in the apartment.
- No parties or excessive noise.
- Off street parking for two cars at most.
- Guests are to be respectful of neighbours at all times.
- Failure to adhere to the house rules may result in termination of a guests stay.

The monitoring of the adherence to the house rules will be undertaken by myself, the owner, on a daily basis as I shall be residing under the same roof and able to act swiftly should any guests cause a nuisance. If required, in extreme cases, I reserve the right to terminate the guests stay.

It expected that the apartment will provide convenient short term accommodation for people visiting the local hospitals from country regions. Given the proximity to the hospitals, many people coming for this purpose may not need to hire a vehicle and so not suffer greater expense during their stay.

Additionally the area is well serviced by public transport, providing easy access to Perth city and Fremantle.

With Kings Park within walking distance, the apartment is also suitable for holiday makers.

It is expected that there will be no adverse effect on neighbours or the amenity of the surrounding area and that the period of any short term stays will vary from one night to several weeks.

Management Plan.

1. The gardens and apartment shall be maintained by myself, the owner to ensure that they are presentable for the local amenity.
2. Guests will be advised prior to their booking/stay that the area is a quiet residential area and that no excessive noise will be tolerated and that parties are not permitted.
3. Guest numbers shall not exceed 4 and guest vehicles shall not exceed 2.
4. House rules will be stipulated on any hosting websites used as well as within the apartment.
5. Any maintenance required shall be carried out between 8am and 5pm.
6. Rubbish bins shall be maintained by myself, the owner on a regular basis.
7. Record of all guests and contact details shall be retained.

Complaint Management.

Prior to beginning operation, the local residents shall be informed of the complaint management procedure by way of a letter drop. The letter will inform the locals of the rules that guests are expected to abide by and how complaints can be lodged. Please see Appendix A for the proposed letter.

This letter shall be issued to properties in Croydon Street adjoining, directly and diagonally opposite number 6. Specifically, numbers 3,4,5,7 and 8 Croydon Street. Should this selection of properties not be satisfactory, the letter drop will be extended to cover the requirements of the Nedlands City council.

As the owner and operator, I shall be personally responsible for managing and investigating any complaints. Complaints are to be made via email to croydonshortstays@gmail.com and complainants shall be kept informed of the outcomes via reply email. As well as the email record of complaints and correspondence, a digital log of all complaints and resolutions shall be created and maintained by me in Excel format.

To assist in investigating any complaints, should they occur, complainants will be asked to provide the following information.

- Name and contact details
- Nature of the complaint
- Time and period of occurrence
- Any other pertinent information.

In investigating any complaints, the guests will be approached and questioned and if found to be in breach of any of the house rules, they shall be informed that any repeat offences may result in the termination of their stay.

Parking

The residence has adequate parking for 4 - 6 vehicles, with only 2 vehicles parked there currently. No action is required to accommodate additional vehicles and guests will be directed to park in one side of the carport (In tandem if they have 2 vehicles), leaving the other side of the carport for the 2 vehicles of the property owners. This will ensure neither guests nor residents can block the other in. Guests will be advised that there is no parking on the road and fines are likely to be issued if they park there.

Fire alarms and safety measures

The apartment is fitted with a hard wired smoke alarm in the central kitchen/dining room such that every room is at most one room away from the smoke alarm.

Prior to beginning operation, an additional fire alarm shall be installed in the bedroom and a lighting system installed that will activate in the event of the fire alarm sounding. The fire alarms throughout the house shall be interconnected, such that if an alarm sounds in the main house, the alarm in the short term accommodation will also sound and vice versa.

Contact details and emergency numbers shall be provided within the apartment.

Fire Separation.

The north wall of short term accommodation is the required 900mm distance from the boundary. I have spoken to Paul Busby of the Nedlands City Council and he has informed me that fire walls are not required in this situation, but it is required that the smoke alarms in the two separate areas be inter-connected such that an alarm in one area will trigger the alarm in the other area.

Bathroom/Laundry area

As is required, the bathroom/laundry is fitted with a washing machine and a 40L laundry basin. The laundry floor is impervious (tiled), with an even fall to floor water plumbing which is suitably trapped and discharged to water corporation sewer.

Aquatic Facility

I seek exemption by the Chief Health Officer of running an aquatic facility for the following reasons.

- There will be no guest access to a pool, spa or other body of water and as such, it would not be considered an aquatic facility.
- Guests will access the short term accommodation via the front of the property and have no access to the rear of the property where a pool is situated.
- Only persons who have a long-term connection with the facility and their guests are permitted to have access to it.
- The health and safety of the persons using the facility will not be compromised.
- It is in the public interest to exempt the facility.
- Additionally, all further requirements as listed at http://ww2.health.wa.gov.au/Articles/A_E/Aquatic-facilities-at-short-stay-accomodations shall be adhered to.

Rubbish and Recycling.

Guests will be provided with general waste and recycling bins within the apartment with large bins externally within the boundary fence of the property.

The property is currently supplied with a 240 l. general waste bin provided by the Nedlands city council which shall be adequate for excess waste generated.

Parties and Gatherings

The apartment is not to be used for parties or gatherings at any time. Given that I, the owner, am residing under the same roof and that the size of the apartment it is not suitable for parties, it is unlikely that the apartment will be rented for this purpose. Additionally, in investigating any complaints, the guests will be approached and questioned and if found to be in breach of the house rules, it will result in the termination of their stay.

Response to Objection.

One objection to the proposed short term accommodating was received during the consultation period which stated:

“The proposal will change the character & community of the street by changing it from purely residential to partially commercial – i.e. paid accommodation”.

In response to this, I claim that there will be little to no obvious evidence of the service being provided and hence will not have any effect on the character and community of the street.

The property has parking available for 4 -6 cars with only two parked there regularly being those of the permanent residents. One or two additional cars shall not seem out of the ordinary, with many houses in the street regularly having 3 or more cars parked at their residences.

The day to day coming and going of the guests during their stay is expected to be minimal and also will barely be noticeable by local residents.

Croydon Street already has a semi commercial feel given that there are 4 businesses already operating less than 100 meters from the proposed short term accommodation. Additionally there are child care facilities and hospitals directly opposite the far end of the street.

Should this proposal not be accepted, the accommodation shall be rented out on a long term basis which will likely result in more cars being parked at the premises, more regularly as well as my not being able to impose such strict restriction on the use of the property and behaviour of the tenants.

Christopher Rees.

topherrees@gmail.com

0401326583

Appendix A

Dear resident,

My name is Chris Rees and I am the owner of 6 Croydon St. Nedlands. This letter is to inform you that I shall be offering a short term accommodation service to people visiting the area.

The accommodation being offered shall consist of one bedroom, a living room, kitchen/dining room and a bathroom /laundry. There shall be a maximum of 4 guests permitted and it is expected that the majority of guests shall be holiday makers or people visiting the local hospitals or university.

As my family and I shall be residing in the main house, I shall be managing the accommodation and the guest's adherence to the rules myself.

To ensure that the local community is not adversely affected by this arrangement and has an avenue by which to register complaints should the need arise, please find below a list of rules and restrictions that the guests are to adhere to, and the complaint management procedure that outlines how complaints can be registered should the need arise.

RULES FOR GUESTS

- Maximum occupancy of 4 persons.
- No pets allowed.
- No smoking in the apartment.
- No parties or excessive noise.
- Off street parking for no more than two cars.
- Guests are to be respectful of neighbours at all times.
- Failure to adhere to the house rules may result in termination of a guests stay.

COMPLAINTS PROCEDURE

- All complaints shall be managed by myself and should be emailed to me at croydonshortstays@gmail.com
- When making a complaint please advise of the following:
 - Name and address of complainant.
 - Nature of complaint.
 - Date, time and period of occurrence.
 - Any other pertinent information.
- Once the matter is taken up with guests and resolved, complainants shall be informed as to any actions taken.

Kind Regards,

Chris Rees.

PD53.17	(Lot 46) No. 154 Adelma Road, Dalkeith – Two-Storey Single House with Under Croft
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Committee	5 December 2017
Council	19 December 2017
Applicant	Seacrest Homes
Landowner	58 Ocean Drive Pty Ltd T/A Seacrest Homes
Director	Peter Mickleson – Director Planning & Development
Reference	DA17/127
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) and d) of the City's Instrument of Delegation, Council is required to determine the application when refusal is recommended, and discretion exists for Council to approve the variations, and when objections have been received.
Attachments	1. Site photographs 2. Applicant justification

1.0 Executive Summary

Development approval is being sought to construct a two-storey single house with under-croft. The development proposes variations to the deemed-to-comply provisions of the Residential Design Codes (R-Codes). The application was advertised for a period of 14 days inviting neighbouring landowners to comment on the variations. Five (5) objections were received.

It is recommended that the application be refused by Council as the development represents an over development of the subject property. The proposed development does not satisfy the design principles of the R-Codes specifically regarding building setbacks and open space. As a consequence, the cumulative impact of these variations is likely to have an adverse impact on the amenity of neighbouring properties and result in the appearance of the development being out of context for the locality.

2.0 Recommendation to Committee

Council refuses the development application dated 01 June 2017 with amended plans dated 10 November 2017 at (Lot 46) No. 154 Adelma Road, Dalkeith, for the following reasons:

- 1. The development will adversely affect the amenity of the surrounding properties as the development has increased bulk and scale through the additional site cover and reduced lot boundary setbacks.**
- 2. The proposal does not satisfy the design principles stipulated under clause 5.1.3 (Lot Boundary Setback) of the Residential Design Codes due to the design of the dwelling not reducing the appearance of building bulk as viewed from neighbouring properties and reducing the amount of sunlight into the habitable areas of the southern neighbouring property.**

3. The proposal does not satisfy the design principles stipulated under clause 5.1.4 (Open space) of the Residential Design Codes as the scale of the development is inconsistent with the expectations of building bulk within the R10 density code. The site cover also provides reduced opportunities for residents to use external space around the dwelling for soft landscaping typically found in the Dalkeith locality.
4. The proposal does not satisfy provisions (m), (n) and (s) of Clause 67 within the *Planning and Development (Local Planning Schemes) Regulations 2015*, as the amount of site cover and reduced lot boundary setbacks are incompatible with low density coding of the locality and will negatively impact the character and the amenity of the locality.

3.0 Site Details

Lot area	1011.7m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The existing single storey house has been demolished and the site cleared of all vegetation to facilitate the proposed development. The subject property's topography slopes down 2.5m from the street to the north-eastern rear corner of the lot.

An aerial image showing the location of the property follows.



4.0 Specific Application Details

The applicant seeks approval to construct a two-storey single house with an undercroft inclusive of primary street fencing, fill and fencing, decking, swimming pool, garden beds and landscaping on the currently vacant lot.

The development proposes the variations to the City's Town Planning Scheme No. 2, Fill and Fencing Local Planning Policy and the deemed provisions of the Residential Design Codes of which are discussed in the later sections of this report.

By way of justification in support of the development application the applicant has provided a design principle justification which is provided as an attachment to this report (attachment no. 2).

5.0 Consultation

The development application was advertised to neighbouring landowners for comment on the proposed variations for 14 days to affected landowners for comment. Five (5) objections were received during the consultation period. The following is a summary of the concerns raised:

- *"The shadow plan demonstrates that the development is likely to cast shadow over a significant area of the north-facing habitable room windows at the ground floor level of the neighbouring dwelling.*
- *The lot boundary setback does not reduce the impact of bulk on adjoining properties or provide adequate direct sun to the neighbouring building and open space associated with that property.*
- *The reduced setbacks will significantly impact on privacy, noise levels and visual aesthetic as viewed from our property.*
- *Given the density coding applicable to the subject site and surrounding properties and the resulting average lot sizes in the locality, the design of new dwellings is typically not to achieve the deemed-to-comply open space requirement of 60%.*
- *An established quality of the Dalkeith locality is the landscaped setting achieved by larger lot areas with substantial open areas for gardens and canopy trees which contribute to both the streetscape character and residential amenity. The reduction in the provision of open space has a direct impact on the ability to achieve separation between dwellings and the provision of landscaping and vegetation.*
- *The open space is considered not in-keeping with the form of development expected within this density code and is not balanced relative to the adjoining properties and the desired streetscape.*
- *The open space rule variation will result in a much larger house with reduced greenery compared to surrounding houses – this will have a negative impact on the streetscape and act as a heatsink.*
- *A tree which shades 30-40% of the block has been removed during the demolition of the existing dwelling with the ability to provide replacement vegetation being restricted to planter boxes. The provision of additional open space enables more greenery to soften the built form as viewed from neighbouring properties and the street."*

Please note that after the development application consultation concluded, the applicant elected to reduce the levels of the rear decking and the rear alfresco area to reduce the site cover, remove some lot boundary setback variations to the rear and northern side lot boundary and remove all the visual privacy variations.

Additionally, the ground floor northern elevation major openings were modified to be minor openings, the solid sections of front fencing were modified to be visually permeable and the over-height dividing fencing was removed from the northern side lot boundary.

As a result of these modifications to the plans, the concerns received in regard to visual privacy, primary street fencing and over-height dividing fencing have not been included in the summary above as these aspects of the design now comply with the deemed-to-comply provisions of the R-Codes and the Council's Fill and Fencing Policy. The above comments are addressed in the discussion sections later in this report.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 Council may refuse to approve any development if:

"in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned."

The local development context of the locality is comprised of a mix of single storey and two storey developments which typically have smaller upper floors than the ground floor. The scale of the dwelling is significantly larger than the neighbouring dwellings and surrounding dwellings with the number of variations – namely to open space and lot boundary setbacks being reflective of the larger scale of the proposed dwelling.

The cumulative impact of these variations represents an over-development of the property which on balance will have a negative impact on neighbouring properties and a negative impact on the streetscape due to the development's appearance of bulk as viewed from neighbouring properties, loss of sun and a perceived loss of privacy.

The following sections of this report discusses each of the variations in more detail and suggests some design changes to either remove the variations or reduce the impact of the variations which are likely to have a negative impact on the neighbouring properties.

6.3 Residential Design Codes (State Planning Policy 3.1)

6.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies
Buildings are setback in accordance with Table 2A and 2B of the R-Codes.	The ground floor is setback 1.6m in lieu of 2.0m to the northern side lot boundary	No
	The upper floor wall length from the ensuite 2 to balcony screen is setback 1.6m in lieu of 2.8m to the northern side lot boundary	
	The upper floor entire wall length is setback 2.6m in lieu of 3.8m to the northern side lot boundary	
	The upper floor wall length from the retreat to lift is setback 1.53m in lieu of 2.0m to the southern side lot boundary	
	The upper floor entire wall length is setback 2.6m in lieu of 3.8m to the southern side lot boundary.	
<p>Design Principles</p> <p>Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:</p> <p><i>“P3.1 – Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> • <i>reduce impacts of building bulk on adjoining properties;</i> • <i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i> 		
<p>Administration Comments – Northern side Lot boundary setbacks</p> <p>The ground floor variation was initially advertised with major openings and a required setback of 5.4m under Table 2A of the R-Codes in lieu of the 1.6m proposed. Following the conclusion of consultation, the applicants amended the plans to remove the major openings through provision of obscured glazing which addresses privacy between the two properties and has reduced the required setback to 2.0m. However, the length of the wall on the ground floor is over 30m in length and 4.25m in height and therefore as viewed from the neighbour’s property, the ground floor wall will be imposing and add considerable bulk and scale compared to a wall height of 3.5m or less or provision of articulation in the wall length with a larger setback.</p> <p>The upper floor has an articulation of over 6m between the two lengths of walls setback at 1.6m. The section of wall from the balcony to the ensuite 2 is setback 1.6m in lieu of 2.8m. The length of the wall at 20.25m and the height at 6.75m adds considerable bulk as viewed from the northern neighbouring landowner. A reduction in the length to 20m or less and wall height reduction down to 6.5m or less would reduce the required setback down to 2.3m which is still 0.7m more than the setback provided.</p> <p>The bulk of the upper floor is setback 2.59m in lieu of 3.8m. The length of wall is over 30m and the maximum height of the wall is 7.75m due to the slope of the lot towards the rear of the lot. The fundamentals of lot boundary setbacks within the explanatory guidelines is to have walls setback further as they increase in height and length.</p>		

This design has not sought to provide substantial articulation in the wall length to break up the bulk with the appearance of the development being boxy in nature without consideration to the development’s main outdoor living area which will have no access to northern sun with only the rear setback area decking having some access to northern sun. The setbacks should be substantially increased, and/or greater articulation provided to better address the design principle to reduce the impact of building bulk on neighbouring properties.

Administration Comments – Southern side Lot boundary setbacks

The upper floor has the retreat to lift wall length setback 1.6m in lieu of 2.0m to the southern side lot boundary. The length of wall is 12.2m and the height is 8.25m due to the lift shaft height. The bulk of the wall is actually closer to 6.5m in height and therefore the required setback is actually closer to 1.7m based on this height.

The bulk of the upper floor wall has a setback of 2.2m in lieu of 4.1m due to the wall length exceeding 25m and the maximum wall height of 8.25m. The majority of the wall length is setback 2.8m to the east of the closer section of wall and 3.6m to the west. Based on the majority of the wall height being 8m or less, the required setback would be 3.8m. Therefore, even taking the more moderate approach to setback assessment rather than the maximums as required by the R-Codes, the required setback would still be more than the setbacks provided. Although the overshadowing to the south is compliant with the 25% based on the overshadowing diagram provided by the applicant, the development will substantially reduce the amount of sunlight into the southern neighbour’s living areas on the ground floor – including the internal courtyard of the neighbour’s dwelling which has been provided to increase the light into these living areas of which the proposed dwelling will effectively make redundant.

The upper floor has substantial void areas on the upper floor which contribute significantly to building bulk and overshadowing to the southern neighbouring property without providing functional living area for the subject dwelling. The development does not make effective use of space to mitigate the impact of the development on neighbouring landowner’s habitable areas and outdoor living areas.

The setbacks should be substantially increased to the southern side lot boundary to reduce the overshadowing into the southern neighbour’s dwelling, the appearance of building bulk and perceived levels of privacy.

6.3.2 Open space

Deemed-to-Comply Requirement	Proposed	Complies
40% site cover and 60% open space	43.48% (440m ²) site cover and 56.52% open space	No

Design Principles

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P4 Development incorporates suitable open space for its context to:

- reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
- provide access to natural sunlight for the dwelling;*
- reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;*
- provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
- provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and*
- provide space for external fixtures and essential facilities.”*

Administration Comments

The development was initially advertised to neighbouring landowners with 55.72% open space. The amount of open space was increased by the applicant at the conclusion of consultation by lowering the rear decking area and the alfresco area for the dwelling as these areas were previously required to be excluded from open space due to the levels exceeding 0.5m above natural ground level.

The open space is now proposed to be 56.52% in lieu of the required 60% and is inclusive of the front porch and terrace and the rear decking and covered alfresco areas. The additional site cover is equivalent to 35.21m² of building area which is the size of a standard garage for a dwelling. The total building area of the development is in excess of 1100m² over three levels with this area not including the external covered areas or the void areas on the upper floor and therefore the development is substantially larger than the vast majority of developments within the locality. The open space provisions of the R-Codes permit 404.68m² of building area on one level for this property (1011.7m² lot area) and therefore a substantial development can easily be accommodated on the subject property without the need for an open space variation.

The development limits the outdoor areas of the dwelling for active outdoor pursuits and spaces for external fixtures only with limited opportunities for planting and soft landscaping. The bulk of the development has resulted in lot boundary setback variations and the design of the development does not maximise opportunities for north facing habitable spaces and north facing outdoor living areas for the development.

The development is representative of an overdevelopment of the site with the site cover exceeding the building area expected for the locality and reducing the amenity of neighbouring properties through additional building bulk and reduced opportunities for soft landscaping and vegetation.

6.3.3 Site works and Setback of retaining walls

Deemed-to-Comply Requirement	Proposed	Complies
Fill and retaining is no more than 0.5m within 1m of the lot boundary or setback in accordance with Table 2A and 2B of the R-Codes.	Fill and retaining up to 0.75m is proposed to be located up to the northern side lot boundary in lieu of 0.5m.	No

Design Principles

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P7.1 – Development that considers and responds to the natural features of the site and requires minimal excavation/fill.

P7.2 – Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.

P8 – Retaining walls that results in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard for clause 5.3.7 (site works) and 5.4.1 (Visual privacy).”

Administration Comments

The additional fill and retaining is limited to towards the rear of the dwelling and is only adjacent to the northern side lot boundary at essentially the lowest part of the lot. The finished floor level of the dwelling is lower than the level at the front lot boundary and relative to the mid-point of the lot ensuring that the development maintains the appearance of natural ground level from the street and minimises the impact of modifications to the natural ground level on the neighbouring properties.

The dividing fencing is proposed to be 1.8m in height above natural ground level at the lot boundary and therefore the appearance of the additional fill will be concealed by the fence. The area facilitated by the additional fill and retaining is a small undercover decking area which is likely to be used infrequently as it is away from the main outdoor living area of the dwelling. Therefore, this variation is supported.

7.0 Budget / Financial Implications

N/A

8.0 Risk Management

N/A

9.0 Conclusion

The development does not satisfy the design principles of the R-Codes due to the proposed amount of building area reducing the required open space and building setbacks to lot boundaries – all of which being representative of an overdevelopment of the subject property and having a cumulative negative impact on the neighbouring landowners and streetscape.

The size of the proposed development will not positively contribute to the streetscape or the prevailing development context as the scale of the development is contrary to the low-density coding and streetscape character of the locality.

Accordingly, it is recommended that the application be refused by Council.

9.1 Recommended Conditions if Application is Approved

If Council resolves to approve the application the following wording and conditions are recommended.

Council approves the development application dated 01 June 2017 with amended plans dated 10 November 2017 attached to construct a two-storey single house with under-croft at (lot 46) No. 154 Adelma Road, Dalkeith, subject to the following conditions and advice:

1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.
2. This development approval only pertains to the two-storey single house with under croft, associated landscaping, fill and retaining and fencing.

3. The dwelling shall not be used as a display home without further approval from the City being obtained.
4. The use of the basement level shall be restricted to the uses of plant and equipment, storage, toilets and/or the parking of wheeled vehicles. Prior to occupation of the dwelling, the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the basement level is subject to the restriction set-out above.
5. The north and south facing obscured windows to habitable rooms are fixed obscured up to 1.6m above the finished floor level.
6. The front fencing in-fill panels shall be visually permeable in accordance with the Residential Design Codes.
7. All footings and structures to retaining walls and fences, shall be constructed wholly inside the site boundaries of the property's Certificate of Title.
8. All fencing, visual privacy screens and obscure glass panels to Major Openings and Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2015*. The fencing, visual privacy screens and obscure glass panels shall be installed prior to the development's practicable completion and remain in place permanently, unless otherwise approved by the City.
9. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.

Advice Notes:

1. All crossovers to the street(s) shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
2. The existing crossover(s) shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
3. The redundant crossover(s) shall be removed and the nature-strip (verge) reinstated to the City's satisfaction.
4. Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.
5. All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Development approval.

6. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
7. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
8. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. 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.
9. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
10. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

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

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

11. The applicant is advised to consult the City's Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.

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

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

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





14/11/2017

Extract from applicant's initial 'Design principle' justification

R-Code Element 5.1.3 C4 – 'Open space'

Amended plans have been prepared (see copies attached herewith) reducing the extent of the dwelling footprint to assist with providing additional open space for the development. The reductions include reducing the size of the alfresco area (covered area) and removal of the eave/roofing over the light well for the basement level.

Notwithstanding the above, the application proposes the provision of 42.3% (i.e. 428.462m²) open space for the new dwelling in lieu of 40% open space (405m²) required by the 'deemed to comply requirements' of Element 5.1.4 C4 of the R-Codes.

In determining the suitability of the abovementioned variation in the context of the relevant 'design principles criteria' contained at Element 5.1.4 of the R-Codes, the following justifications are provided for the City's consideration:

1. The proposed variation to the open space requirements for the new dwelling (i.e. 2.3% or 23.462m²) is considered minor and will not have a detrimental impact on the local streetscape or any adjoining properties in terms of its bulk and scale.
2. The proposed dwelling has been designed to effectively use all space for the benefit of the future occupants of the dwelling.
3. The proposed outdoor living area provided for the new dwelling is sufficient in area and is accessed by the internal living area (i.e. living room). Furthermore, the outdoor living area has been located to capture the winter sun (i.e. orientated north).
4. The outdoor living area provided for the new dwelling meets the 'deemed to comply requirements' of Element 5.3.1 C1.1 of the R-Codes and is sufficient for the needs of its future occupants.
5. The proposed new dwelling on Lot 46 meets the 'deemed to comply requirements' of Element 5.4.2 C2.1 (i.e. 'Solar access for adjoining sites') of the R-Codes and will not detrimentally impact access to light and ventilation for the existing dwellings on any adjoining properties.
6. The proposed variation to the open space requirements for the new dwelling will not have a detrimental impact on the local streetscape or any adjoining properties in terms of its bulk and scale.
7. It is contended that the proposed outdoor living area provided for the new dwelling is sufficient for the needs of its future occupants.
8. The open space provided for the new dwelling is considered functional, adaptable and will provide an attractive outdoor living area for its future occupants.
9. The proposed new dwelling is consistent in terms of bulk and scale with other similar residential developments approved by the City in the immediate locality.
10. Lot 46 is located approximately 270 metres from David Cruikshank Reserve (public open space), which is capable of supplementing the day-to-day recreational needs of the future occupants of the proposed new dwelling.
11. Abutting Lot 46 is a substantial verge area with a width of approximately 6.5 metres along the land's Adelma Road frontage (see Figure 1 – Aerial Site Plan).

The front setback and verge area for the new dwelling will be adequately landscaped to ensure that it continues to make a positive contribution to the local streetscape. It is significant to note that the verge area contributes a further 130m² of open space to the proposed dwelling on Lot 46.

12. The proposed new dwelling on Lot 46 is orientated towards the street, which is considered highly beneficial in terms of improved visual surveillance of Adelma Road.

Having regard for the above it is contended that the open space provided for the proposed new dwelling on Lot 46 satisfies the 'design principles criteria' of Element 5.1.4 of the R-Codes, is adequate for the future occupants of the dwelling and may therefore be approved by the City.

R-Code Element 5.3.7 C7.3 – 'Site works'

The application proposes that the retaining wall/fill to be built up to the northern side boundary will comprise a maximum height of 820mm above natural ground level (NGL) in lieu of a maximum height of 500mm above NGL permitted by the deemed to comply requirements of Element 5.3.7 C7.3 of the R-Codes.

In determining the suitability of the abovementioned variations in the context of the relevant 'design principles criteria' contained in Element 5.3.7 of the R-Codes, the following justifications are provided for the City's consideration:

1. The proposed variation to the maximum permitted retaining wall/fill heights (i.e. between nil and 320mm) are considered minor and will not have an adverse impact on the adjoining properties in terms of bulk and scale.
2. Lot 46 is characterised by a 2.5 metre fall from its front boundary (i.e. Adelma Road frontage) to the rear of the property. Given this variation in the natural ground level down the entire site, the proposed new dwelling has been designed to fall from Adelma Road with the retaining wall along the northern boundary sloping down the site to minimize the extent of fill and retaining along the property boundaries.
3. That portion of the new retaining wall and fill to be built up to the northern side boundary in excess of 500mm below NGL is unlikely to have any detrimental impacts on the local streetscape in terms of their design, bulk and scale and are consistent with retaining walls associated with other similar residential developments approved by the City in the immediate locality.
4. The proposed new dwelling meets the 'deemed to comply requirements' of Element 5.4.2 C2.1 ('Solar access for adjoining sites') of the R-Codes and will detrimentally impact access to light and ventilation for the existing dwellings on any adjoining properties.
5. A 1.8 metre high solid dividing fence will be constructed on top of the new retaining wall along the side boundaries to prevent direct overlooking of the adjoining property.
6. The location of the retaining wall and fill for the new dwelling assists with providing an effective use of all available space and the creation of adequate internal and external living areas.
7. That portion of the new dwelling proposing retaining wall and fill to be built up to the northern side boundary abuts the side setback and extensive rear yard

area of the existing single detached dwelling on adjoining Lot 47 (No.152) Adelma Road, which comprises an outbuilding and vegetation along the common boundary. As such, it is contended that the proposed retaining/fill on Lot 46 to be built up to the northern side boundary will not have a detrimental impact on any outdoor living areas or any major openings to habitable rooms for the existing dwelling on adjoining Lot 47.

Having regard for the above it is contended that the proposed retaining wall and fill to be built up to the northern side boundary for the proposed new dwelling on Lot 46 satisfies the 'design principles criteria' of Element 5.3.7 of the R-Codes, will not have a detrimental impact on the adjoining properties or local streetscape and may therefore be approved by the City.

PD54.17	(Lot 207) No.3 Lupin Hill Grove, Nedlands – Two-Storey Single House
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Committee	5 December 2017
Council	19 December 2017
Applicant	I & D Jacimovic
Landowner	I & D Jacimovic
Director	Peter Mickleson – Director Planning & Development
Reference	DA2017/265
Previous Item	Nil
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to objections being received
Attachments	1. Site photographs

1.0 Executive Summary

Development approval is being sought to construct a two-storey single house. The development proposes variations to the Hollywood Design Guidelines and the deemed-to-comply provisions of the Residential Design Codes (R-codes). The application was advertised for a period of 14 days inviting neighbouring landowners to comment on the variations. Three (3) objections were received.

Amended plans were subsequently submitted which propose a reduction to the finished floor levels of the house, reducing the number of variations to the R-codes for visual privacy and retaining walls that were originally proposed.

It is recommended that Council approves the application. The amended plans satisfy the objectives of the Hollywood Design Guidelines and provide for a balance of cut and fill across the lot which satisfies the R-code Design Principles.

2.0 Recommendation to Committee

Council approves the development application dated 15 September 2017 to construct a two-storey single house at (Lot 207) No.3 Lupin Hill Grove, Nedlands, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. All footings and structures to the proposed fences shall be constructed wholly inside the site boundaries of the property's Certificate of Title.**
- 3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**

4. All visual privacy screens to unenclosed active habitable spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2015 (R-codes)*. The visual privacy screens shall be installed prior to the development’s practicable completion and remain in place permanently, unless otherwise approved by the City.

Advice Notes specific to this approval:

1. Stormwater to be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
2. Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City’s Technical Services department, prior to construction commencing. The crossover is to be constructed to the City’s specifications.
3. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
4. The landowner is advised that all mechanical equipment e.g. air-conditioner is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.
5. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	710m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R15
Detailed Area Plan/Outline Development Plan	Hollywood Design Guidelines
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property is currently vacant. The surrounding properties contain single dwellings. The topography of the land slopes towards the north east. An aerial image showing the location of the property is shown on the following page.



4.0 Specific Application Details

The applicant seeks approval to construct a two-storey single house. The development proposes variations to the Hollywood Design Guidelines and deemed-to-comply provisions of the R-codes of which are discussed in the later sections of this report.

5.0 Consultation

The development application was advertised to affected landowners for comment. The following is a summary of the concerns raised:

- Concern is raised about the potential reduction of light to the neighbouring dwelling due to the setback of the study and raised floor level.
- The raised floor area of the dwelling has the potential to reduce the level of privacy and amenity of the neighbouring property.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 Council may refuse to approve any development if:

“in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”

In accordance with provisions (n) of the Planning and Development (Local Planning Schemes) Regulations 2015 clause 67, due regard is to be given to the likely effect of the proposal on the local amenity.

The amended plans reduce the floor level of the alfresco and remove the privacy variations to the adjoining neighbours. The proposed floor level is not anticipated to create an adverse impact on the amenity of the surrounding area.

6.3 Residential Design Codes

6.3.1 Visual Privacy

Deemed-to-Comply Requirement	Proposed	Complies
Major openings to bedrooms and studies being setback 4.5m to the boundary	The north facing major opening for a study is proposed to have a visual privacy setback of 2.4m in lieu of 4.5m.	No
<p>Design Principles</p> <p>Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:</p> <p><i>“P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</i></p> <ul style="list-style-type: none"> • <i>building layout and location;</i> • <i>design of major openings;</i> • <i>landscape screening of outdoor active habitable spaces; and/or</i> • <i>location of screening devices.</i> <p><i>P1.2 Maximum visual privacy to side and rear boundaries through measures such as:</i></p> <ul style="list-style-type: none"> • <i>offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;</i> • <i>building to the boundary where appropriate;</i> • <i>setting back the first floor from the side boundary;</i> • <i>providing higher or opaque and fixed windows; and/or</i> • <i>screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).”</i> 		
<p>Administration Comments</p> <p>The major opening to the study slightly exceeds the minimum area to not be considered a major opening (i.e. a maximum of 1sqm) with an area of 1.35m². The variation was advertised to the affected neighbour who did not provide an objection to the proposed setback. The variation is considered to be minor and satisfy the design principles of the R-codes. It will unlikely have a significant impact on the neighbour’s amenity considering the above.</p>		

6.4 Hollywood Design Guidelines

6.4.1 Boundary Setbacks

Requirement	Proposed	Complies
Minimum 8m front setback and maximum 10m front setback to the ground floor of the dwelling Minimum 1m setback to the side boundary	The feature wall is proposed to be setback 7.5m from the front boundary in lieu of 8m, and 850mm from the southern side boundary in lieu of 1m.	No
<p>Objectives of Hollywood Design Guidelines</p> <p>To facilitate development that exists in harmony with the environment at Hollywood and surrounding areas. Specifically, it promotes a strong sense of architectural character that is contemporary, harmonious and responds to the qualities of the context and existing and future residential amenity and conditions.</p>		
<p>Administration Comments</p> <p>The variations were advertised to affected neighbours for comment with no objections received. The setback intrusions proposed for the feature wall are minor with a width of 200mm intruding into the side setback area and 850mm intruding into the front setback.</p> <p>The feature wall is not considered to create an adverse impact to the streetscape of the surrounding area or affect the amenity of the neighbouring landowners. The feature wall creates an attractive architectural feature to the façade of the building and meets the objectives of the guidelines.</p> <p>It is noted, the setback of the study (2.4m) to the northern boundary is compliant with the Guidelines which permits a minimum 1m. The Guidelines require rear and northern setbacks to provide solar access to an outdoor living area at the rear of the property. The proposal meets this requirement.</p>		

6.4.2 Finished Floor Level

Requirement	Proposed	Complies
The finished floor level of the ground floor slab shall not be more than 200mm above the as-constructed level provided by the developer.	<p>The rear portion of the dwelling was originally proposed with a maximum proposed fill of 1.08m.</p> <p>Revised plans were submitted to show a reduction to the finished floor level of the alfresco and store to a maximum fill of 495mm above natural ground level.</p> <p>The family, dining, kitchen and scullery have also been reduced to be a maximum fill of 421mm above natural ground level.</p> <p>The finished floor level of the study is a maximum fill of 935mm above natural ground level.</p>	No
<p>Objectives of Hollywood Design Guidelines</p> <p>To facilitate development that exists in harmony with the environment at Hollywood and surrounding areas. Specifically, it promotes a strong sense of architectural character that is contemporary, harmonious and responds to the qualities of the context and existing and future residential amenity and conditions.</p>		

Administration Comments

The properties along the western side of Lupin Hill Grove slope steeply towards the middle of the lot. The intention of the guidelines is to provide for split level dwellings, with the level of the front portion of the dwelling extending to the rear of the slope, dropping down to a lower level at the bottom of the slope. This is reflected in the dwellings which have been constructed in the street.

The levels proposed for the study, family room, dining, kitchen, and scullery are consistent with the development on adjacent properties by maintaining the higher level to the bottom of the slope. The applicant has however chosen to step the house before the slope to allow for the alfresco to be at relatively the same level as the rear of the house. This has resulted in the alfresco and store being a maximum of 495mm above natural ground level in lieu of 200mm.

The levels that are proposed are not considered to adversely affect the neighbouring landowners and are largely consistent with surrounding development. The levels adjacent to the southern boundary largely match the slope at the boundary. On the northern side of the dwelling, retaining is proposed at the building with the natural ground levels remaining at the boundary. The reduced levels also remove privacy variations to the rear and southern properties. For these reasons the proposed levels are supported.

7.0 Budget / Financial Implications

N/A

8.0 Risk management

N/A

9.0 Conclusion

The proposal is largely consistent with the surrounding development and maintains a balance of cut and fill across the site. The proposed levels are not considered to adversely affect the amenity of the surrounding residents. Accordingly, it is recommended that the application be approved by Council.





PD55.17	Dalkeith Road, Nedlands – Fencing for Nedlands Golf Course
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Committee	5 December 2017
Council	19 December 2017
Applicant	Nedlands Golf Club
Landowner	City of Nedlands
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/143
Previous Item	Nil
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photographs of the fence’s proposed location

1.0 Executive Summary

Development approval is being sought to construct a chain link fence along a portion of the verge adjacent to Nedlands Golf Club (117 Melvista Avenue, Nedlands). The fencing is proposed to reduce the amount of golf balls entering a residential property on the opposite side of Dalkeith Road.

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

It is recommended that the application be approved by Council as the location and appearance of the fencing is unlikely to have a significant adverse impact on the local amenity, especially if it is of a temporary nature.

Therefore, if approved by Council it is recommended that a condition is included requiring the fencing to be removed within 3 years of the decision, unless further approval is obtained for it to remain beyond this period. It is anticipated that by the time the fencing is removed the existing street trees will be more established and therefore act as a more appropriate barrier instead of the fencing.

2.0 Recommendation to Committee

Council approves the development application to install 3.6m high 18m long chain mesh fencing on the verge adjacent to (Lot 117) No. 117 Melvista Avenue, Nedlands, in accordance with the plans received on 20 June 2017 and the amended site plan received on 31 August 2017, subject to the following conditions and advice:

- 1. The fencing being removed within 3 years from the date of this decision to the City’s satisfaction, unless otherwise approved to remain there for a longer period.**
- 2. The development shall at all times comply with the approved plans.**
- 3. The chain mesh fencing and supporting posts being black in colour (or other colour approved by the City), and being maintained by the applicant to the City’s satisfaction.**

Advice Notes specific to this proposal:

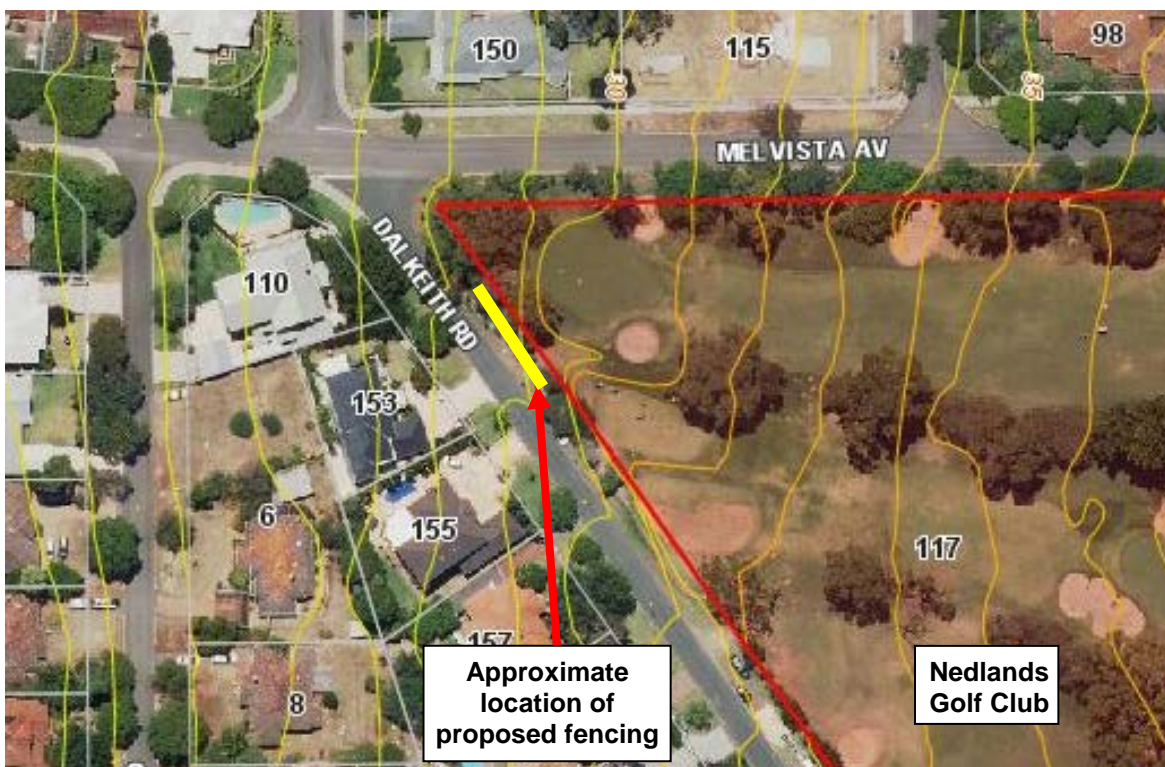
1. All street trees on the verge are to be retained and shall not be removed and/or pruned without written approval from the City.
2. Any development in the nature-strip (verge) will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City’s Technical Services department, prior to construction commencing. The fencing is to be constructed to the City’s specifications.
3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	N/A
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Unzoned
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The portion of verge where the fencing is proposed to be located is adjacent to the north-western portion of Nedlands Golf Club, near to the intersection of Dalkeith Road and Melvista Avenue. On the opposite side to the golf course are single dwellings.

An aerial image showing the location of the proposed fencing and the surrounding area follows.



4.0 Specific Application Details

The applicant seeks development approval to construct a fence along portion of the verge adjacent to Nedlands Golf Club.

The fence is proposed to be 3.6m in height above natural ground level and 18m in length, consisting of chain link mesh with pipe railing to support the structure.

The fencing is proposed to reduce the amount of golf balls entering a residential property on the opposite side of Dalkeith Road.

5.0 Consultation

During the advertising period 4 objections and 2 non-objections were received.

The following is a summary of the concerns received:

- The appearance of the proposed fence potentially having an impact on the local amenity.
- The proposed fencing potentially impacting the value of nearby properties.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with provisions (m), (n) and (r) of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) Schedule 2 Part 9 Clause 67, due regard is to be given to the likely effect of the proposal on the local amenity, and the suitability of the land for the development taking into account possible risk to human safety. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 of Town Planning Scheme No. 2 (TPS 2) Council may refuse to approve any development if:

“in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”

It should be noted that Council’s Fencing Local Planning Policy only applies to zoned land. The verge where the fencing is proposed to be located is unzoned under TPS 2 and therefore the policy does not apply to this proposal. As such, Council is to have due regard to the matters stipulated under the Regulations, referred to in section 6.1 of this report.

During the advertising period concerns were raised regarding the potential impact of the proposed fence on the local amenity. In response to the concerns the following is advised:

- The City receives concerns regarding golf balls entering residential properties on the opposite side of Dalkeith Road, the fencing is proposed in an attempt to address the issue. The fencing will also minimise the risk of pedestrians and vehicles near the Dalkeith Road and Melvista Avenue intersection being struck by golf balls.
- The fencing is proposed in a location where street trees at various levels of maturity already exist. None of them will need to be removed if the fencing is approved, and it is anticipated that the trees will grow to be taller and wider than the fencing over time. When this occurs, the trees will assist with minimising the amount of golf balls entering the nearby residential properties.

It is for this reason that if Council approves the application it is recommended that it be subject to a condition requiring the fencing be removed within 3 years of the decision. If the fencing is to remain beyond the 3 years development approval will need to be obtained.

- The fencing is proposed to consist of chain mesh, no solid fencing is proposed. If Council approves the application, it is recommended that a condition is included requiring the fencing to be black to blend more with the surroundings.
- The proposed location of the fencing means that pedestrian and/or vehicle movement will not be obstructed.

Taking into consideration the above, the proposed fencing is unlikely to have a significant adverse impact on the local amenity.

7.0 Other Matters of Concern

During the advertising period concerns were also received about the proposal potentially affecting the value of nearby properties.

In response to this concern it is advised that the potential impact proposed development may have on nearby property values is not a matter due regard is to be given to when determining the application under the Regulations.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

There may be a potential liability risk to Council if persons are struck by golf balls.

10.0 Conclusion

The fencing will assist with minimising the risk of golf balls entering nearby residential properties, and pedestrians and/or vehicles potentially being struck. It is a temporary measure to address this issue, and when the nearby street trees grow larger the fencing will no longer be necessary. It is for this reason that if approved by Council it is recommended that the fencing is required to be removed within 3 years of the decision as a condition.

The proposed materials of the fencing mean that the streetscape will unlikely be significantly impacted. Its visual impact will be further reduced if its colour is black as per the recommendation to Council.

The proposed location of the fencing means that pedestrian and/or vehicle movement will not be obstructed.

Accordingly, it is recommended that the application be approved by Council.

Below – View from Dalkeith Road towards the fence's proposed location



Below – View of residential properties opposite the fence's proposed location



PD56.17	(Lot 12) No. 7 Nidjalla Loop, Swanbourne – Privacy Screen
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Committee	5 December 2017
Council	19 December 2017
Applicant	Rodrigues Bodycoat Architects
Landowner	H and P Bitdorf
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2016/307
Previous Item	Item PD02.17 – February 2017
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photograph of the privacy screen’s proposed location when viewed towards the northern boundary of 7 Nidjalla Loop.

1.0 Executive Summary

In February 2017, Council resolved to refuse a development application for a proposed louvre privacy screen, which was to be 1.8m in height above an existing parapet wall on the northern (rear) boundary of the property.

Subsequently an appeal was lodged with the State Administrative Tribunal (the SAT) and the proposal was discussed at a Directions Hearing.

Amended plans have been received which show the proposed screen being 1.5m in height above the parapet wall and constructed using obscure glazing. On this basis, Council has been requested by the SAT to reconsider its decision pursuant to Section 31(1) of the SAT Act 2004.

The amended plans were advertised for comment and an objection was received.

The proposed privacy screen is deemed to satisfy the requirements of the Residential Design Codes (R-Codes), Town Planning Scheme No. 2 (TPS 2) and Council’s Fill and Fencing Local Planning Policy (Fencing LPP). It is therefore recommended that Council approves the application.

2.0 Recommendation to Committee

Pursuant to Section 31(1) of the *State Administrative Tribunal Act 2004 (WA)*, Council approves the development application with amended plans received on 19 October 2017, to install a privacy screen adjacent to the northern (rear) boundary at (Lot 12) No. 7 Nidjalla Loop, Swanbourne, subject to the following conditions and advice:

1. **The development shall at all times comply with the approved plans.**
2. **The privacy screening shown on the approved plans being maintained by the landowners to the City’s satisfaction.**
3. **All footings and the structure shall be constructed wholly inside the site boundaries of the Certificate of Title.**

Advice Notes specific to this approval:

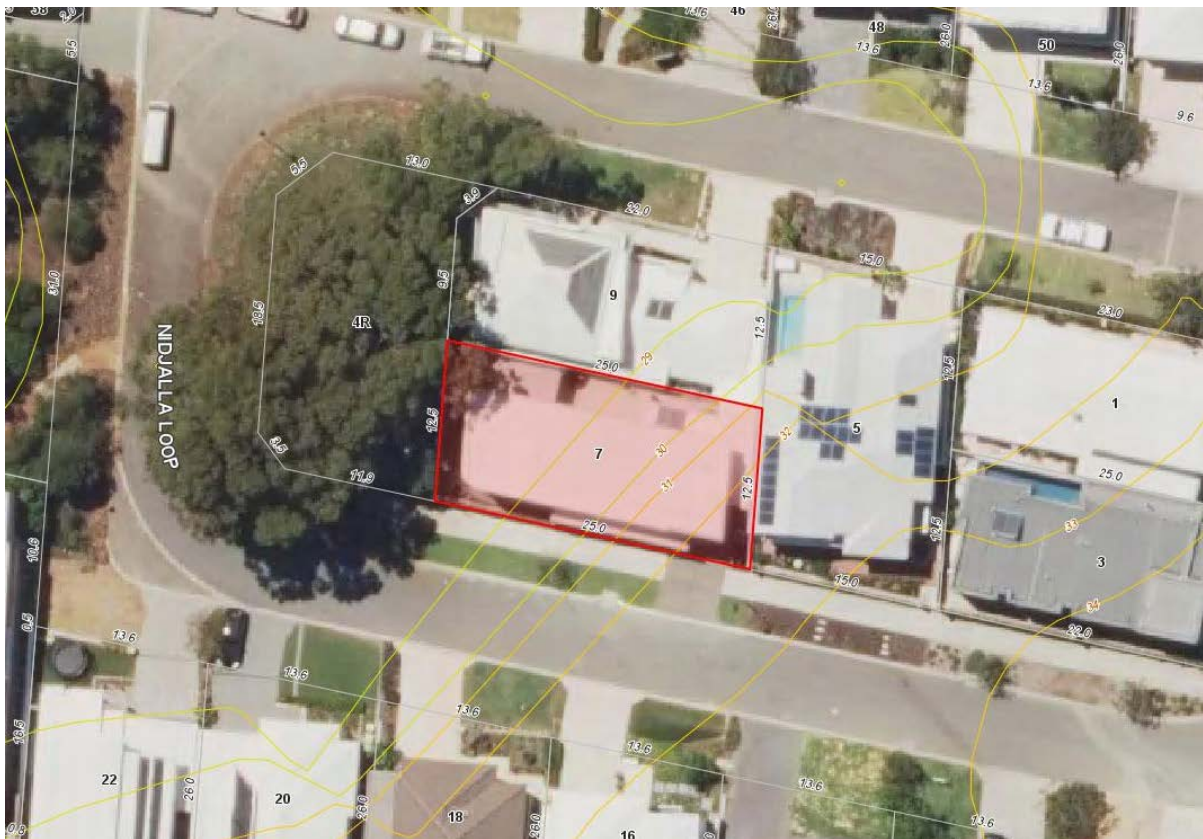
- This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.**

3.0 Site Details

Lot area	310m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R30
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property contains a single dwelling and its topography is relatively flat, as shown on the locality plan below. It falls within Precinct 2 of the Swanbourne Design Guidelines.

The adjoining properties contain single dwellings and associated outbuildings. The Swanbourne Estate Reserve adjoins the subject property's western boundary.



4.0 Specific Application Details

The applicant seeks approval to install a privacy screen which is proposed to be 4.9m in height above natural ground level, 1.5m higher than an existing parapet wall which is adjacent to the subject property's northern boundary. The screen is proposed to be 3.7m long.

The material of the screening is proposed to be 'dusted crystal' obscure glazing.

By way of justification in support of the proposal the applicant has advised the following:

"After an on-site mediation and several discussions and meetings with the neighbours, the privacy screen has been amended to reduce the height to 1.5m above the finished floor level of the balcony and to made from 3M Toughened Glass with a Dusted Crystal Film for visual obscurity."

"The reduction in height allows light to be penetrated into the stairway window of the neighbouring property from above the privacy screen. The glass material also reduces the perceived bulk of the privacy screen and also allows light into the windows of the neighbouring property. It is also noted that the subject privacy screen is only visible from a stairway and toilet window of the neighbouring property and in accordance with the R Codes, neither of these rooms are considered as habitable rooms."

"Furthermore, the subject property is located to the south of No. 9 Nidjalla Loop, therefore there are no impacts in terms of overshadowing."

"Additionally, the outdoor living area of the neighbouring property is located to the west of their lot. Due to this, the additional height caused by the proposed privacy screen will not be visible from the outdoor living area of the neighbouring property."

5.0 Consultation

The amended plans were advertised to the affected landowners by the City for 14 days for comment. One objection was received during the consultation period.

The following is a summary of the concerns received:

- The screen not complying with the Planning requirements.
- The proposed screen potentially preventing light from entering the submitter's house.
- The proposed reduced height of the screen not preventing overshadowing.
- The proposed screen potentially not being structurally safe with such a large high top-heavy structure.

Note: A full copy of the consultation feedback by the City and photographs taken by the City on the submitter's property have been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

“in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”

In accordance with provision (n) of the *Planning and Development (Local Planning Schemes) Regulations 2015* clause 67, due regard is to be given to the likely effect of the proposal on the local amenity.

Concerns received during the advertising period were in relation to the screen potentially overshadowing and preventing natural light from entering the submitter's house. In response to the concerns the following is advised:

- The property directly adjacent to the screen's proposed location is on the northern side therefore the overshadowing requirements of the R-Codes are complied with.
- To address concerns previously raised regarding natural light being prevented from entering the house on the adjoining property the screen is proposed to be constructed using 'dusted crystal' obscure glazing. The screen's proposed location, height and material means that the amount of light likely to enter the nearest house would comply with the Building Code of Australia (BCA) requirements.
- The screen will not be directly visible from any habitable room and/or outdoor living area on the adjoining property, only from a window belonging to a stairway and a toilet.
- The screen's proposed location means that it will not be fully visible from the street.

Considering the above, the proposed screen is unlikely to have a significant adverse impact on the local amenity.

6.2 Fill and Fencing Local Planning Policy

Policy Clause	Assessment Comment	Complies
<p>4.0 <i>Fencing Height Requirements</i></p> <p><i>Dividing fences shall have a maximum height of 1.8m above any approved or deemed-to-comply fill or retaining under the R-Codes.</i></p>	The privacy screening is proposed to be 4.9m in height above natural ground level.	No
<p>Policy Objective</p> <p>To outline the City's requirements with regard to the minimum standard of fencing to ensure that the amenity of neighbouring properties and the streetscape is maintained.</p>		
<p>Administration Comments</p> <p>As mentioned in the previous section of this report, the proposal complies with the R-Code requirements regarding overshadowing and the BCA requirements. Its location means that it will not be visible from any habitable rooms and/or outdoor living areas on the adjoining property, nor will it be directly visible from the street.</p> <p>Considering the above, the proposal is deemed to satisfy the objective of the Fencing LPP and is therefore unlikely to have a significant adverse impact on the local amenity.</p>		

7.0 Other Matters of Concern

During the advertising period concerns were also raised with regard to the proposed screen potentially not being structurally safe.

In response to these concerns it is advised that if the application is approved by Council a building permit will need to be obtained from the City prior to constructing the screen. As part of this process the footings for the structures, amongst other matters, will be assessed to ensure that it complies with the BCA requirements.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

Considering that the majority of the structure will be screened by an existing parapet wall on the neighbour's property, and no habitable rooms nor outdoor living areas on the neighbours' property will be affected, the screen is unlikely to have a significant adverse impact on the neighbour's amenity.

Its height and location mean that the screen will also not be fully visible from the street.

The proposal complies with the overshadowing and natural light requirements.

Accordingly, it is recommended that the application be approved by Council.

Photograph of the privacy screen's proposed location when viewed towards the northern boundary of 7 Nidjalla Loop





**Outline of the
proposed screen**

PD57.17	Municipal Inventory and Heritage List
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Committee	5 December 2017
Council	19 December 2017
Applicant	City of Nedlands
Landowner	Various
Director	Peter Mickleson – Director Planning & Development
Attachments	1. Proposed Heritage List 2. Proposed Municipal Inventory

1.0 Executive Summary

The purpose of this report is to present a Heritage List and Municipal Inventory for the City of Nedlands.

A Heritage List is the list of properties that are protected under a Town Planning Scheme. This is enabled by subsidiary legislation of the *Planning and Development Act 2005*.

A Municipal Inventory is a list of places that the community see as important and/or representative of their heritage. These places may have aesthetic, historic, social or scientific value. A Municipal Inventory does not have to prohibit, restrict, or otherwise alter the development potential of the place, but the requirement for a local government to have a Municipal Inventory comes from the *Heritage of Western Australia Act 1990*.

The proposed Heritage List (attached) updates the properties protected by the Scheme. This list is based mostly on properties already on the State Heritage Register.

The proposed Municipal Inventory (attached) is a simple register of places that have heritage significance, based on a review of the existing 1999 Municipal Heritage Inventory and the comments received by property owners to date. The proposed Municipal Inventory is for information purposes and to provide a record of the built heritage of the City of Nedlands at this time. It will not prohibit, restrict, or otherwise alter the development potential of the place.

The proposed Municipal Inventory presented for adoption does not include any property where the property owner objected to the entry in 2013 and/or 2015 consultation periods, whether the place is on the current 1999 Municipal Heritage Inventory or not.

Following adoption of the proposed Heritage List and Municipal Inventory, a final consultation period will commence. Any further objections to inclusion on the Municipal Inventory received at this time will result in the property being removed.

This report also presents a modest program of incentives to assist owners of properties with heritage significance should Council wish to offer services of this nature.

2.0 Recommendation to Committee

Council:

1. **Adopts the proposed Heritage List (Attachment 1) subject to:**
 - a) **Consultation with property owners, and**
 - b) **Subsequent removal of properties where an owner objects to the listing, unless registered on the State Heritage list.**
2. **Adopts the proposed Municipal Inventory (Attachment 2) subject to:**
 - a) **Consultation with property owners, and**
 - b) **Subsequent removal of properties where an owner objects to the listing, or in the case of strata titled properties, the corporate body objects to the listing.**
3. **Approves the inclusion of \$10,000 for heritage advice in 2018-19 Budget.**
4. **Approves the inclusion of \$10,000 for refund of planning fees in 2018-19 Budget.**
5. **Agrees any remaining budget amount at the end of each financial year will be held and accumulated in a Heritage Incentives Reserve (or similar).**
6. **Agrees following the adoption, consultation and subsequent removal of properties outlined under 2. above, any requests for removal from the list after this will be considered at the next review (approximately every 4 years).**

3.0 Background

The City of Nedlands engaged Palassis Architects in 2011 for the purpose of reviewing the existing Municipal Heritage Inventory (1999 Municipal Heritage Inventory).

A basic timeline of events relating to the review of the Municipal Inventory since that time follows:

March 2012	Palassis Municipal Inventory first considered by Council, matter referred back to Administration for further consideration.
February 2013	Palassis Municipal Inventory considered by Council.
April 2013	Consultation process occurs.
October 2013	Workshopping of possible incentive program.
November 2013	Council considered a proposed incentives program, matter referred back to Administration.
February 2014	Workshopping of possible incentive program.
June 2014	No incentive program included in 2014-15 budget.
December 2014	NOM to request Administration re-present a Municipal Inventory.
May 2015	Revised Heritage List and Municipal Inventory considered by Council.

The most recent Council resolution (May 2015), reads as follows:

“Council:

- 1. Endorses the proposed Heritage List as the accepted list of places to be given statutory protection except that private properties listed where the owners have objected or do object to the listing are to be excluded from the list (unless such properties are on the State Register or already on the list prior to this review); and*
- 2. Endorses the proposed Municipal Inventory for the purposes of consultation with all owners except that private properties listed where the owners have objected or do object to the listing in the course of consultation are to be excluded from the list (unless such properties are on the Municipal Inventory or already on the list prior to this review).”*

Following this resolution (July 2015) consultation occurred with all property owners except those owned by state/federal government and those already included on the State Heritage Register. Following this consultation process, all resources were diverted to the drafting of the Local Planning Strategy and Local Planning Scheme No. 3.

This report is intended to address the most recent resolution and consultation results, and finalise the review process that commenced in 2011.

4.0 Consultation Process

4.1 Previous Consultation

In April 2013 a substantial consultation process was undertaken. Approximately 75 places were included in this process, being places that were new to the Municipal Inventory or were proposed to have the management category changed (at this point in time, the Municipal Inventory did have recommended management categories). Approximately 40 written responses were received during the consultation.

In July 2015 another consultation process was undertaken. Approximately 110 places were included in this process, being all places except those on the State Heritage Register or State/Federal Government places. Approximately 57 written responses were received during the consultation.

4.2 Proposed Consultation

Legislation requires that public consultation is carried out when compiling a Municipal Inventory and/or Heritage List.

Consultation will be carried out by direct mail to owners of all places on the proposed Municipal Inventory and/or proposed Heritage List (including those who have previously commented), along with notice on the City’s community engagement website. Consultation will be scheduled to begin in February 2018 and run for four weeks.

Where an objection is received the property will be removed from the Heritage List/Municipal Inventory unless;

- The property is already on the State Heritage Register, or
- The property is strata titled. The objection is not unanimous (i.e. not all owners have objected). The City will consult with the corporate body in these circumstances, and the corporate body's objection will be needed before the strata property is removed.

The Municipal Inventory and Heritage List will also be referred to the Heritage Council as per the *Heritage Act 1990*.

After the process described above is completed, affected property owners and elected members will be informed, and the final Heritage List and Municipal Inventory will be published on the City of Nedlands website.

5.0 Discussion

5.1 Proposed Heritage List (to be reviewed every 5 years)

A proposed Heritage List has been prepared to be adopted by Council (Attachment 1). The Heritage List contains the places that are intended to be protected by a planning scheme. Taking into account feedback received over the life of this project, there are 21 places on this list. It is based on the existing 'Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest' appendix of TPS2. but removes entries that can no longer be located and includes entries that are already on the State Heritage Register.

5.2 Proposed Municipal Inventory 2017 (to be reviewed every 4 years)

The proposed Municipal Inventory is included as Attachment 2, and is split into four sections:

- Residential Properties: are all in private ownership.
- Residential Strata Flats: flats held in strata ownership.
- Commercial Properties: are also privately owned but are used for commercial purposes. Some of these places may include a residential component (i.e. a flat above a shop).
- Other Properties: includes places that do not fall into the previous sections. Places within this section are varied but includes all places under the management of the City of Nedlands.

The sections are sorted by street address for ease of reference.

The main point of difference between the attached proposed Municipal Inventory and the previous version presented to Council is the removal of those who objected to the entry in 2013 and/or 2015 consultation periods, whether the place is on the current 1999 Municipal Heritage Inventory or not. Where a property is in strata ownership, the place has not been removed unless all owners objected to the entry.

The proposed Municipal Inventory includes a number of new places not included in the current 1999 Municipal Heritage Inventory. There are various reasons as to why the new places have been included. In particular the following points are to be noted:

- Over the past 18 years (since 1999), as new buildings replace older housing stock it becomes more important to record good examples of our built heritage as it ages.
- Flats/maisonettes were underrepresented (generally not included) in the 1999 Municipal Heritage Inventory.

The places on the proposed Municipal Inventory have associated 'place records' which include information on the construction of the place, historical notes, physical description and statement/s as to why the place has heritage significance. These 'place records' will be made freely available to anyone wishing to understand the heritage significance of a place or area.

The proposed Municipal Inventory does not include management categories or any 'heritage precincts' or similar.

Like the current 1999 Municipal Heritage Inventory, the proposed Municipal Inventory does not offer statutory protection to the places within it. Single houses on the proposed Municipal Inventory, like any other single house, may be altered/developed without development approval, subject to satisfying the usual requirements of TPS2, R-Codes and policy. This includes the ability to demolish a building or structure without development approval.

There is no practical difference in the way properties on the current 1999 MHI are treated and the way properties on the proposed Municipal Inventory will be treated.

The proposed framework is intended to be simple but updated to align with current legislation and terminology.

6.0 Incentives

A modest incentive program to be made available to owners of property on either the Heritage List or Municipal Inventory is recommended to be established by the inclusion of appropriate funds in the 2018-19 budget as follows;

6.1 Heritage advice

Eligible property owners may apply to have a free consultation with a heritage and conservation expert for the purpose of discussing potential development applications or re-use strategies for maintaining the heritage significance of the building. Session/s to be capped at a maximum of \$1,500 value.

A contract with suitably qualified heritage advisory providers would be established by the City of Nedlands, with property owners then requesting a consultation session through the City.

The granting of a heritage consultation would be at the discretion of the City of Nedlands and the total value of heritage consultations capped at \$10,000 per financial year.

Annual budget requirement: \$10,000

6.2 Reduced planning fees

Eligible property owners may apply for a 50% refund of Development Application fees (to a maximum of \$1,500), where the development is deemed to restore, conserve or re-use the heritage attributes of the place.

The granting of a refund would be at the discretion of the City of Nedlands and the total value of refunded fees capped at \$10,000 per financial year.

Annual budget requirement: \$10,000

6.3 Recognition

The recently approved Civic Design Awards (October 2017 Council resolution) provides an opportunity to recognise projects that conserve, preserve and rehabilitate buildings with heritage significance.

Annual budget requirement: Nil.

7.0 Legislation / Policy

- *Heritage of Western Australia Act 1990*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Nedlands Town Planning Scheme No. 2 (TPS2)

8.0 Budget / Financial Implications

The only financial implications relate to funding the incentives program as detailed above.

9.0 Risk management

The current 1999 Municipal Heritage Inventory is outdated and requires review. The local government is not in compliance with the *Heritage of Western Australia Act 1990* if the Municipal Inventory is not reviewed every four years.

10.0 Conclusion

This report presents a proposed Heritage List and proposed 2017 Municipal Inventory to update the City's heritage planning framework in line with legislative requirements. The Heritage List is the places that are worthy of protection via a scheme and the proposed Municipal Inventory is the non-statutory, informative document. There are no other recommendations as to the management of heritage properties (i.e. character areas, management categories, other inventories) at this time. A modest incentives program involving reduction of planning fees and access to expert heritage advice is recommended to be established by inclusion of appropriate funds in the 2018-19 budget.

10.1 Alternative Recommendation to Council

If Council is of the opinion an alternative version of either the proposed Heritage List or proposed Municipal Inventory ought to be adopted (subject to final advertising), the following is recommended:

Council refers the item to a Councillor Briefing session for further discussion.

CITY OF NEDLANDS HERITAGE LIST

Name of Place	Address	Suburb	Date of Inclusion	State Heritage Register
Gallop House	22 Birdwood Pde	DALKEITH	<i>Date of Inclusion</i>	Yes
Sunset Hospital	Birdwood Pde	DALKEITH	<i>Date of Inclusion</i>	Yes
War Memorial	Birdwood Pde / Waratah Ave	DALKEITH	<i>Date of Inclusion</i>	Yes
Chisolm House	32 Genesta Cres	DALKEITH	<i>Date of Inclusion</i>	Yes
St Lawrence's Church	56 Viking Rd	DALKEITH	<i>Date of Inclusion</i>	Yes
Irwin Barracks Magazine	Stubbs Tce	KARRAKATTA	<i>Date of Inclusion</i>	
Graylands Hospital	1 Brockway Rd	MT CLAREMONT	<i>Date of Inclusion</i>	Yes
Director's House	1 Grainger Dr	MT CLAREMONT	<i>Date of Inclusion</i>	Yes
Director's Gardens	Grainger Dr	MT CLAREMONT	<i>Date of Inclusion</i>	Yes
Swanbourne Hospital	1 Heritage La	MT CLAREMONT	<i>Date of Inclusion</i>	Yes
David Foulkes-Taylor Showroom	33 Broadway	NEDLANDS	<i>Date of Inclusion</i>	Yes
Nedlands Tennis Club	121 Bruce St	NEDLANDS	<i>Date of Inclusion</i>	Yes
Old Post Office	35 Stirling Hwy	NEDLANDS	<i>Date of Inclusion</i>	Yes
The Maisonettes	67 Stirling Hwy	NEDLANDS	<i>Date of Inclusion</i>	Yes
Captain Stirling Hotel	80 Stirling Hwy	NEDLANDS	<i>Date of Inclusion</i>	Yes
Rose Gardens	Stirling Hwy	NEDLANDS	<i>Date of Inclusion</i>	Yes
St Margaret's Church	52 Tyrell St	NEDLANDS	<i>Date of Inclusion</i>	Yes
Shenton Park Rehabilitation Hospital	6 Selby St	SHENTON PARK	<i>Date of Inclusion</i>	Yes
Lemnos Hospital	Stubbs Tce	SHENTON PARK	<i>Date of Inclusion</i>	Yes
Tom Collins House	Kirkwood Rd	SWANBOURNE	<i>Date of Inclusion</i>	Yes
Mattie Furphy House	Kirkwood Rd	SWANBOURNE	<i>Date of Inclusion</i>	Yes

Proposed Municipal Inventory

Residential				
Name of Place	Address	Suburb	State List	On 1999 MHI
<i>Objection rec'd, removed.</i>	Residence	9 Birdwood Pde	DALKEITH	✓
<i>Objection rec'd, removed.</i>	Residence	15 Birdwood Pde	DALKEITH	✓
	Residence	25 Birdwood Pde	DALKEITH	✓
<i>Objection rec'd, removed.</i>	Residence	33 Birdwood Pde	DALKEITH	✓
	Residence	39 Birdwood Pde	DALKEITH	✓
	Karda Mordo	53 Birdwood Pde	DALKEITH	✓
<i>Objection rec'd, removed.</i>	Residence	89 Broadway	NEDLANDS	✓
<i>Objection rec'd, removed.</i>	Residence	93 Broadway	NEDLANDS	✓
<i>Objection rec'd, removed.</i>	Residence	101 Broadway	NEDLANDS	✓
	Residence	139 Broadway	NEDLANDS	✓
	Residence	15 Browne Ave	DALKEITH	✓
	Residence	14 Bulimba	NEDLANDS	
	Residence	18 Circe Circ	DALKEITH	
	Residence	14 Cooper St	NEDLANDS	
	Residence	35 Cross St	SWANBOURNE	
	Residence	37 Cross St	SWANBOURNE	
<i>Objection rec'd, removed.</i>	Residence	10 Edward St	NEDLANDS	✓
	Residence	79 Florence Rd	NEDLANDS	✓
	Residence	83 Florence Rd	NEDLANDS	✓
	Chisolm House	32 Genesta Cres	DALKEITH	✓
	Greystones	5 Gordon St	NEDLANDS	✓
	Director's House	1 Grainger Dve	MT CLAREMONT	✓
<i>Objection rec'd, removed.</i>	Residence	4 Hillway	NEDLANDS	✓
	Residence	6 Jutland Pde	DALKEITH	✓
	Residence	30 Jutland Pde	DALKEITH	
	Residence	39 Jutland Pde	DALKEITH	✓
	Residence	41 Jutland Pde	DALKEITH	✓
	Kylemore	43 Jutland Pde	DALKEITH	✓
	Residence	52 Jutland Pde	DALKEITH	
<i>Objection rec'd, removed.</i>	Residence	24 Kingsway	NEDLANDS	✓
	Residence	47 Kingsway	NEDLANDS	
<i>Objection rec'd, removed.</i>	Strickland Park	39 Kinninmont Ave	NEDLANDS	✓
	Residence	11 Kitchener St	NEDLANDS	
<i>Objection rec'd, removed.</i>	Residence	17 Kitchener St	NEDLANDS	✓
	Residence	29 Leon Rd	DALKEITH	
	Residence	51 Loftus	NEDLANDS	✓
	Residence	41 Marita Rd	NEDLANDS	✓
	Residence	35 Meriwa St	NEDLANDS	
	Residence	91 Meriwa St	NEDLANDS	
	Residence	40 Minora Rd	DALKEITH	✓
	Residence	2 Portland St	NEDLANDS	✓
	Residence	5 Rockton Rd	NEDLANDS	✓
	Residence	7 Rockton Rd	NEDLANDS	✓
	Residence	10 Rockton Rd	NEDLANDS	
	Residence	14 Rockton Rd	NEDLANDS	✓

	Residence	16 Rockton Rd	NEDLANDS		✓
	Residence	18 Rockton Rd	NEDLANDS		✓
	Residence	24 Rockton Rd	NEDLANDS		
	Residence	29 Rockton Rd	NEDLANDS		✓
	Residence	31 Rockton Rd	NEDLANDS		✓
	Residence	33 Rockton Rd	NEDLANDS		✓
	Residence	35 Rockton Rd	NEDLANDS		✓
	Stirling Court	48 Stirling Hwy	NEDLANDS		✓
	Portland Flats	55 Stirling Hwy	NEDLANDS		✓
	Residence	68 Stirling Hwy	NEDLANDS		
Objection rec'd, removed.	Residence	61 The Avenue	NEDLANDS		
Objection rec'd, removed.	Residence	11 Thomas St	NEDLANDS		
	Residence	1A Tyrell St	NEDLANDS		✓
	Residence	1B Tyrell St	NEDLANDS		✓
	Residence	65 Tyrell St	NEDLANDS		✓
	Residence	75 Tyrell St	NEDLANDS		✓
	Residence	77 Tyrell St	NEDLANDS		✓
	Residence	81 Victoria Ave	DALKEITH		
	Residence	87 Victoria Ave	DALKEITH		
	Residence	93 Victoria Ave	DALKEITH		
Objection rec'd, removed.	Residence	150 Victoria Ave	DALKEITH		✓
	Day House	166 Victoria Ave	DALKEITH		✓
Objection rec'd, removed.	Residence	33 Viewway	NEDLANDS		
Objection rec'd, removed.	Residence	47 Vincent St	NEDLANDS		
Objection rec'd, removed.	Residence	30 Waratah Ave	DALKEITH		
	Residence	11 Waroonga Rd	NEDLANDS		

Residential Strata Flats

Name of Place	Address	Suburb	State List	On 1999 MHI
Kooyong	50-60 Kinninmont Ave	NEDLANDS		
Kumara	101 Smyth Rd	NEDLANDS		
Objection rec'd, removed.	Kingston	46 Stirling Hwy	NEDLANDS	✓
Shelbourne	59 Stirling Hwy	NEDLANDS		✓
Grosvenor	63 Stirling Hwy	NEDLANDS		
Flats	72 Stirling Hwy	NEDLANDS		
Flats	74 Stirling Hwy	NEDLANDS		
Boronia Flats	89-91 Stirling Hwy	NEDLANDS		
Bellaranga	93 Stirling Hwy	NEDLANDS		
Powers Court	112 Stirling Hwy	NEDLANDS		
Greenough	114 Stirling Hwy	NEDLANDS		✓
Bossal	157 Stirling Hwy	NEDLANDS		
Nedlands Park Hotel (Steve's)	30 The Avenue	NEDLANDS		✓
Beaumaris Flats	9 Webster St	NEDLANDS		

Commercial Properties

Name of Place	Address	Suburb	State List	On 1999 MHI
David Foulkes-Taylor Showroom Royal Australian Institute of Architects	33 Broadway	NEDLANDS	✓	✓
Robert Muir Books	69 Broadway	NEDLANDS		✓
Elischer Studio + Residence	97 Broadway	NEDLANDS		
Rossen Real Estate	119 Broadway	NEDLANDS		✓
Restaurant	161 Broadway	NEDLANDS		✓
<i>Objection rec'd, removed.</i> Broadway Pizza	165 Broadway	NEDLANDS		✓
Brown's Garage	76 Bruce St	NEDLANDS		✓
<i>Objection rec'd, removed.</i> Hampden Road shops	23 Hampden Rd	NEDLANDS		✓
Hampden Road shops	25 Hampden Rd	NEDLANDS		✓
Hampden Road shops	27 Hampden Rd	NEDLANDS		✓
Hampden Road shops	29 Hampden Rd	NEDLANDS		✓
Hampden Road shops	31 Hampden Rd	NEDLANDS		✓
Hampden Road shops	33 Hampden Rd	NEDLANDS		✓
Hampden Road shops	35 Hampden Rd	NEDLANDS		✓
<i>Objection rec'd, removed.</i> Hampden Road shops	45 Hampden Rd	NEDLANDS		✓
Tiamo	57 Hampden Rd	NEDLANDS		✓
Swanbourne Hospital	1 Heritage Ln	MT CLAREMONT	✓	✓
Domain	30 Loch St	NEDLANDS		✓
Hollywood Private Hospital	Monash Ave	NEDLANDS		✓
Bruce St Stirling Hwy shops	26 Stirling Hwy	NEDLANDS		✓
Old Nedlands Post Office	35 Stirling Hwy	NEDLANDS	✓	✓
Captain Stirling Hotel & Bottle Shop	80 Stirling Hwy	NEDLANDS	✓	✓
Windsor Cinema	98 Stirling Hwy	NEDLANDS		✓
Persian Carpet Gallery (AKA Art Deco Shop)	102 Stirling Hwy	NEDLANDS		✓
<i>Objection rec'd, removed.</i> Renkema	134 Stirling Hwy	NEDLANDS		✓
Torbay	189 Stirling Hwy	NEDLANDS		✓
Corner Store	24 Webster St	NEDLANDS		✓

Other Properties

Name of Place	Address	Suburb	State List	On 1999 MHI
Carmelite Monastery	104 Adelpa Rd	DALKEITH		✓
Mt Claremont Primary School	103 Alfred Rd	MT CLAREMONT		
Sunset Hospital	Birdwood Pde	DALKEITH	✓	✓
Gallop House	22 Birdwood Pde	DALKEITH	✓	✓
Graylands Hospital	1 Brockway Rd	MT CLAREMONT	✓	✓
Dalkeith Primary School	44 Circe Circ	DALKEITH		✓
Church Of Christ	68 Dalkeith Rd	NEDLANDS		✓
John XXIII College	25 John XXIII Ave	MT CLAREMONT		✓
Nedlands Primary School	35 Kingsway	NEDLANDS		✓
Chinese Methodist Church	38 Kingsway	NEDLANDS		✓
Hollywood Primary School	117 Monash Ave	NEDLANDS		✓
Nedlands Uniting Church	237 Princess Rd	NEDLANDS		✓
Karrakatta Cemetary	Railway Pde	NEDLANDS		✓
Royal Perth Rehabilitation Hospital	6 Selby St	SHENTON PARK		✓
Commonwealth War Cemeteries	Smyth Rd	NEDLANDS		✓
Telephone Exchange	46 Stanley St	NEDLANDS		✓
Challenge Stadium	100 Stephenson Ave	MT CLAREMONT		✓
St Andrew's Anglican Church	177 Stirling Hwy	NEDLANDS		✓
Irwin Barracks	Stubbs Tce	KARRAKATTA		✓
Magazine	Stubbs Tce	KARRAKATTA		✓
Barracks	Stubbs Tce	KARRAKATTA		✓
Lemnos Hospital	Stubbs Tce	KARRAKATTA	✓	✓
Holy Rosary Roman Catholic Church	46 Thomas St	NEDLANDS		✓
St Margaret's Anglican Church	58 Tyrell St	NEDLANDS	✓	✓
St Lawrence's Anglican Church	Viking Rd	DALKEITH	✓	✓
Loreto Convent	69 Webster St	NEDLANDS		✓
Swanbourne Army Complex	West Coast Hwy	SWANBOURNE		✓

Objection rec'd, removed.

PD58.17	Perth Flying Squadron Yacht Club Inc. – Proposed Development and Public Access Foreshore
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Committee	5 December 2017
Council	19 December 2017
Applicant	Perth Flying Squadron Yacht Club Inc.
Landowner	City of Nedlands
Director	Peter Mickleson – Director Planning & Development
Previous Item	Item D15.11, 22 February 2011 – Renegotiation of new Lease Item 13.2, 9 June 2009 – Development Approval for Redevelopment Item CM28.07, 11 September 2007 – Variation of previous lease arrangement Item CM19.06, 9 May 2006 – Previous lease arrangement
Delegation	To the Chief Executive Officer but staff decline to exercise delegation
Attachments	<ol style="list-style-type: none"> 1. Deed of Lease with commencement date 1 January 2011 2. Photos 3. Form 1 Application for Development Approval to install a wave attenuation device at the Perth Flying Squadron Yacht Club premises.

1.0 Executive Summary

The Perth Flying Squadron Yacht Club Inc. leases a portion of the City's reserve on the Swan River foreshore, Esplanade, Dalkeith. The lease boundary ends approximately 20 metres from the river's edge. The strip of land between the river and lease boundary is public access reserve.

The Club's lease commenced on 1 January 2011 and annexed to the Deed of Lease was a Development Approval from 2009 for works to redevelop the Club's facilities. The redevelopment included works to formalise public access through the strip of foreshore reserve by removing the slipway onsite, landscaping the area and constructing a public footpath along the river foreshore. The redevelopment did not take place due to financial constraints on the Club and so there remains outstanding issues with Club infrastructure located on the public reserve which poses a significant risk to public safety and in turn the City and Club.

As well the Club continue to use the area of public access reserve for boat storage and hardstand, an unapproved use. The City has requested the Club review their plans to achieve redevelopment of the public access foreshore to align with the land's purpose for public access and recreation.

The City has liaised with the Department of Biodiversity Conservation and Attractions who regulates development on the river and relevant area of the river foreshore and they advise that the Minister for Environment expects the Club to construct the shared public footpath as approved in the 2009 Development Approval. Construction of this involves the removal of the slipway and other Club infrastructure on the land. The Department has advised the Club of this expectation.

The Club has recently submitted an application to the City, for endorsement by the City as landlord, for development approval to construct in-water infrastructure to protect their jetties and boats. Included in this application the Club has referenced a time frame of 4-5 years to commence works on the public access foreshore, installing the shared public path. City Administration are not satisfied with this lengthy timeframe on the basis that the risk posed by the status quo for the public access foreshore is unacceptable and works in the public access foreshore need to be completed in the short-term.

The Club's Lease was premised on the redevelopment taking place and six and a half years on the works still have not been undertaken. This Council report seeks to settle the steps to addressing the issues with Club infrastructure in the public access reserve and achieving an optimal outcome for Club, members of the public, the Department of Biodiversity Conservation and Attractions and the City.

2.0 Recommendation to Committee

Council as landowner and lessor:

- 1. Instructs Administration to action requirements of clauses 43 and 44 of the Lease, being Essential Terms of the Lease, and issue the Club with a Notice pursuant to the Lease requesting the Club, within 12 months remove and make good, the slipway and all other impediments by the Club to public access through the public access area of the river foreshore reserve.**
- 2. Refuses to sign the Form 1 development application submitted by Perth Flying Squadron Yacht Club Inc. on 17th October 2017 to install in-water infrastructure, until the City receives from the Club a plan of works (to the satisfaction of the City's Chief Executive Officer and by 31 March 2018) to provide safe and unhindered pedestrian access along the public river foreshore.**
- 3. Requires the Club to apply for and receive the necessary statutory approvals to do the work required in (1) above and requests the Club include in any new application for development approval a commitment to install the shared public footpath within 2 years of the date of this Council meeting.**

3.0 Site Details

The Perth Flying Squadron Yacht Club Inc. leases a portion of Lot 254 on Deposited Plan 37070. Lot 254 forms part of class "A" Crown Reserve 17391, a reserve for which the City is vested with the care and control through a management order. Further detail of the Club's tenancy is included in the section with background detail below.

An aerial image showing the location of the property follows.



Diagram 1. Aerial of Perth Flying Squadron Yacht Club lease premises in blue ink

4.0 Background

Perth Flying Squadron Yacht Club Inc (the Club) was formed in 1897 and is located on the northern shore of the Swan River in Dalkeith. Clubhouse facilities provide pen, hardstand and undercover storage for various classes of sail and power boat.

The Club's facilities are located on Lot 254 on Deposited Plan 37070, Birdwood Parade, Dalkeith being the whole of the land comprised in Crown Land Title Volume LR3131 Folio 762.

Lot 254 is part of class "A" Crown Reserve (Reserve 17391) and has been vested to the City since 18 July 1947 for the purpose of "Recreation" by way of a management order (the Order). The Order grants the City the power to lease Reserve 17391 for any term not exceeding 21 years subject to the consent of the Minister for Lands.

In Council item CM19.06, on 9 May 2006 Council resolved to endorse an exclusive use lease arrangement between the City and the Club. The arrangement had an initial term of ten years with an option of a further five-year term. That lease agreement was dated 20 June 2006 and commenced on 28 September 2005. Under the terms of that lease agreement, the Club was responsible to pay for all costs associated with maintenance, cleaning, operations, insurance and utilities. An annual peppercorn rental applied.

In Council item CM28.07, on 11 September 2007 Council resolved to endorse a Deed of Variation of Lease (the Variation). The Variation enabled the club to secure a mortgage over the premises. The mortgage was sought to repay a loan taken by the Club to engage professionals to prepare planning documentation for the upgrade of the Club's infrastructure. The Variation also amended the name of the lessee Club to record accurate details.

In 2008 Perth Flying Squadron Yacht Club Inc. completed a master plan to redevelop the Club's water and land based assets to comply not only with statutory environmental obligations but also the expectations of members and local residents.

It was estimated that the cost of works would be \$11.1 million. In Council item 13.2, on 9 June 2009 Council considered the item "Reserve 17391 (lot 254) The Esplanade, Nedlands - Proposed Redevelopment of Land-based infrastructure component at Perth Flying Squadron Yacht Club" and resolved to recommend approval by the City to the Swan River Trust for the development application subject to certain conditions. The Council resolution and report for Item 13.2 is annexed to the Club's current lease agreement and forms a condition of the Lease. Of note in that report is the following comment on the Club's use of the public access foreshore reserve:

"Public access

Currently there is public access through the premises along the river's edge, but this is not formalised and in fact, to the most extent is impractical and potentially dangerous due to the boat slips, surface and activity. The redevelopment will establish a defined and continuing access along the river's edge in a controlled manner which will provide reinforcement of the availability of the access and will also improve safety for people traversing the grounds"

Council's resolution for this item included the following notable point:

"4. The City values the protection of public access to the river foreshore between the river wall and the lease boundary to approximately an average of 20 metres"

The Club received approval from the Minister for Environment to proceed with the major redevelopment of the Club's land and river based infrastructure. The Club then applied to the City to surrender their lease arrangement at that time in favour of a new lease with a longer term. This was intended to provide comfort for a financial institution to advance the necessary funding to undertake the major capital works project.

A condition of the ministerial approval stipulated that the lease arrangement be amended as follows:

"Condition 36. The applicant is to enter into an agreement with the City for the ongoing maintenance of the public footpath and other infrastructure, including safety barriers and signage, within the public foreshore reserve located between the Perth Flying Squadron Yacht Club's land lease and river bed areas. The agreement shall be prepared by the City's solicitors to the satisfaction of the City and the Swan River Trust. The applicant shall be responsible for paying all costs associated with the City's solicitors' costs of and incidental to the preparation (including all drafts) of the agreement".

In Council item D15.11, on 22 February 2011 Council resolved to accept the surrender of lease and approve a new lease agreement with a term of 21 years commencing on 1 January 2011. Council required several amendments to the draft Deed of Lease which were included in the final Deed of Lease.

The Club and City executed the Deed of Lease as per Council item D15.11 (the Lease). A copy of the Lease is included in Attachment 1. Annexed to the Lease is the development approval for Proposed Redevelopment of Yacht Club – SRT755-17 and dated 17 December 2009 (Development Approval). This approval was for 3 years. It is noted that the Club applied for a minor variation to the Development Approval in the form of a 12-month extension and modifications to the works. This was granted, and approval extended a further 12 months. It is noted that the Club's application for Minor Variation to the Development Approval included "Amended Plans and Staged Development" as follows:

"Stage 1 - Commencing July 2013

- *Upgrade of boat works yard and boat wash down area, including the provision of new storm water and waste management devices and bunding.*
- *Removal of the existing slipway.*
- *Landscaping within 20m wide foreshore frontage (non-lease area).*
- *Upgrade of existing jetties D & E to accommodate the provision of a Tammy Lift.*
- *Provision of a Tammy Lift.*

Stage 2 - Commencing January 2014

- *Amendment to Reserve 17391 Lease (City of Nedlands):*
 - *to remove the verge along The Esplanade.*
 - *addressing the need to maintain public access along the foreshore adjacent to the lease area (Condition 27);*
 - *addressing the need to maintain the proposed public footpath and other infrastructure, including safety barriers and signage within the public foreshore reserve located between the Club and the river bed areas (Condition 36); and*
 - *to provide a mechanism to ensure on-going environmental management (Condition 30)*
- *Amendment to River Lease (Swan River Trust)*
 - *incorporating amended river lease area to accommodate new jetties and wave wall; and*
 - *removing 5009m² between jetty AA and the foreshore.*

Stage 3 - Commencing December 2014

- *Extension of jetties and pens.*
- *Replacement of aged jetties.*
- *Expansion / construction of new wave wall.*
- *Relocation and upgrade of fuel storage facilities.*
- *Construction of 2m wide dual use path along the foreshore frontage.*

Stage 4 - Commencement date still to be determined

- *Clubhouse redevelopment.*
- *New parking and access arrangements.*
- *Additional landscaping."*

Of relevance to this report are the provisions of the Lease referenced below:

“43. Maintain Access

The Lessee CONVENANTS AND AGREES to keep that portion of Land between the southern boundary of the Premises and the river’s edge:

- (a) Free of permanent fixtures and physical barriers, unless such fixtures and barriers have first been approved by the Lessor in writing; and*
- (b) Free and unhindered for pedestrian access by the general public”*

This provision accords the public interest in the 20-metre strip between the Club’s lease premises and the river’s edge, being the public access foreshore reserve. It is noted that no permanent fixtures or physical barriers in that area of reserve have been approved in writing by the City since the Lease and Development Approval were formalised.

Clause 16.5 of the Lease defines clause 43 as an “Essential Term” of the Lease and any breach of an Essential Term attaches additional remedies and entitlements to the Lessor.

“44. Re-development Obligations

44.1 Comply with Development Approval

In terms of the redevelopment of the Premises and the surrounding land, the Lessee COVENANTS AND AGREES to comply strictly with the terms of the Development Approval issued by the Swan River Trust, copy annexed hereto as Annexure 3, including without limitation:

- a) the construction of the shared public access footpath as required pursuant to condition 11 of the Development Approval;*
- b) the removal of infrastructure from the Crown reserve between the river and the Premises as required pursuant to condition 10 of the Development Approval.*

44.2 Comply with Lessor's Requirement

In terms of the redevelopment of the Premises and the surrounding land, the Lessee covenants and agrees to:

- a) comply strictly with the Lessor's conditions of approval to the re-development, annexed hereto as Annexure 4, including without limitation of the upgrade of the Car Park to the Lessor's satisfaction; and*
- b) in respect of the shared public access footpath, required pursuant to condition 11 of the Development Approval, erect signs to the Lessor's specifications and reasonable satisfaction alerting users of the footpath that boats and other machinery will frequently cross the shared public access footpath*

44.3 General requirements

The Lessee agrees and acknowledges with the Lessor in relation to the redevelopment

- a) that the re-development must be undertaken at its full cost and expense;*
- b) the construction of any buildings or improvements on the Premises must be:
 - i. in strict compliance with the Building Code of Australia;*
 - ii. in accordance with plans approved by the Lessor in its capacity as landlord, and the Lessor in its capacity as local government authority;*
and
 - iii. completed in a proper and workman-like manner.**

44.4 Risk

The Lessee acknowledges and agrees all of the re-development works shall in all respect be carried out at the risk of the Lessee and that the Lessor has not given any warranty or made any representations either as to the suitability of the Land for the Lessee's proposed use.

44.5 Obtain all necessary approvals

The Lessee covenants and agrees to obtain at its expense all necessary statutory approvals for the re-development of the Premises, including without limitation planning and building approvals.

44.6 Insurance for Works

The Lessee covenants and agrees with the Lessor that prior to commencing any works related to the re-development of the Premises:

- a) to effect and maintain a public risk insurance policy covering the respective rights and interests of the Lessor and the Lessee for an amount of not less than \$10 million dollars for any one claim covering all usual and necessary insurable risks arising out of such works; and*
- b) to ensure that all consultants and contractors engaged to do the re-development works have adequate and appropriate insurance cover for the work that they are engaged to perform.*

44.7 Indemnity

The Lessee covenants and agrees to indemnify and keep indemnified the Lessor from and against all claims, demands, writs, actions and suits which may be brought or made against it by any person or persons in connection with loss of life or loss, injury or damage claimed to have been suffered to any property or by any person or persons arising out of or in connection with any works undertaken as part of the re-development of the Premises and the surrounding area.

44.8 Maintain all improvements constructed by the Lessee

The Lessee COVENANTS AND AGREES to:

- a) *maintain at its own expense all additions, structures and improvements constructed or erected by it on the Land or the surrounding areas in good safe order repair and condition to the City's satisfaction, including without limitation:*
 - i. *the public footpath to be constructed pursuant to condition 11 of the Development Approval;*
 - ii. *the parking bays, driveways and points of ingress and egress;*
 - iii. *all safety barriers and signage; and*
 - iv. *the Car Park.*
- b) *comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the additions, structures and improvements outlined in paragraph a) above."*

This provision is also an Essential Term and reflects the basis for Lease negotiations in 2010, being that a new lease with the longest permitted term of lease was agreed for the Club to fund its redevelopment.

The Lease also includes a general provision requiring the Club to comply with all relevant statutes and laws and have all necessary statutory approvals in place for the Club's operations.

"14. Statutory obligations and notices

14.1 Comply with Statutes

The Lessee must –

- a) *comply promptly with all statutes and local laws from time to time in force relating to the Premises;*
- b) *apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at clause 12;*
- c) *ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and*
- d) *comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.*

14.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against –

- a) *failing to perform, discharge or execute any of the items referred to in clause 14.1; and*
- b) *any claims, demands, costs or other payments of or incidental to any of the items referred to in clause 14.1."*

Over the last 2 years the City has had much communication with the Club and with the relevant statutory authority, being the former Department of Parks and Wildlife, now the Department of Biodiversity Conservation and Attractions (DBCA), who administer the *Swan and Canning River Management Act 2006* (the governing legislation for development along the Swan River and Foreshore).

Discussions have continued and included a number of requests for the Club to review its obligations under the Lease in terms of maintaining public access in the foreshore reserve, installing a public shared footpath and understanding the necessary approval processes for development in that area. A summary of this communication is included below.

The current situation at the time of reporting to Council in December 2017, is that the works forming the Development Approval have not taken place and so there remains the following issues:

- Club infrastructure continues to be located on the public access foreshore which impedes the public's safe and unhindered passage through that area. In particular the slipway, a fence, boats and other Club infrastructure continue to be located on site. Photos evidencing this are in Attachment 2 of this report;
- There is no public footpath on the public access foreshore abutting the Club's lease premises despite the obligation imposed in cl.44.1(a) of the Lease
- The area of public access reserve has not been landscaped to facilitate free and unhindered pedestrian access

A summary of key dates to note in this matter is provided below:

- 2005 PFSYC and City agreed a new lease of premises at R17391 for 10 + 5 years
- 2008 PFSYC completed master planning process for club's site which resulted in application for DA to value of \$11.1 million. Basics of works involved much reorganisation of terrestrial premises, new building, extension to existing clubhouse, demolition and removal of asbestos materials, replacement of jetties, removal of slipway, redevelopment of carpark and installation of public footpath with landscaping along foreshore area
- 2009 Club received Development Approval – SRT755-17
- 2010 PFSYC requested a new lease agreement in order to secure funding for redevelopment works
- 2011 Council lease item – Council agreed to 21-year lease which included specific redevelopment obligations and requirement to maintain access along the public access foreshore. Lease annexed the Development Approval SRT755-17
- 2010 Contaminated Sites compliance issue raised regarding hydro carbon contamination from leaking unleaded petrol bowser.
- 2011 DEC required PFSYC to construct health and safety plan for site to address risks to health of any workers undertaking works at PFSYC due to hydrocarbon contamination. Site further is classified under Contaminated Sites Act 2003 due to antifouling activities used in Club operation.

- 2012 Classification changed on Contaminated Sites memorial on CT – from “Possibly contaminated – investigation required” to “Contaminated – remediation required”. This classification has since been changed to “Remediated for restricted use” (as of October 2017).
- 2013 Club received an extension of 12 months to Development Approval SRT755-17
- 2015 August – City met onsite with Club representatives, advised in follow up email of boundary to lease area and noted provisions in Lease to Maintain Access and Redevelopment Obligations which included installation of public footpath. Email recommended Club re-consider those lease requirements for redevelopment works; footpath installation and its plans to complete this.
- 2016 Advised river wall failing – Club raised concerns for their infrastructure. City advised its responsibility is to ensure public safety. City completed repair work.
- 2016 June – In a letter to the Club the City noted the Club’s lease area excludes the area of public access foreshore which is approximately 20 metres from the river’s edge. Advice referred to the Club’s premises and river foreshore being within the Swan and Canning Rivers Management Act 2006 Development Control Area and therefore subject to administration by the Department of Parks and Wildlife (regulatory body at the time). Therefore, the Club is bound by two levels of administration, the City as lessor and DBCA (formerly Department of Parks and Wildlife) as approval body for development and compliance in that area. This communication included request to not do any works unless approval first obtained.

This point was emphasised on finding works had been completed by Club to resurface a bitumen area and install a new fence on the public access foreshore.

The City requested the Club do no further works without relevant approvals; remove any unauthorised works, review the Development Approval as annexed to the Lease, and before 31 July 2016 advise on the Club’s plans to comply with the Development Approval and Lease provisions relating to the Land – in particular clauses 43 and 44 of the Lease - Access on public foreshore and compliance with Development Approval.

- 2016 July – In a letter to the Club the City referred to its letter of 16 June 2016 and email of 1 July 2016 and re-emphasised the Club’s lease area excluded the 20-metre public access foreshore area between the Club’s lease boundary and the river’s edge and the requirement for the Club to ensure compliance in that area with Club infrastructure and public access. Items noted as non-compliant were: line marking of bitumen and storing boats along the foreshore, installation of a black chain link fence and continued presence of the slipway.

The letter referenced the City’s All Abilities Play Space project and emphasised the importance of the locality being accessible and noting the Club’s continued use of the public access foreshore in the manner of use conflicted with that vision. A further request for the Club to review

Development Approval and Lease provisions was made with 31 July 2016 being referenced as date for when the City expected to receive the Club's plans for complying with the Development Approval and Lease provisions.

- 2016 August – The City met with Club General Manager to discuss the issues associated with the Club's use of the public access river foreshore. A copy of the Development Approval was provided to the Club for review and as a reference point for what is expected of the Club in terms of the public access reserve. The Club advised that financial constraints restricted the Club's ability to progress works. In a follow-up email the next day the Club were advised that the City was seeking the Club's assistance with achieving a reorganised river foreshore to ensure an optimal outcome for the Club, City and the general public. The email included information and weblinks regarding legislated requirements for the river foreshore and associated statutory approval processes for development and compliance. A request was made for the Club at its August committee meeting to consider its Lease obligations in terms of the Redevelopment and Maintaining Access and provide a response to the City on plans to resolve noted issues.
- 2016 September – The City completed works to river wall to ensure integrity and safety in area of the public access river foreshore abutting the Club's lease premises. To complete the works, the Club removed items located on the foreshore and temporarily disconnected services.
- 2016 October – City met with Club representatives – General Manager, Vice Commodore and a former Commodore to discuss issues with the Club's use of the public access foreshore area outside their lease area. It was agreed that the Club would review plans to achieve redevelopment and update the City.
- 2017 February – City requested Club's update on revision of plans for public access foreshore. Club advised they had engaged a number of consultants to assist with Master Planning process, but finance was a constraint. The Club was also working to establish a new Constitution to comply with the new legislative requirements.
- 2017 April – Club updated to advise they were holding a Special General Meeting of the Members on April 21 to present to them their first draft of the Master Plan and Development Plans. They advised that once the members had approved the Club would prepare and submit the Master Plan and Development Application documentation for the City's review.
- 2017 August – City staff met with Club representatives and a senior planning officer from the DBCA to discuss the Club's proposed application for development approval to install a wave attenuation device to protect their on-water infrastructure – jetties and boats. Club noted they'd suffered a catastrophic jetty failure in July which resulted from swell and wave action of a nearby vessel. As well the Club advised that over the past two years, four vessels had sunk in their moorings in the marina which a wave attenuator would likely prevent. Club advised to expect a Form 1 Development Application. At this meeting it was advised that any application would need to include a commitment by the Club to do works to resolve issues with Club infrastructure on the public access foreshore,

- remove the slipway and install the shared public footpath. The Club noted that Club finances would determine the timeframe.
- 2017 September – Club emailed a Form 1 application for Development Approval to install a wave attenuation device, including the reference to “a complete redevelopment over the next 10-15 years”. Noted works included redevelopment of the slipway and installation of the shared public pathway. The City refused to sign this application as landowner on the basis that the timeframe of 10-15 years for redevelopment works was too long.
- 2017 October – Club emailed an amended Form 1 Application for Development Approval to install wave attenuator with amended reference to a “complete redevelopment commencing within 2-3 years following the completion of the attenuator”. Included in stages 2-5 of the noted framework of that Master Plan was redevelopment of the slipway, and installation of Public Access Pathway along the foreshore (2-3 years after completion of the attenuator – being approximately 4-5 years which includes the period for works to install wave attenuator)
- 2017 October – City met with DBCA and it was agreed that a master plan was required for any success at moving approval processes along and addressing noted issues in the public access reserve. The City advised a resolution of issues in that area by the Club was a priority to satisfy their Lease requirements before developing other aspects of the Club’s facilities. DBCA advised the Minister’s expectation for public shared path to be installed as per Development Approval of 2009. DBCA also confirmed requirement for all development within the area of the Club’s facility and foreshore to first be approved by DBCA before commencing works.

5.0 Discussion

On the 19th of October 2017, the City received a Form 1 application for development approval (the Application) from the Club which requires the City’s endorsement as landowner before the statutory authority DBCA can process it. The Application is included in Attachment 3 to this report. The proposed work is costed at \$3.5million and is for the installation of a wave attenuation device. This device will protect the Club’s dilapidating in-water infrastructure and members’ boats. The 2009 Development Application also included the installation of a wave attenuator.

The Application is the second version of the Form 1 provided by the Club. The first version of the Form 1 application was emailed to the City on 11th September 2017. The City’s Chief Executive Officer determined to refuse the application as the application included an undertaking by the Club to address issues with Club infrastructure in the public access foreshore within a 10-15-year timeframe, and this was considered unacceptable.

The Application now considered proposes the same work to install a wave attenuator but includes an amended timeframe for the “complete redevelopment commencing within 2-3 years following the completion of the attenuator”, being a 4-5-year time frame in total to “commence” the redevelopment. Included in stages 2-5 of the noted framework of that Master Plan was redevelopment of the slipway, and installation of Public Access Pathway along the foreshore (2-3 years after completion of the attenuator).

Administration considers this timeframe to be unacceptable as well and expects that the Club should prioritise compliance with its tenancy obligations before improving Club infrastructure. Administration acknowledges that the Club faces a challenging task to balance operational requirements for facility management and service delivery, along with Lease obligations, however it must be realised that the ongoing risk posed by the current state of and use by the Club of the area of river foreshore that is for public use and access is unacceptable. This must be realised by the Club as a priority. The City has requested on numerous occasions that the Club revise its plans for the redevelopment proposed in 2009 and amended in 2013, while acknowledging that the City does not require the full redevelopment to occur but that the area of public access reserve be addressed. The Club has been advised that once a plan is prepared the City can consider options for assisting the Club to realise those plans.

In the Application the Club sites financial constraints as the reason for not proceeding with the Development Approval, and advises the effect of the 2008 global financial crisis had a significant impact on the Club's finances and note that in the last 3 years "the Club has worked extremely hard to pull itself out of a hefty financial overdraft to the point where it is once again self-sustainable and financially stable". The Club notes that dilapidating infrastructure continues to be an issue and their priority now is "to protect the Club's fragile on-water infrastructure. This will then provide the Club with adequate protection from adverse weather, ferry and large vessel wash, thus allowing the Club to commence repairs and replacement of the damaged jetties."

The project that would resolve issues with the public access reserve has not been costed, as first there is required a plan to work from, however the construction of a shared public path has been quoted to cost \$41,318 (as per attached quote in the Application). There would be further costs to landscape that area and address other aspects of Club infrastructure in that location.

On review of the Club's financial statements as at 30 June 2017 it is noted that the Club has sufficient cash reserves to fund the shared public path, as quoted in the Application. It is understood that the Club will finance installation of the wave attenuator through a loan arrangement.

In considering whether to approve the Application Administration refers to the background detail in this report and particularly to Council's resolution of 9 June 2009, in Item 13.2 which included the following:

"the City values the protection of public access to the river foreshore between the river wall and the lease boundary to approximately an average of 20 metres."

In keeping with the City's value of the protection of public access to and enjoyment of the river foreshore the nearby area at Beaton Park is the site for the All Abilities Play Space, a project funded by Rotary Clubs, public and corporate donation, the City and Lotterywest.

The project involves construction of a large-scale, innovative, state-of-the-art play facility that has been purpose-designed to meet everyone's needs, regardless of age or ability. The All Abilities Play Space is expected to result in increased pedestrian traffic and is considered a "statement of inclusion". Considering this vision for Beaton Park, neighbouring site to the Club's it is further noted that action is required to resolve issues with access in that area and to enhance and support this vision of accessibility and inclusion at the neighbouring All Abilities Play Space.

The City has emphasised to the Club this vision for the foreshore precinct and requested their assistance with achieving this. It appears that the Club and City have different priorities and time frames for realising this vision of accessibility, so to reconcile this, Administration recommends the City refuse to sign the Application until the Club provides the City with detailed plans of how the Club will resolve the issue of Club infrastructure in the public access foreshore reserve and provide the requisite unhindered and safe public access to that area. Administration advises an acceptable model for this area has already been developed in the Development Approval, annexed to the Lease so there is already a base to work from.

Administration recommends the City issue the Club with a notice pursuant to the Lease requesting that the Club remove and make good the slipway and all Club infrastructure from the public access reserve within 12 months of the date of this Council meeting. In doing these works the Club will be required to first obtain the necessary statutory approvals for development and in undertaking that approval process presents an opportunity for the Club to also apply for development approval to do any other works the Club requires, such as installation of the wave attenuator.

Administration recommends that the Club be required to install the shared public footpath within 2 years of the date of this Council meeting. Administration recommends the City consider options to assist the Club with this component of the project, recognising that the footpath will benefit the wider community.

During our discussions with the Club, it was noted that the Club were of the opinion that the works forming the Development Application were not ever commenced and so those provisions of the Lease outlined in this report did not apply however it is recognised that the Lease includes numerous provisions which directly relate to the Development Application and the reason Council considered renegotiating the Club's Lease for commencement in 2011 was to reflect the redevelopment and enable the financing of the redevelopment works. And as noted above, both clauses 43 and 44 of the Lease relating to public access and the redevelopment are Essential Terms of the Lease.

Even if the City decided not to enforce the provisions relating to the redevelopment, the fact remains that the Club has an obligation to ensure unhindered, safe public access to the area which is dedicated to public access and enjoyment. They are also obliged to receive statutory approvals prior to undertaking any works at their lease premises and on the river foreshore. The continued existence of the slipway contradicts these requirements. And therefore, poses an unacceptable risk to members of the public accessing this area.

The Club also contended that it is simply continuing to maintain Club infrastructure through continued use of the public access area in the manner it has historically been however it was realised in 2009 when the Club completed a Master Plan for the redevelopment of Club facilities and further in 2010 when the Lease was agreed that this was no longer acceptable practice.

6.0 Consultation

As noted above the City has met on numerous occasions with representatives of the Club to discuss issues as outlined. The City has further written to the Club several times referencing requirements on the Club to revise plans to resolve issues with infrastructure located on the public access area of the reserve.

The City has met with both the Club and DBCA to discuss statutory requirements on the Club to address those issues.

The City has met separately with DBCA to further discuss the issues and determine a way forward.

7.0 Budget / Financial Implications

There are no budget or financial implications directly associated with this report although to pursue compliance by the Club in a formal sense may involve legal fees. And if the City decides that it shall do the works to resolve the issues reported on then costs associated with those works will need to be further considered.

8.0 Risk management

The City as management body of Crown Reserve 17391 has care and control of the land and associated with that assumes the liability and risk associated with use of the land. The City through the Lease has apportioned responsibility to the Club for its lease premises and to some degree its use of the public access foreshore. However, it must be reaffirmed by the City, its responsibility for regulating activity on and use of that land in the context of permissible and appropriate use. And use of that land in a manner as reported to Council in 2009 “public access through the premises along the river’s edge ... to the most extent is impractical and potentially dangerous” is not appropriate.

The risk associated with allowing the Club to continue to use the public access foreshore in the continued manner is unacceptable. A plan to mitigate this risk is required and this report presents options to adequately manage that risk.

9.0 Conclusion

Council is now required to reinforce its obligations in protecting the public’s rights and interest in the Dalkeith / Nedlands river foreshore and ensuring safe access to and enjoyment of that area of Crown reserve. To achieve this requires Council as landlord to reaffirm requirements on the Perth Flying Squadron Yacht Club: to remove all unapproved infrastructure from the public access area of the foreshore; and install the shared public footpath as the Club agreed to on signing the Deed of Lease in 2011. Acknowledging the Club’s challenging task to manage the public interest in the land with membership interest in service provision, Administration proposes a reasonable timeframe for addressing the issues.

M L 1

FORM APPROVED
NO. B2590

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED

LEASE

DESCRIPTION OF LAND (Note 1)

DESCRIPTION OF LAND (Note 1)	EXTENT	VOLUME	FOLIO
That part of Lot 254 on Deposited Plan 37070 depicted with the letter "A" on Deposited Plan 65818 (copy annexed to the Lease)	Part	LR3131	762

ENCUMBRANCES (Note 2)

Nil

ESTATE AND INTEREST

Freehold

LESSOR (Note 3)

CITY OF NEDLANDS of 71 Stirling Highway, Nedlands.

LESSEE (Note 4)

PERTH FLYING SQUADRON YACHT CLUB INCORPORATED of The Esplanade, Dalkeith

TERM OF LEASE (Note 5)

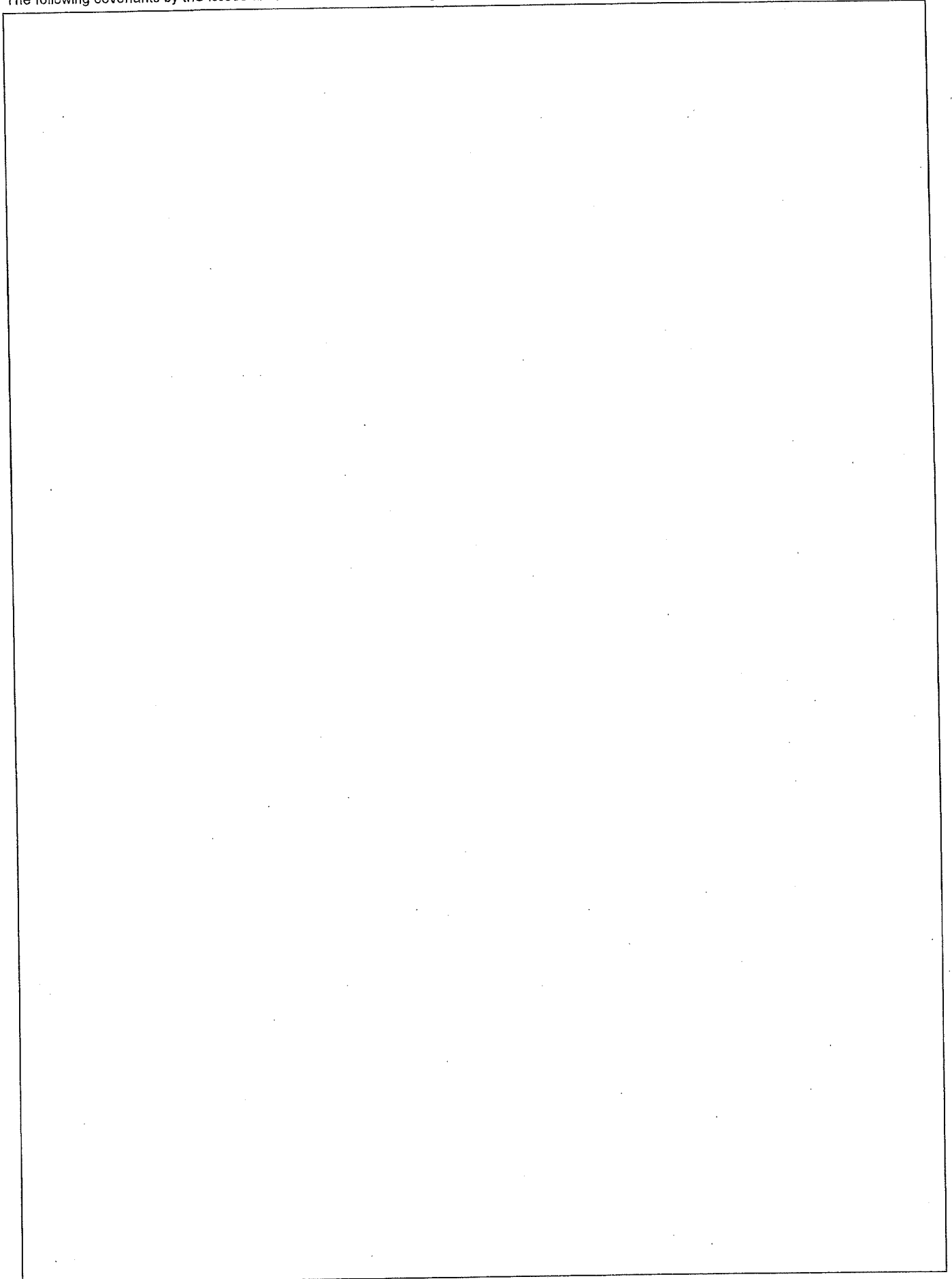
Twenty one (21) years
Commencing from the 1 day of January Year

THE LESSOR HEREBY LEASES TO THE LESSEE the land above described subject to the encumbrances as shown hereon (Note 6)

for the above term for the clear yearly rental of (Note 7) one peppercorn payable (Note 8) per annum

Subject to the covenants and powers implied under the Transfer of Land Act 1893 as amended (unless hereby negated or modified) and also to the covenants and conditions contained herein.

The following covenants by the lessee are to be construed according to section ninety - four of the Transfer of Land Act 1893 as amended (Note 1)



Lease of a portion of Reserve
17391, Lot 254 Birdwood
Parade, Dalkeith

City of Nedlands

Perth Flying Squadron Yacht Club Incorporated



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: TF:NEDLI 18642

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Table of Contents

Copyright notice	i
Details	1
Agreed Terms	1
1. Defined terms and interpretation	1
1.1 Defined terms	1
1.2 Interpretation	3
1.3 Headings	4
2. Conditions	4
3. Grant of lease	5
4. Quiet enjoyment	5
5. Rent and other payments	5
5.1 Rent	5
5.2 Outgoings	5
5.3 Interest	5
5.4 Costs	6
5.5 Payment of Money	6
6. Accrual of amounts payable	6
7. Insurance	6
7.1 Insurance to be effected	6
7.2 Building Insurance to be effected and paid by Lessee	6
7.3 Details and receipts	7
7.4 Not to invalidate	7
7.5 Report	7
7.6 Settlement of claim	7
7.7 Lessor as attorney	7
8. Indemnity	8
8.1 Lessee responsibilities	8
8.2 Indemnity	8
8.3 Obligations Continuing	8
8.4 No indemnity for Lessor's negligence	9
8.5 Release	9
9. Limit of Lessor's liability	9
9.1 No liability for loss on Premises	9
9.2 Limit on liability for breach of Lessor's covenants	9
10. Maintenance, repair and cleaning	9
10.1 Maintenance	9
10.2 Repair	10
10.3 No obligation to Lessor to repair or maintain	10
10.4 Cleaning	10
10.5 Maintain surroundings	10
10.6 Pest control	11
10.7 Structural state of Premises	11
10.8 Maintenance fund	11

11. Alterations	12
11.1 Restriction	12
11.2 Consent	12
11.3 Cost of Works	13
11.4 Conditions	13
12. Use	13
12.1 Restrictions on use	13
12.2 No Warranty	14
12.3 Premises Subject to Restriction	14
12.4 Indemnity for Costs	14
13. Lessor's right of entry	14
13.1 Entry on Reasonable Notice	14
13.2 Costs of Rectifying Breach	14
14. Statutory obligations and notices	15
14.1 Comply with Statutes	15
14.2 Indemnity if Lessee Fails to Comply	15
15. Report to Lessor	15
16. Default	15
16.1 Events of Default	15
16.2 Forfeiture	16
16.3 Lessor may remedy breach	16
16.4 Acceptance of Amount Payable By Lessor	16
16.5 Essential Terms	16
16.6 Breach of Essential Terms	17
17. Damage or destruction	17
17.1 Damage or destruction	17
17.2 Insurance proceeds	17
18. Holding over	18
19. Restore premises	18
20. Yield up the premises	18
20.1 Peacefully surrender	18
20.2 Clause 20.1 to survive termination	18
21. Removal of property from Premises	18
21.1 Remove property prior to termination	18
21.2 Lessor can remove property on re-entry	19
22. Hire of Premises	19
22.1 Casual Hire or Regular Hire Only	19
22.2 Lessee remains responsible for Premises at all times	19
23. Assignment, sub-letting and charging	19
23.1 No assignment or sub-letting without consent	19
23.2 Lessor's Consent to Assignment and Sub-letting	19
23.3 Where sublessee is a community group	20
23.4 Consents of Assignee Supplementary	20
23.5 <i>Property Law Act 1969</i>	20
23.6 Costs for assignment and sub-letting	20
23.7 No mortgage or charge without consent	20
24. Acts by agents	20

25. Governing law	20
26. Statutory powers	20
27. Notice	21
27.1 Form of delivery	21
27.2 Service of notice	21
27.3 Signing of notice	21
28. Severance	21
29. Disputes	21
29.1 Appointment of arbitrator	21
29.2 Payment of amounts payable to date of award	22
30. Variation	22
31. Moratorium	22
32. Further assurance	22
33. Payment of money	22
34. Waiver	22
34.1 No general waiver	22
34.2 Partial exercise of right power or privilege	22
35. Goods and services tax	22
35.1 Definitions	22
35.2 Lessee to pay GST	23
35.3 Consideration in Kind	23
36. Commercial Tenancy Act	23
37. Caveat	24
37.1 No absolute caveat	24
37.2 CEO & Lessor as attorney	24
38. Indemnity and ratification	24
38.1 Ratification	24
38.2 Indemnity	24
39. Prior notice of proposal to change rules	24
40. Provision of information	25
41. Alcohol	25
41.1 Acknowledgement	25
41.2 No variation or further licence without consent	25
41.3 Liquor licence	25
42. Minimise nuisance to neighbours	25
43. Maintain Access	26
44. Re-development Obligations	26
44.1 Comply with Development Approval	26
44.2 Comply with Lessor's Requirement	26
44.3 General requirements	26
44.4 Risk	27
44.5 Obtain all necessary approvals	27
44.6 Insurance for Works	27
44.7 Indemnity	27
44.8 Maintain all improvements constructed by the Lessee	27

45. Environmental Management Plan	28
46. Additional terms and covenants	28
Schedule	29
Signing page	30
Annexure 1 – Sketch of Premises (Deposited Plan 65818)	31
Annexure 2 – Sketch of Car Park	32
Annexure 3 – Development Approval	33
Annexure 4 – Lessor’s Conditions	34

Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009
(Lessor)

Perth Flying Squadron Yacht Club Incorporated

of The Esplanade, Dalkeith, Western Australia
(A0080005G)
(Lessee)

Background

- A The Lessor is the management body of the Land under the Order.
- B Under the Order, the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands being first obtained.
- C The Lessor has agreed to grant a lease of the Premises on the terms and conditions of this Lease.

Agreed Terms

1. Defined terms and interpretation

1.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter -

Alterations means any of the acts referred to in **clauses 11.1(1)(b); 11.1(1)(c); 11.1(1)(d); and 11.1(1)(e);**

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorised Person means –

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (a);

Car Park means the car parking area located on the Land outside of the Premises, across the Esplanade adjacent to the eastern pedestrian entrance of the Premises, and identified as “Limestone Carpark” on the sketch annexed hereto as **Annexure 2;**

Casual Hire means the Hire of the Premises (or part thereof) on an irregular basis, for the purpose of temporary or occasional use of the Premises (or part thereof). Casual Hire does not require the entering into a formal legal agreement, but will require hire application form to be

completed. Casual Hire will mean that the hirer does not have exclusive possession of the Premises, and the Premises will be available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Contaminated Sites Act means the *Contaminated Sites Act 2003 (WA)*.

DEC means the Department of Environment and Conservation of Western Australia;

Environmental Contamination has the same meaning as the word "contaminated" in the Contaminated Sites Act;

EPA means the Environment Protection Agency of Western Australia;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Hire means the hiring out of the Premises (or part thereof) on a temporary basis, for the purpose of providing them with temporary or shared use of the Premises. The Hire of the Premises may be in the form of Casual Hire or Regular Hire. Hire would normally be applied for by filling out a simple hire application form, and would not require a legal lease or sub-leasing document. Hire means that the hirer does not have exclusive possession of the Premises (or part thereof), and the Premises will remain available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

Land means the land described at **Item 1** of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lessee's Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Leased Premises by the authority of a person specified in paragraph (a).

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Order means the vesting order published in the *Government Gazette* under the former *Land Act 1933* (and which now has the status of a Management Order made by the Minister under section 46 of the *Land Administration Act 1997*), or the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of Recreation;

Party means the Lessor or the Lessee according to the context;

Premises means the premises described in **Item 1** of the Schedule;

Regular Hire means the hire of the Premises (or part thereof) on a repeated basis (such as hire for a full year at the same time each week), for the purpose of regular use of the Premises (or part thereof). Regular Hire will not require the entry into a legal agreement, beyond a hire application form. With the exception of storage areas, the Premises hired for use would normally be available for hire at other times by other hirers. The Lessee may grant a regular hirer exclusive use of a storage area, without affecting the hirer's classification as a hirer rather than a permanent tenant or sub-tenant requiring a formal lease agreement and compliance with **clause 23** of the Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-letting or Sub-letting;

Rent means the rent specified in **Item 4** of the Schedule as varied from time to time under this Lease;

Schedule means the Schedule to this Lease;

Sub-letting or Sub-letting means the use of the Premises (or part thereof) by an organisation or individual on a long-term basis, for the purpose of providing them with security of tenure. Sub-letting or Sub-letting would normally be for the purpose of granting an individual or organisation exclusive use of the Premises (or part thereof). If the Lessee wishes to sub-lease or sublet the Premises (or part thereof), it must comply with the requirements of **clause 23** of this Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-letting or Sub-letting;

Term means the term of years specified in **Item 2** of the Schedule and any Further Term; and

Termination means expiry by effluxion of time or sooner determination of the Term or any period of holding over.

1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words importing -
 - (i) the singular includes the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;

- (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to -
 - (A) both express and implied provisions; and
 - (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include -
- (i) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

1.3 Headings

Except in the Schedule, headings do not affect the interpretation of this Lease.

2. Conditions

This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

3. Grant of lease

The Lessor, subject to **clause 2** of this Lease, leases to the Lessee the Premises for the Term subject to -

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

4. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Order, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

5. Rent and other payments

The Lessee covenants with the Lessor -

5.1 Rent

To pay to the Lessor the Rent in the manner set out at **Item 4** of the Schedule on and from the Commencement Date clear of any deductions.

5.2 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises -
 - (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
 - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection;
 - (d) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (e) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

5.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from

the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

5.4 Costs

- (1) To pay to the Lessor on demand -
 - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
 - (b) all registration fees in connection with this Lease; and
 - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
 - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (b) any breach of covenant by the Lessee or an Authorised Person;
 - (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (d) any work done at the Lessee's request; and
 - (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 5.4** or any matter arising out of this Lease.

5.5 Payment of Money

Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in this Lease or as otherwise directed by the Lessor by Notice from time to time.

6. Accrual of amounts payable

Amounts Payable accrue on a daily basis.

7. Insurance

7.1 Insurance to be effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

7.2 Building Insurance to be effected and paid by Lessee

The Lessee will effect and maintain insurance of the building on the Premises, with an insurance company acceptable to the Lessor, and to a value agreed by the parties.

7.3 Details and receipts

In respect of the insurances required by **clause 7.1** and **clause 7.2** the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately-
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

7.4 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might -

- (a) render any insurance effected under **clause 7.1** or **7.2** on the Premises, or any adjoining premises, void or voidable;
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

7.5 Report

Each Party must report to the other promptly in writing, and in addition verbally in an emergency -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

7.6 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clauses 7.1** and **7.2**.

7.7 Lessor as attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clauses 7.1** and **7.2**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clauses 7.1** and **7.2**;
- (c) to give good and effectual receipts and discharges for the insurance; and

- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

8. Indemnity

8.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

8.2 Indemnity

- (1) The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:
 - (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
 - (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
 - (e) any work carried out by or on behalf of the Lessee on the Premises;
 - (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
 - (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
 - (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
 - (i) an act or omission of the Lessee.

8.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 8.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

8.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

8.5 Release

(1) The Lessee:

(a) agrees to occupy and use the Premises at the risk of the Lessee; and

(b) releases to the full extent permitted by law, the Lessor from:

(i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;

(ii) loss of or damage to the Premises or personal property of the Lessee; and

(iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

(2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

9. Limit of Lessor's liability

9.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

9.2 Limit on liability for breach of Lessor's covenants

(1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Premises under the Order.

(2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

10. Maintenance, repair and cleaning

10.1 Maintenance

(1) The Lessee will maintain at its own expense the Premises including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks, leach drains, paths, paving, park or garden furniture, retaining walls, fences and reticulation in good, safe order repair and condition.

- (2) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.
- (3) The Lessee must take such reasonable action as is necessary to -
 - (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

10.2 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises including damage of a structural nature, regardless of how it is caused.

10.3 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.
- (2) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

10.4 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

10.5 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens lawns, shrubs, hedges and trees.
- (2) If there is any remnant natural bushland in the surrounds the Lessee must not remove or do anything to damage such bushland without written consent from the Lessor and the Lessee must maintain any such bushland, at its cost, in accordance with a maintenance programme agreed with the Lessor's Parks Manager.
- (3) Subject to paragraph (2), any pruning of trees must be undertaken by a qualified tree surgeon.
- (4) Subject to paragraph (2), if any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (5) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (6) Subject to paragraph (2), the Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

10.6 Pest control

- (1) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.
- (2)
 - (a) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
 - (b) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within two weeks of the inspection;
 - (c) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
 - (d) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

10.7 Structural state of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

10.8 Maintenance fund

- (1) The intention of this subclause is to ensure that the Lessee establishes a reserve fund and sets aside sufficient funds to maintain the Premises in accordance with this Lease and for the replacement of any structures or improvements on the Premises which will require eventual replacement. The fund may also be used for capital development of the Premises.
- (2) The Lessee must -
 - (a) establish and maintain a fund to be retained under its own management for the purpose of providing adequate funds for ongoing maintenance of the Premises and to allow for the depreciation of structures or improvements forming part of the Premises (**the Fund**);
 - (b) keep the Fund in an interest bearing bank account as a separate fund to other monies held by the Lessee;
 - (c) ensure that the Fund is clearly identified, as a distinct and separate fund in the Lessee's accounting records and is reported as such in all general financial statements produced by the Lessee;
 - (d) ensure that the Fund is audited in accordance with the Lessee's audit requirements and that the Lessor is provided at least once in each year of the Term with a copy of an audited financial statement showing the amount in the Fund; and
 - (e) make regular contributions to the Fund in accordance with this subclause (**Fund Contributions**).
- (3) The amount of money the Lessee will deposit in the Fund by the first anniversary date is specified in **Item 7** of the Schedule.
- (4) The amount of money the Lessee will deposit in the Fund each subsequent year and frequency of Fund contributions will be reviewed annually.

- (5) Before each annual review of the Fund Contributions, the Lessor's Building Services will meet with the Lessee to review the maintenance requirements for the Premises. The intention of the meeting will be for the Lessor's Building Services and the Lessee to reach agreement on the amount and frequency of Fund Contributions for the next twelve months.
- (6) The Lessee must only use the Fund for purposes and on specific items agreed between the parties.
- (7) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction.
- (8) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction, in preference to using the Fund for capital development of the Premises. The Fund may be used for capital development of the Premises, but only if all maintenance items as identified by the Lessor have been completed.

11. Alterations

11.1 Restriction

- (1) The Lessee must not without prior written consent –
 - (a)
 - (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
 - (b) install any new signage;
 - (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
 - (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
 - (e) subject to the performance of the Lessee's obligations in **clause 10**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

11.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 11.1** the Lessor may -
 - (a) consent subject to conditions; and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
 - (b) if the Lessor consents to any matter referred to in **clause 11.1** -
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and

- (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

11.3 Cost of Works

All works undertaken under this **clause 11** will be carried out at the Lessee's expense.

11.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either -

- (a) carry out those other works at the Lessee's expense; or
 - (b) permit the Lessor to carry out those other works at the Lessee's expense,
- in accordance with the Lessor's requirements.

12. Use

12.1 Restrictions on use

The Lessee must not and must not suffer or permit a person to -

- (a)
 - (i) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessor, as set out at **Item 5** of the Schedule; or
 - (ii) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (d) store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions -
 - (i) any such storage must comply with all relevant statutory provisions;
 - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
 - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
 - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises;
- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises; or
- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

12.2 No Warranty

The Lessor gives no warranty -

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

12.3 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

12.4 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause 12.

13. Lessor's right of entry

13.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice -

- (a)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this **clause 13.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 13.1(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

14. Statutory obligations and notices

14.1 Comply with Statutes

The Lessee must -

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 12**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

14.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against -

- (a) failing to perform, discharge or execute any of the items referred to in **clause 14.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 14.1**.

15. Report to Lessor

The Lessee must immediately report to the Lessor -

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

16. Default

16.1 Events of Default

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;

- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** the Lessor may -

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 18**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

16.3 Lessor may remedy breach

If the Lessee -

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

16.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

16.5 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **10** (Maintenance, Repair and Cleaning), **12** (Use), **23** (Assignment, Subletting and Charging), **35** (Goods and Services Tax), **41** (Alcohol), **42** (Minimise Nuisance to Neighbours); **43** (Maintain Access); **44** Redevelopment Obligations and **45** Environmental Management Plan is an essential term of this Lease but this **clause 16.5** does not mean or imply that there are no other essential terms in this Lease.

16.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined -
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the covenant set out in this **clause 16.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 16.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

17. Damage or destruction

17.1 Damage or destruction

If the Premises or any part of the Premises are totally or partially destroyed so as to require major rebuilding the Lessee -

- (a) may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessor; or
- (b) must within 2 years from the date of destruction or damage rebuild the Premises to its original state and condition to the satisfaction of the Lessor and in accordance with the requirements of all relevant authorities.

17.2 Insurance proceeds

- (1) If the Lessee terminates the Term in accordance with **clause 17.1** all insurance proceeds in respect of the Premises will be paid to and retained by the Lessor; or

- (2) If the Lessee rebuilds the Premises, all insurance proceeds will be applied to the rebuilding with any shortfall paid by the Lessee.

18. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

19. Restore premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease fair wear and tear excepted.

20. Yield up the premises

20.1 Peacefully surrender

On Termination the Lessee must -

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease;
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

20.2 Clause 20.1 to survive termination

The Lessee's obligation under **clause 20.1** will survive termination.

21. Removal of property from Premises

21.1 Remove property prior to termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must:

- (a) remove from the Premises all property of the Lessee which is not a fixture other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.
- (b) remove from the Land and surrounding foreshore, all additions, structures and improvements constructed or erected by it on the Land, unless the Lessor requests in writing for such additions or structures to remain, and following the removal of any improvements, the additions or structures restore the land to the same or substantially the same condition as it was immediately prior to the erection or construction of such improvements, additions or structures.

21.2 Lessor can remove property on re-entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.

22. Hire of Premises

22.1 Casual Hire or Regular Hire Only

The Lessee may Hire out the Premises or any part thereof on a Casual Hire or Regular Hire basis only PROVIDED -

- (a) such use is consistent at all times with the Permitted Purpose; and
- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease.

22.2 Lessee remains responsible for Premises at all times

The Lessee ACKNOWLEDGES that at all times, including when the Premises are hired to a third party, it remains responsible for the Premises, including without limitation any damage that may be caused or occurs during any hire period.

23. Assignment, sub-letting and charging

23.1 No assignment or sub-letting without consent

Subject to **clause 22**, the Lessee must not assign the leasehold estate in the Premises nor Sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

23.2 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or Sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by -
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

23.3 Where sublessee is a community group

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 23.2(c)**.

23.4 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

23.5 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

23.6 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to -

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or Sub-letting proceeds.

23.7 No mortgage or charge without consent

The Lessee must not mortgage nor charge the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law, such consent being capable of being subject to conditions as required by the persons giving consent.

24. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

25. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

26. Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

27. Notice

27.1 Form of delivery

A Notice to a Party must be in writing and may be given or made -

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

27.2 Service of notice

A Notice to a Party is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 27.1(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 27.1(b)**, on the second business day following the date of posting of the Notice.

27.3 Signing of notice

A Notice to a Party may be signed -

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

28. Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

29. Disputes

29.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

29.2 Payment of amounts payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

30. Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

31. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

32. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

33. Payment of money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

34. Waiver

34.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

34.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

35. Goods and services tax

35.1 Definitions

The following definitions apply for the purpose of this clause -

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;

- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

35.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 35.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

35.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 35.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

- (1) No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

- (2) Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

- (3) Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

- (4) Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

36. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

37. Caveat

37.1 No absolute caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

37.2 CEO & Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally -

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate -

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

38. Indemnity and ratification

38.1 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 37**.

38.2 Indemnity

The Lessee indemnifies the Lessor against -

- (a) any loss arising directly from any act done under **clause 37** and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 37**.

39. Prior notice of proposal to change rules

The Lessee agrees that it will not change its rules of association under the Associations Incorporations Act 1987 without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

40. Provision of information

The Lessee agrees to provide to the Lessor -

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor.

41. Alcohol

41.1 Acknowledgement

The Lessor and the Lessee acknowledge that the Lessee holds a Special Facility Licence for the Premises.

41.2 No variation or further licence without consent

The Lessee COVENANTS AND AGREES that it shall not make an application for a further licence or permit under the Liquor Control Act 1988 for the Premises, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

41.3 Liquor licence

The Lessee COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must -

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 11** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following -
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

42. Minimise nuisance to neighbours

- (1) The Lessee acknowledges that the Premises are located in close proximity to residential premises.

- (2) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Premises.
- (3) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

43. Maintain Access

The Lessee COVENANTS AND AGREES to keep that portion of Land between the southern boundary of the Premises and the river's edge:

- (a) free of permanent fixtures and physical barriers, unless such fixtures and barriers have first been approved by the Lessor in writing; and
- (b) free and unhindered for pedestrian access by the general public.

44. Re-development Obligations

44.1 Comply with Development Approval

In terms of the redevelopment of the Premises and the surrounding land, the Lessee COVENANTS AND AGREES to comply strictly with the terms of the Development Approval issued by the Swan River Trust, copy annexed hereto as **Annexure 3**, including without limitation:

- (a) the construction of the shared public access footpath as required pursuant to condition 11 of the Development Approval;
- (b) the removal of infrastructure from the Crown reserve between the river and the Premises as required pursuant to condition 10 of the Development Approval.

44.2 Comply with Lessor's Requirement

In terms of the redevelopment of the Premises and the surrounding land, the Lessee covenants and agrees to:

- (a) comply strictly the Lessor's conditions of approval to the re-development, annexed hereto as **Annexure 4**, including without limitation the upgrade of the Car Park to the Lessor's satisfaction; and
- (b) in respect of the shared public access footpath, required pursuant to condition 11 of the Development Approval, erect signs to the Lessor's specifications and reasonable satisfaction alerting users of the footpath that boats and other machinery will frequently cross the shared public access footpath

44.3 General requirements

The Lessee agrees and acknowledges with the Lessor in relation to the redevelopment:

- (a) that the re-development must be undertaken at is full cost and expense;
- (b) the construction of any buildings or improvements on the Premises must be:
 - (i) in strict compliance with the Building Code of Australia;

- (ii) in accordance with plans approved by the Lessor in its capacity as landlord, and the Lessor in its capacity as local government authority; and
- (iii) completed in a proper and workman-like manner.

44.4 Risk

The Lessee acknowledges and agrees all of the re-development works shall in all respect be carried out at the risk of the Lessee and that the Lessor has not given any warranty or made any representations either as to the suitability of the Land for the Lessee's proposed use.

44.5 Obtain all necessary approvals

The Lessee covenants and agrees to obtain at its expense all necessary statutory approvals for the re-development of the Premises, including without limitation planning and building approvals.

44.6 Insurance for Works

The Lessee covenants and agrees with the Lessor that prior to commencing the any works related to the re-development of the Premises:

- (a) to effect and maintain a public risk insurance policy covering the respective rights and interests of the Lessor and the Lessee for an amount of not less than \$10 million dollars for any one claim covering all usual and necessary insurable risks arising out of such works; and
- (b) to ensure that all consultants and contractors engaged to do the re-development works have adequate and appropriate insurance cover for the work that they are engaged to perform.

44.7 Indemnity

The Lessee covenants and agrees to indemnify and keep indemnified the Lessor from and against all claims, demands, writs, actions and suits which may be brought or made against it by any person or persons in connection with loss of life or loss, injury or damage claimed to have been suffered to any property or by any person or persons arising out of or in connection with any works undertaken as part of the re-development of the Premises and the surrounding area.

44.8 Maintain all improvements constructed by the Lessee

The Lessee COVENANTS AND AGREES to:

- (a) maintain at its own expense all additions, structures and improvements constructed or erected by it on the Land or the surrounding areas in good safe order repair and condition to the City's satisfaction, including without limitation:
 - (i) the public footpath to be constructed pursuant to condition 11 of the Development Approval;
 - (ii) the parking bays, driveways and points of ingress and egress;
 - (iii) all safety barriers and signage; and
 - (iv) the Car Park.
- (b) comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the additions, structures and improvements outlined in paragraph (a) above.

45. Environmental Management Plan

The Lessee COVENANTS AND AGREES:

- (a) prior to occupying the re-developed Premises, the Lessee must submit for the Lessor's approval an Environmental Management Plan; and
- (b) the Lessee must strictly comply with and implement at all times the approved Environmental Management Plan, and any other replacement plan approved by the Lessor in writing.

46. Additional terms and covenants

Each of the terms, covenants and conditions (if any) specified in **Item 6** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease

Schedule

Item 1 Land and Premises

Land

Reserve 17391 – Lot 254 on Deposited Plan 37070 being the whole of the land comprised in Crown Land Title Volume LR3131 Folio 762.

Premises

That part of the Land identified on Deposited Plan 65818 with the letter “A” annexed hereto as **Annexure 1**, including all buildings, structures, alterations, additions and improvements on that part of the Land, or erected on that part of the Land during the Term.

Item 2 Term

21 years commencing on 1 January 2011 and expiring on 31 December 2031.

Item 3 Commencement Date

1 January 2011

Item 4 Rent

One peppercorn per annum payable on the Lessor’s demand.

Item 5 Permitted purpose

Private yacht club, clubhouse and licensed club premises under a club licence pursuant to the Liquor Licensing Act 1988 and uses reasonably ancillary thereto.

Item 6 Additional terms and covenants

Nil

Item 7 Maintenance fund

\$2000 per year (to be reviewed on an annual basis in accordance with the terms of **clause 10.8**), this sum must be expended on the Premises in each year of the Term to the Lessor’s satisfaction and in accordance with the provisions of **clause 10.8**.

Item 8 Public liability insurance

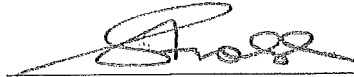
Twenty million dollars (\$20,000,000.00).

Signing page

EXECUTED

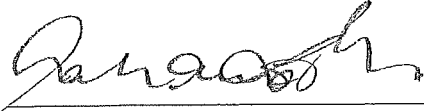
2011

THE COMMON SEAL of the CITY OF)
NEDLANDS was hereunto affixed by authority)
of a resolution of the Council in the presence of:)



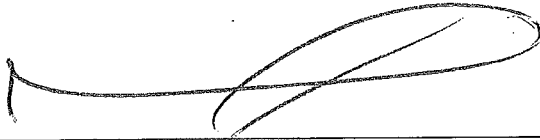
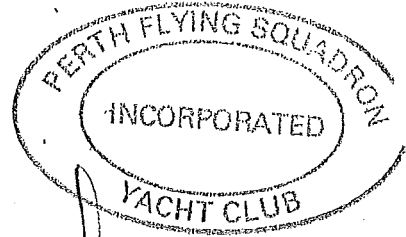
MAYOR

No. 557

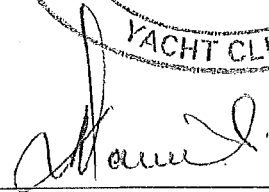


CHIEF EXECUTIVE OFFICER

THE COMMON SEAL of PERTH FLYING)
SQUADRON YACHT CLUB INC was hereunto)
affixed in the presence of:)



OFFICE HOLDER SIGN




OFFICE HOLDER SIGN

Office Held: SEAL HOLDER
Full Name GRAHAM MERTON DAY
Address 17 STUART-ST
MOSMAN PARK
WA 6012

Office Held: SEAL HOLDER
Full Name DONALD CHARLES DAVIES
Address 17 VIEW STREET
SUBIAEO W.A. 6008

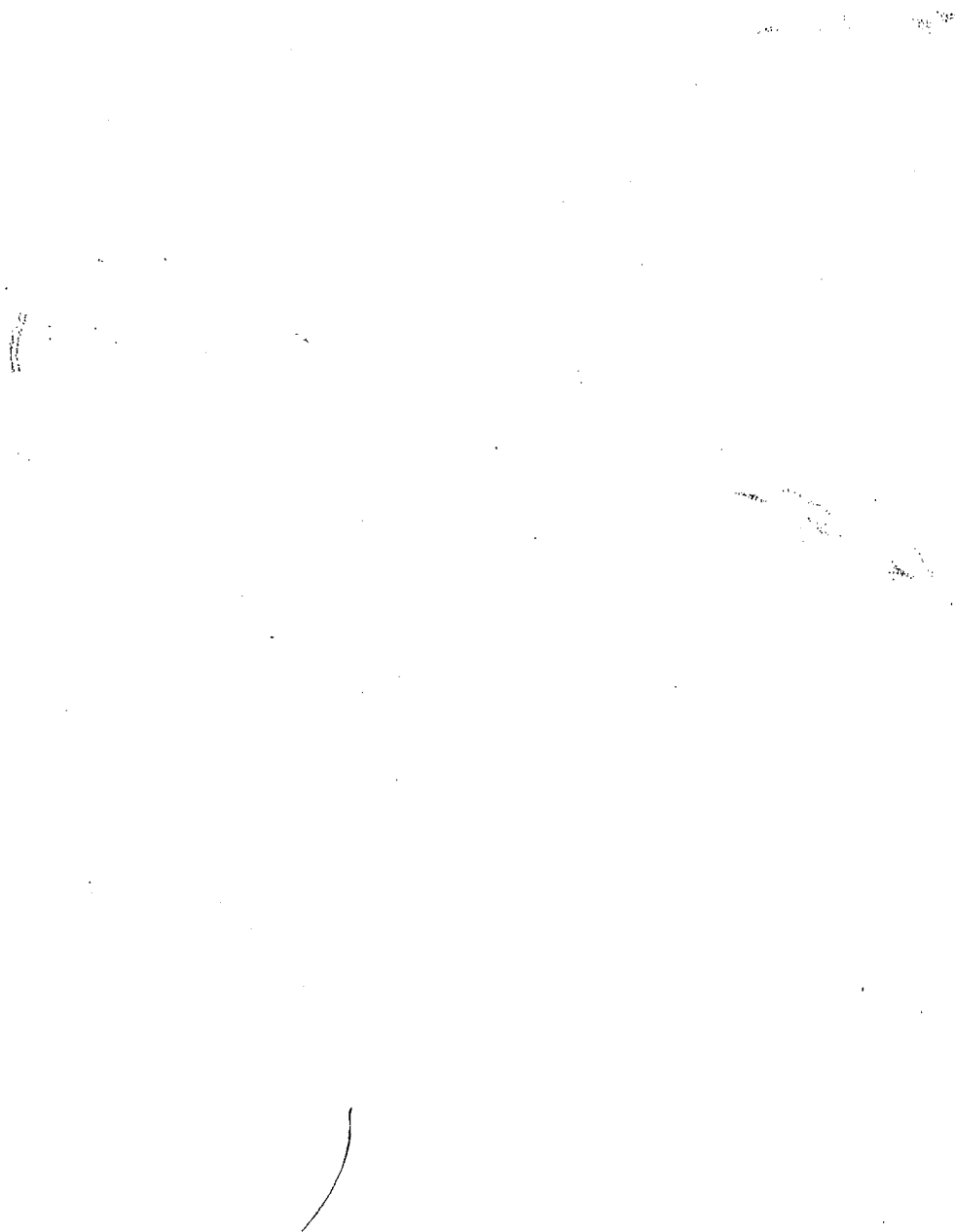
APPROVED FOR THE PURPOSES OF SECTION 18
OF THE LAND ADMINISTRATION ACT 1997



by Order of the Minister for Lands
This document is still subject to the registration
requirements of the Transfer of Land Act 1893.

18/4/2011

Annexure 1 – Sketch of Premises (Deposited Plan 65818)



TYPE CROWN
PURPOSE INTEREST
POINT OF

LEASE AREAS AND / OR
OTHER INTEREST OVER
A M17931 ON DP 37070

SSA NO
FORMER TENURE
EXTRACT SWAN
TOWNSITE SOUTH NEDLANDS
LANDGATE FILE CITY OF NEDLANDS
LOCAL AUTHORITY
LOCALITY DANKSHEIL

FIELD BOOK
113352
DN
INBK BC 3/0 10.0

SCALE 1:750 @ A2
ALL DISTANCES ARE IN METRES

SURVEYORS CERTIFICATE - COMPULSORY
I hereby certify that this instrument is a correct representation of the facts as shown to me by the parties to the instrument and that I have not been influenced by any person in the execution of this instrument.

REGISTERED SURVEYOR
VERA
P.O. Box 182
BURSWOOD WA 6100
FAX (08) 9355 5377
EMAIL: FORN@VERA.SURV.AU
ABR-41, LRA 54, VFA

APPROVED BY
WESTERN AUSTRALIAN
PLANNING COMMISSION
DATE
LEGAL COMPONENT
CHECKED
FEE PAID
ASSESSING NO.
FILE
PLANNING NO.
DATE

LOGGED
JOB NO. 16508
TYPE OF VALIDATION
FULL AUDIT
DATE
LEGAL COMPONENT
CHECKED
FEE PAID
ASSESSING NO.
FILE
PLANNING NO.
DATE

SUBJECT TO
IN ORDER FOR DEALINGS
DATE

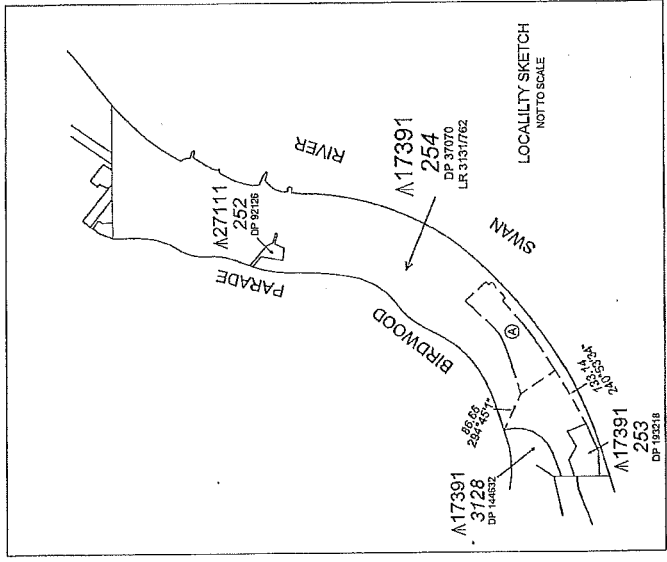
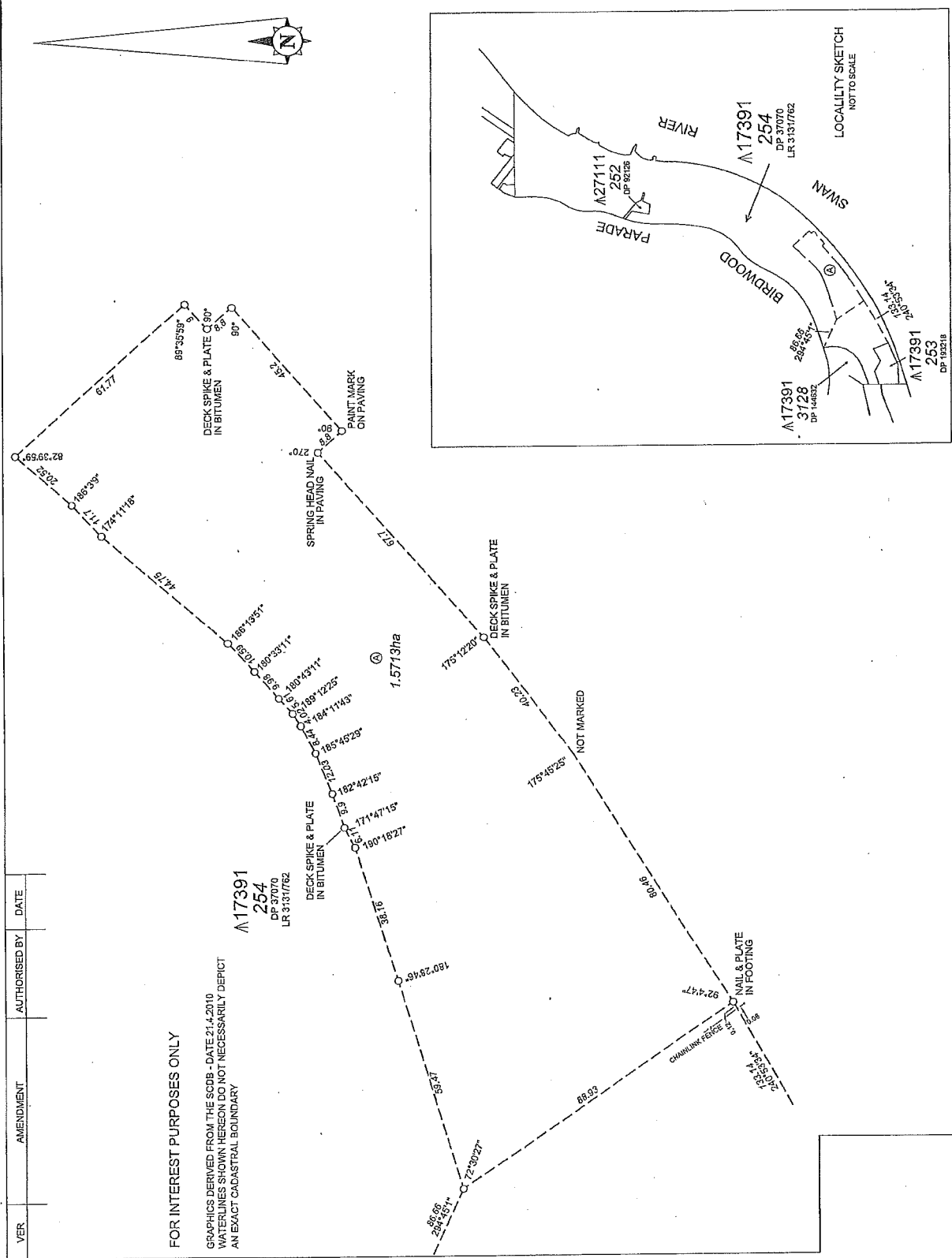
FOR INSPECTOR OF PLANS & SURVEYS / AUTHORIZED LAND OFFICER
DATE

INSPECTOR OF PLANS & SURVEYS / AUTHORIZED LAND OFFICER
DATE

Landgate
Western Australian Land Information Authority

DEPOSITED PLAN
65818

SHEET 1 OF 1
VERSION 1



FOR INTEREST PURPOSES ONLY

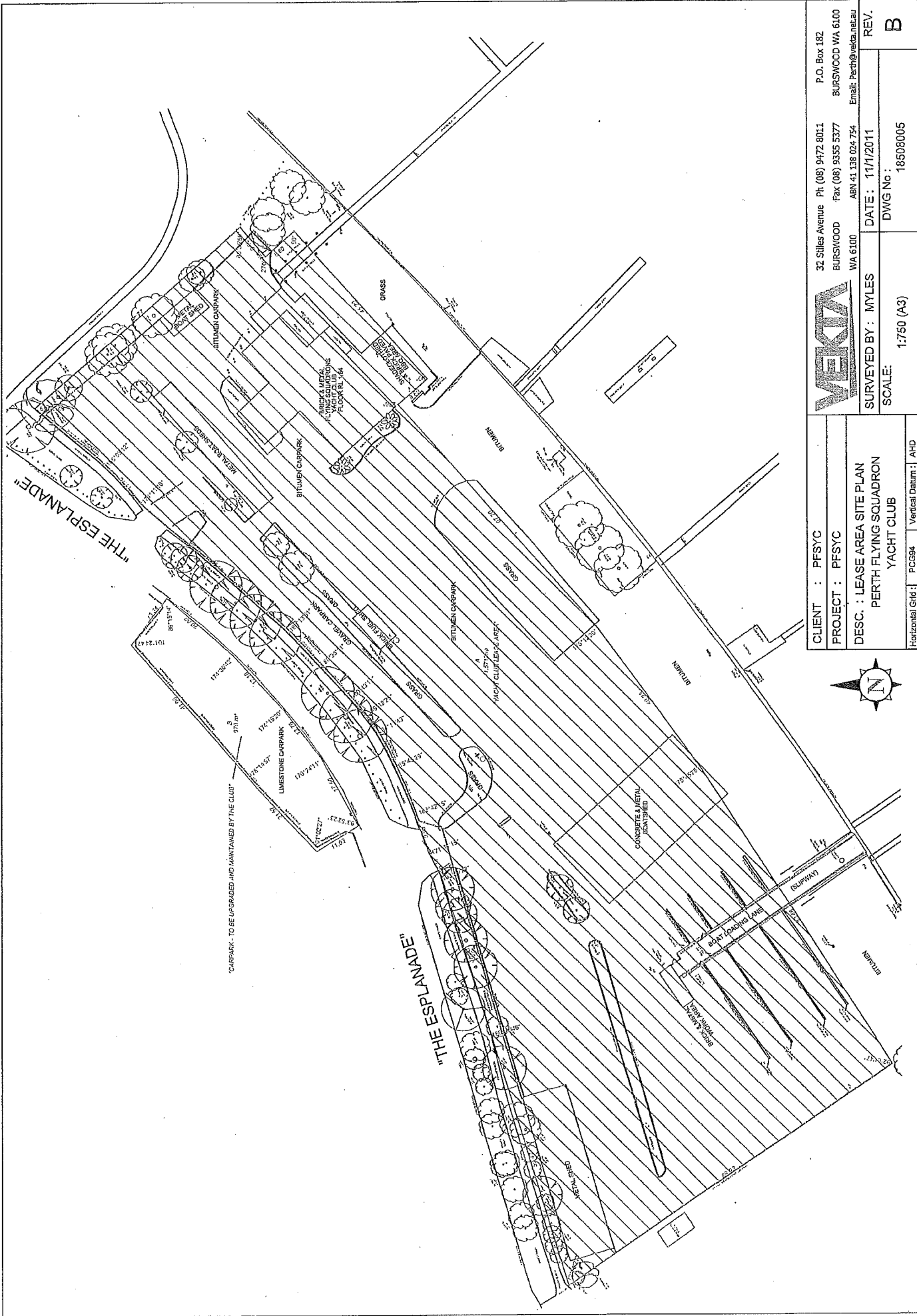
GRAPHICS DERIVED FROM THE SCDB - DATE 21.4.2010
WATERLINES SHOWN HEREON DO NOT NECESSARILY DEPICT
AN EXACT CADASTRAL BOUNDARY

M17391
254
DP 37070
LR 3/31/762

INITIAL INTERESTS

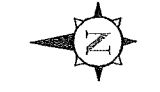
SUBJECT	PURPOSE	STATUTORY REFERENCE	ORIGIN	LAND BURDENED	BENEFIT TO	COMMENTS
Ⓐ	LEASE	DOC		RESERVE 17391 (LOT 254)	SEE DOCUMENT	

Annexure 2 – Sketch of Car Park



"CARPARK - TO BE UPGRADED AND MAINTAINED BY THE CLUB"

<p>CLIENT : PFSYC PROJECT : PFSYC DESC. : LEASE AREA SITE PLAN PERTH FLYING SQUADRON YACHT CLUB</p>	<p>32 Stiles Avenue BURSWOOD WA 6100</p> <p>Ph (08) 9472 8011 Fax (08) 9355 5377 ABN 41 138 024 754</p> <p>DATE: 11/1/2011 DWG No: 18508005</p>	<p>P.O. Box 182 BURSWOOD WA 6100 Email: Perth@vecta.net.au</p>
<p>Horizontal Grid: PCC84 Vertical Datum: AHJ</p>	<p>SCALE: 1:750 (A3)</p>	<p>REV. B</p>



Annexure 3 – Development Approval



COPY

Your Ref
Our Ref SRT755-17
Enquiries Jasmine Tothill

Mr Damian O'Donnell
General Manager
Perth Flying Squadron Yacht Club
PO Box 3181
BROADWAY NEDLANDS WA 6009

CITY OF NEDLANDS	
DIVISION	
Document #	
File #	24 DEC 2009
Radirect	_____
ASAP	ASX NFN OTHER
Enclure	_____

RECEIVED

Dear Mr O'Donnell

**PROPOSED REDEVELOPMENT OF YACHT CLUB – LOT 300 (RIVER RESERVE)
& PORTION OF RESERVE 48325 ESPLANADE, DALKEITH – PERTH FLYING
SQUADRON YACHT CLUB**

On the 1 December 2009 the Swan River Trust made its report on the above development application to the Minister for Environment. The Minister has considered the Trust's report and has made a decision to approve the application subject to the modification of Condition 33 and deletion of Advice Note 14.

In accordance with section 80 of the *Swan and Canning Rivers Management Act 2006* I have attached a copy of the Notice of the Minister's Determination. A copy of the Trust's report is available for viewing on our website:

www.swanrivertrust.wa.gov.au

A copy of this decision has been forwarded to the City of Nedlands, the Department of Indigenous Affairs, the Department of Transport and those community members who lodged a submission with the Trust.

If you believe any condition or restriction is unacceptable, under Section 82 of the *Swan and Canning Rivers Management Act 2006*, you have 28 days from the date of this Notice of Determination to request reconsideration of any condition or restriction.

Yours sincerely

Rod Hughes
GENERAL MANAGER

21 December 2009

Encl.

Cc:

City of Nedlands
Department of Indigenous Affairs
Department of Transport – New Coastal Assets
Department of Transport - Marine Safety
Community Members who lodged a submission with the Trust

CARING FOR THE SWAN AND CANNING RIVERS

Level 1 Hyatt Centre 20 Terrace Road East Perth Western Australia 6004
PO Box 6740 Hay Street East Perth 6892 Telephone (08) 9278 0900 Fax (08) 9325 7149
www.swanrivertrust.wa.gov.au

City of Nedlands - 24 Dec 2009



Your Ref
Our Ref SRT755-17
Enquiries

Swan and Canning Rivers Management Act 2006

PART 5

DETERMINATION OF DEVELOPMENT APPLICATION

APPLICANT : Damian O'Donnell – General Manager
Perth Flying Squadron Yacht Club

APPLICANT'S ADDRESS : PO Box 3181
BROADWAY NEDLANDS WA 6009

LAND OWNER : 1) Swan River Trust
2) City of Nedlands

LAND DESCRIPTION : Lot 300 (River Reserve) & portion of Reserve
48325 Esplanade, Dalkeith

DEVELOPMENT : Perth Flying Squadron Yacht Club
Redevelopment

FORM 1 DATE : 9 October 2008

FORM 1 RECEIVED : 15 October 2008

PLANS RECEIVED : 15 October 2008 & 11 August 2009

LOCAL GOVERNMENT : City of Nedlands

DETERMINATION : **APPROVAL WITH CONDITIONS**

The application to commence development in accordance with plans received 15 October 2008 and AMENDED plans received 11 August 2009 is APPROVED subject to the following conditions:

1. Approval to implement this decision is valid for three years from the date of the approval. If the development has not been completed or substantially commenced within this period, a new approval will be required before commencing or completing the development.
2. The applicant shall notify the General Manager, Swan River Trust in writing thirty (30) days prior to the proposed commencement of any works.
3. Unless agreed in writing by the General Manager, Swan River Trust, no development shall commence until all plans requiring approval by the General Manager have been submitted and approved.
4. Prior to commencement of development, plans certified by a qualified and practising marine engineer showing the design, structural and construction details of all in-water structures including jetties and wave wall shall be submitted and approved by the General Manager, Swan River Trust on advice from the Department of Transport (New Coastal Assets). The applicant shall provide further certification that the construction works have been completed in accordance with specifications after the work has ceased.

CARING FOR THE SWAN AND CANNING RIVERS

Level 1 Hyatt Centre 20 Terrace Road East Perth Western Australia 6004
PO Box 6740 Hay Street East Perth 6892 Telephone (08) 9278 0900 Fax (08) 9325 7149
www.swanrivertrust.wa.gov.au

5. Prior to the commencement of development, the applicant shall demonstrate to the satisfaction of the General Manager, Swan River Trust, that the proposed in-water structures, particularly the wave-attenuation devices, will not have a detrimental impact through accretion or erosion of the river shoreline in the locality.
6. Prior to the commencement of development, a Stormwater Management Plan shall be submitted to the General Manager, Swan River Trust for approval (see **Advice Note 3**).
7. Drainage from the bunded boat yard shall be connected to reticulated sewer after passing through appropriate treatment devices approved by the General Manager, Swan River Trust on advice from the Water Corporation.
8. Prior to the commencement of works a Landscaping Plan is to be submitted to and approved by the General Manager, Swan River Trust (see **Advice Note 4**).
9. Landscaping works shall be undertaken in accordance with the approved Landscaping Plan required under **Condition 8** within six (6) months of the commencement of development or such alternative timeframe as agreed in writing by the General Manager, Swan River Trust.
10. All infrastructure on the Crown reserve between the river and the Perth Flying Squadron Yacht Club land lease, other than that agreed by the owner (City of Nedlands) or approved in accordance with this approval, shall be removed and the area landscaped in accordance with the approved Landscaping Plan.
11. A shared public access path of minimum 2.0 metre width is to be constructed within the public foreshore area and situated a minimum distance of 2 metres from the rivers wall/ edge to the specifications of the City of Nedlands and the satisfaction of the General Manager, Swan River Trust.
12. Prior to the commencement of development, a colour scheme for all proposed buildings shall be submitted to the General Manager, Swan River Trust for approval on advice from the City of Nedlands.
13. The proposed buildings shall be finished in accordance with the approved colour scheme.
14. Any new fencing to be installed as part of the development shall be black coated chainmesh fencing with matching black supporting poles, and new fencing shall be installed along the south western boundary of the boat hardstand area facing the Esplanade and Beaton Park.
15. Prior to the commencement of development, a Construction Management Plan shall be prepared to the satisfaction of the General Manager, Swan River Trust on advice from the City of Nedlands (see **Advice Note 6**).
16. The approved Construction Management Plan required under **Condition 15** shall be implemented.
17. Transport of sediment from construction works shall be prevented by the use of silt curtains placed in the immediate vicinity of the works. Details of sediment transport control shall be provided in the Construction Management Plan required under **Condition 15** (see **Advice Note 7**).

18. Prior to the removal of the in-water portion of the slipway, an environmental impact assessment and decommissioning plan to minimise impacts on the river from mobilisation of contaminants shall be prepared and approved to the satisfaction of the General Manager, Swan River Trust. Details of the assessment and decommissioning shall be provided in the Construction Management Plan required under **Condition 15** (see **Advice Notes 6 and 8**).
19. Prior to commencement of any dewatering operations, the applicant shall prepare a Dewatering Management Plan to the satisfaction of the General Manager, Swan River Trust (see **Advice Note 9**).
20. The applicant shall implement the approved Dewatering Management Plan required under **Condition 19**.
21. Dewatering discharges shall meet the ANZECC criteria for marine ecosystems, with the exception of the following:
 - Nutrients – Any dewatering effluent discharged to the Swan River must meet the long-term nutrient concentration targets specified in the Healthy Rivers Action Plan (i.e. total nitrogen of 1.0 mg/L and total phosphorus of 0.1 mg/L).
 - Temperature, odours, colours, floatable matter, and 'settleable' matter – The ANZECC guidelines do not address these indicators, therefore the disposal criteria set out in Trust policy *Dewatering (SRT/DE6)* must be used.
22. Dewatering shall cease immediately if monitoring indicates that discharge water quality does not comply with the performance criteria required under **Condition 21**.
23. Prior to the commencement of development, a Lighting Design Plan is to be submitted to and approved by the General Manager, Swan River Trust on advice from the City of Nedlands (see **Advice Note 10**).
24. The Lighting Design Plan shall be implemented.
25. Prior to commencement of development, an amendment to the River Reserve Lease shall be sought and approved, incorporating the proposed extended marina area and removing 5009 m² between Jetty AA and the foreshore.
26. No rubbish or other deleterious matter shall be allowed to enter the river or the Parks and Recreation reserve as a result of the development.
27. Public access along the foreshore shall be maintained at all times unless otherwise required for reasons of public safety and approved by the General Manager, Swan River Trust.
28. Carparking shall be provided, constructed and marked out in accordance with the approved plans and shall be made available to all patrons using the Club facilities whether or not they are members of the Club (see **Advice Note 11**).
29. Prior to construction of any in-water structures, the applicant shall consult the Department of Transport's Navigational Safety Section to ascertain any changes to navigational safety and lighting devices required as a result of the proposed development.

30. The ongoing environmental management of both the land-based operations and the marina shall be to the satisfaction of the General Manager Swan River Trust and Instituted through an approved Environmental Management System (see Advice Note 12).
31. The hours of operation of the forklifts servicing the boat stacking facility and the mobile boat hoist shall be restricted to; Monday to Saturday 0700 to 1900 hours; and Sunday 0900 to 1900 hours.
32. The forklifts servicing the boat stacking facility and the mobile boat hoist shall be fitted with and not operated without 'stage two noise insulation and louvre kits' as supplied by the manufacturers of the machines (see Advice Note 13).
33. The applicant shall ensure that the safe work system for the forklifts servicing the boat stacking facility and mobile boat hoist shall be in compliance with relevant occupational safety and health legislation, but shall exclude reversing alarms that exhibit tonality (as defined in the *Environmental Protection (Noise) Regulations 1997*).
34. The forklifts servicing the boat stacking facility and the mobile boat hoist are prohibited from operating simultaneously at any one time.
35. Prior to the commencement of development, plans showing the location and specifications of the existing and upgraded fuel facility shall be submitted to and approved by the General Manager Swan River Trust.
36. The applicant is to enter into an agreement with the City of Nedlands for the ongoing maintenance of the public footpath and other infrastructure, including safety barriers and signage, within the public foreshore reserve located between the Perth Flying Squadron Yacht Club's land lease and river bed areas. The agreement shall be prepared by the City's solicitors to the satisfaction of the City and the Swan River Trust. The applicant shall be responsible for paying all costs associated with the City's solicitors' costs of and incidental to the preparation (including all drafts) of the agreement.

ADVICE TO APPLICANT

1. The Department of Indigenous Affairs has advised that the proposed works will impact on Aboriginal site 3536 (Swan River). The applicant is advised to contact the Department for Indigenous Affairs to ensure that the proposed works do not breach any section of Part IV (Protection of Aboriginal Sites) of the *Aboriginal Heritage Act 1972*.
2. Prior to the commencement of development, the applicant should seek approval from the Department of Transport for variations to the existing jetty licences or new jetty licences as required.
3. The Stormwater Management Plan requested under **Condition 6** is to demonstrate that the development will not result in water quality degradation of the river and is to include:
 - final engineering drawings
 - technical details on the operation of the treatment structures and swales
 - details of ongoing monitoring and management
 - a drainage strategy designed to take tidal influences into account

Water sensitive urban design principles should be utilised such that infiltration of minor storm events occurs on site, with only overflow from larger events discharging to the river. At a minimum, gross pollutants and sediments should be prevented from entering the river. The number of outlets to the river should be minimised.

4. The applicant is advised that the Landscaping Plan requested under **Condition 8** is to enhance the viewscape of the river from nearby public places and minimise the visual impact of the boat storage buildings on the landscape. The Landscape Plan should:

- ensure retention of all established trees
- accommodate additional planting within the site, including in the proposed drainage swales
- include screening planting along the interface with Beaton Park and the Esplanade
- address public access and public safety:
 - detail how access at the western end of the site will be provided (e.g. removal of limestone boulders and trimming/removal of existing boundary vegetation)
 - detail methods to ensure public safety where the public access path crosses the launching and retrieval areas.
- details of any proposed vegetation removal or trimming
- consider the use of public art and/or interpretative features for infrastructure associated with the existing slipway
- outline commitments and responsibilities for maintenance of landscaping throughout the life of the development.

The Trust recommends planting of local native species to reduce water and fertiliser requirements and provide habitat for native fauna.

5. The applicant is advised that it is an offence under the *Swan and Canning Rivers Management Regulations 2007* to destroy, pull up, cut back or injure any tree, shrub or perennial plant that is on land within the Swan River Trust Management Area, except with the approval of the Trust or unless otherwise exempt by the Regulations.

6. The Construction Management Plan required under **Condition 15** should detail how the proposed works will be managed to minimise environmental impacts and should address, but not be limited to:

- staging plan for the entire works;
- on-site storage of materials and equipment;
- public and vehicle access;
- parking for contractors;
- waste management;
- acid sulphate soils;
- protection of the waterway from inputs of deleterious matter;
- protection of vegetation (e.g. overhanging branches from vehicles and equipment);
- protection of public infrastructure;
- refuelling of machinery;
- construction methodology, particularly for in-water works and the fuel facility upgrade;

- environmental assessment and decommissioning plan for the slipway;
- details of any in-water excavation;
- sediment and turbidity management during construction and demolition;
- management of noise in accordance with the requirements of the *Environmental Protection (Noise) Regulations 1997*;
- complaints and incidents.

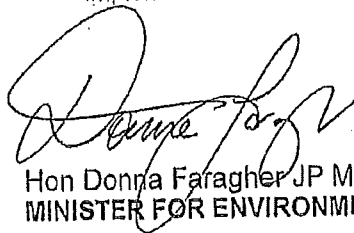
Where relevant, the plan should also include timeframes and responsibility for tasks identified.

7. In relation to **Condition 17** it will be necessary to install silt curtains on a section by section basis during demolition and construction works to prevent the migration of sediment plumes. The use of a large single silt curtain is undesirable because it could pose a danger to wildlife and other river users.
8. In relation to removal of the slipway, it may be undesirable to completely remove the in-water portion of the slipway because disturbance of silt may mobilise contaminants into the water column. Advice from the Swan River Trust should be sought in this regard.
9. The Dewatering Management Plan shall address, but not be limited to:
 - pre-dewatering groundwater sampling and analysis, including interpretation and discussion of the results;
 - proposed dewatering effluent management and disposal measures, in the context of the groundwater analysis results;
 - monitoring program;
 - performance criteria; and
 - proposed contingency measures in the event that performance criteria are not met.

Where measurements are compared to background levels, the management plan should clearly indicate how the background levels will be established. Development approval from the Swan River Trust does not negate the need to obtain a Licence to Take Water from the Department of Water.

10. The Lighting Design Plan required under **Condition 23** is to demonstrate that lighting has been designed to minimise light spill, protect the amenity of the adjoining public reserve and ensure that there are no adverse impacts on any owner or occupier of nearby properties or marine navigation.
11. With respect to **Condition 28**, the car parking facilities are to comply with Australian Standard AS 2890.1 – 2004 Off Street Car Parking Facilities.
12. The Environmental Management System required under **Condition 30** is also required as a condition of the extended marina lease and may be satisfactorily managed through that process. It is desirable that all environmental management issues for both water and land based areas be addressed in one document. The Environmental Management System shall include a drainage and operational management plan for the bunded boat yard. The City of Nedlands as the lessee of the land should be consulted and satisfied that issues pertinent to the City are addressed in the Environmental Management System.

13. It should be noted that compliance with the requirement for forklift noise insulation does not obviate the need to otherwise comply with the *Environmental Protection (Noise) Regulations 1997*.
14. With respect to **Condition 33** the applicant is advised that there is no objection to the use of a broad-band acoustic safety warning system.
15. The applicant is advised that the proposed development is located in an acid sulphate soil risk area, and it is therefore recommended that an acid sulphate soil site assessment be carried out prior to commencement of any ground disturbing activities, and if necessary, a management plan be prepared and implemented.



Hon Donna Faragher JP MLC
MINISTER FOR ENVIRONMENT; YOUTH

Date: 17/12/2009

Annexure 4 – Lessor's Conditions

13.2 Reserve 17391 (Lot 254) The Esplanade, Nedlands – Proposed Redevelopment of Land-based infrastructure component at Perth Flying Squadron Yacht Club (File No. ES1/R17391-02) (DalkKeith Ward)

Proponent/Applicant:	Perth Flying Squadron Yacht Club	Council is requested to refer back the application for the redevelopment of the land-based infrastructure component at Perth Flying Squadron Yacht Club, for a full Acoustic Report to be submitted.
Owner:	City of Nedlands	
Officer:	Coralie Anderson – Acting Senior Planning Officer	
Signature of Director:	<i>C. Froese</i>	
Senior Officer:	Jennifer Heyes – Coordinator Statutory Planning	
Date of Report:	21 May 2009	
Previous Item No's:	N/A	
Disclosure of Interest:	Graham Foster, CEO, his interest being that he is a member of the Perth Flying Squadron Yacht Club, the applicant for the proposed redevelopment of river and land-based infrastructure at the Yacht Club. He will leave the meeting during this item.	

FINANCIAL INTEREST DISCLOSURE

Mr. G. Foster, Chief Executive Officer disclosed a financial interest in Item 13.2 – Reserve 17391 (Lot (254) The Esplanade, Nedlands – Proposed Redevelopment of Land-based infrastructure component at Perth Flying Squadron Yacht Club, his interest being that he is member of the Club.

Mr. G. Foster, Chief Executive Officer left the meeting at 7.48 p.m.

DISCLOSURE OF IMPARTIALITY INTEREST

Mayor Froese disclosed an impartiality interest in Item 13.2 – Reserve 17391 (Lot 254) The Esplanade, Nedlands – Proposed Redevelopment of River and Land-Based Infrastructure at Perth Flying Squadron Yacht Club, her interest being that she is a Patron of the Club. She advised that as a consequence, there may be a perception that her impartiality on the matter may be affected, however she declared that she would consider this matter on its merits and vote accordingly.

This item is presented as a Chief Executive Officer's Report because at Council Meeting on 28 April 2009 this item was "referred back to the next Council meeting in order for Administration to facilitate an on-site inspection of the boat lifting facility in Fremantle".

The purpose of this report is to reconsider the proposed land-based infrastructure component of the Perth Flying Squadron Yacht Club, in order to make comment to the Swan River Trust.

Regulation 11(da) – Council considered it appropriate to progress the application subject to the imposition of conditions as recommended by Administration (as per Attachment 15).

REFER BACK

MOVED – Councillor Smyth

SECONDED – Councillor Tan

That this matter is referred back for a joint workshop with the Swan River Trust together with Administration & Councillors.

LOST 6/7

ON THE CASTING VOTE OF THE PRESIDING MEMBER

(Against: Mayor & Crs. Hodsdon James Mazzucchelli Argyle & Negus)

MOVED – Councillor Negus

SECONDED – Councillor Mazzucchelli

1. Council recommends approval by the City of Nedlands to the Swan River Trust for an application for the land-based infrastructure at Perth Flying Squadron Yacht Club at Reserve 17391 (Lot 254), The Esplanade Nedlands in accordance with the application dated 13 October 2008 and plans dated 13 October 2008 and amended plans dated 6 February 2009 subject to the following conditions:

- a) prior to the Building Licence being issued, a detailed landscaping plan for the lease area, shall be lodged by the Perth Flying Squadron Yacht Club, and approved by the City showing the following:
 - (i) the location and type of existing and proposed trees and shrubs;
 - (ii) any lawn/paving to be established;
 - (iii) reticulation of all areas that are to be landscaped, including lawn areas;
 - (iv) the paving of the 1.0m setback strip on the south-west boundary next to the boat storage area;
 - (v) management agreement of area outside of lease;

- b) prior to the Building Licence being issued, a detailed landscape plan for the area located between the lease area and the river, shall be lodged by the Flying Squadron Yacht Club, and approved by the City showing the following:
- (i) the location and type of existing and proposed trees and shrubs;
 - (ii) any lawn/paving to be established;
 - (iii) reticulation of all areas that are to be landscaped, including lawn areas;
 - (iv) the location and size of any existing and proposed retaining walls.
- c) the landscaping plans, including reticulation, to be established prior to the development being first occupied, and thereafter being continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
- d) the shared path shall be constructed to the satisfaction of the City with:
- i) a minimum distance of 2m from the rivers wall/edge;
 - ii) a minimum width of 2.0m;
 - iii) a clearance of 0.5m provided between the edge of the shared path and any obstacle; and
 - iv) signage in accordance with Australian Standard (AS 1742.9).
- e) the shared path shall be continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
- f) the parking bays, driveways and points of ingress and egress to be designed in accordance with Australian Standards and such areas are to be constructed, drained, marked and thereafter continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
- g) the boat storage building shall be constructed in a colour that is suitable for the area and context and does not detract from the surrounding landscape, to the satisfaction of the City;
- h) 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 City 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 City may require the owner to

treat the building/roof to reduce the reflectivity to a level acceptable by the City;

- i) prior to the Building Licence being issued, a Noise Management Plan for the construction phase of the development, shall be lodged by the Flying Squadron Yacht Club, and approved by the City;
- j) all storm water from building and paving areas (including driveways) shall be contained on site by draining to soak wells of adequate capacity to contain runoff from a 10 year recurrent storm event and the capacity of soak wells shall be a minimum of 1 cubic metre for every 80 m2 of paved or roofed surface on the property;
- k) all crossovers to street shall be constructed to the Council's Crossover Specifications and the applicant to obtain levels of crossovers from the Council's Infrastructure Services under supervision on-site, prior to commencement of works;
- l) concrete footpath must be retained across crossovers;
- m) all car parking onsite shall be available for the use of patrons who attend any events held within the lease area of the Flying Squadron Yacht Club;
- n) prior to the Building Licence being issued, a site management plan shall be lodged by the Flying Squadron Yacht Club, and approved by the City showing the following:
 - (i) location and storage of site materials contained wholly within the lease area;
 - (ii) maintenance of public access during the construction phase.
- o) an Environmental Management Plan be developed by the Club in a cooperation with the City for the ongoing management of the site prior to the commencement of operations of the proposed development; and
- p) prior to the Building Licence being issued, the proponent shall engage the services of a suitably qualified acoustic engineer [who is suitable for Membership of either the Australian Acoustical Society (AAS) or the Association of Australian Acoustical Consultants (AAAC)] to prepare and lodge an acoustic report, and approved by the City, which includes the following –

- i) noise impact prediction for the proposed terrestrial storage, fork lift truck and boat lifter operation;
- ii) engineering and/or operational noise management solutions;
- iii) noise modelling for impact on a number of noise sensitive receivers, taking into account meteorological and topographical effects;
- iv) engineer's recommendations.

Advice Notes:

- a. All pre-sewer water treatment should be to the satisfaction of the Water Corporation;
- b. water re-use systems to comply with the *Health (Treatment of Sewage and disposal of effluent and liquid waste) Regulations 1974* – proponent must liaise with the Department of Health Waste Water Section regarding approvals;
- c. Asbestos cement products to be removed and disposed of in accordance with the *Health (Asbestos) Regulations 1992* and the *Environment Protection (Controlled Waste) Regulations 2004* and if any asbestos structures with a roof area exceeding 200m² are to be removed, work safe accredited contractors are required; and
- d. the applicant is advised that acid sulphate soils (ASS) are present in the development area and an appropriate ASS management plan should be prepared and submitted to the Swan River Trust for review prior to the commencement of works.

AMENDMENT

MOVED - Councillor Smyth
SECONDED - Councillor Bell

That a further point 2. is added as follows:

2. That a joint workshop is held with the Swan River Trust and Administration and Councillors to decide policy in relation to the use of the reserve:

Mr. I. Hamilton, Director Technical Services left the meeting at 8.00 p.m.

AMENDMENT CARRIED 8/4
(Against: Crs. James Tan Mazzucchelli & Argyle)

FURTHER AMENDMENT

MOVED - Councillor Bell

SECONDED - Councillor Tyson

That further Condition q) and Clauses 3. and 4. are added as follows:

- q) prior to the issue of a Building License, plans shall be submitted to the satisfaction of the City showing the circulation roadways (excluding crossovers), buildings and car parking and hardstand areas to be fully within the lease boundaries;
3. Council agrees to pursue the renegotiation of the lease in order to:
- i) increase the rent if, after legal advice, it is considered that there is an increased commercial nature of the activity and it is considered appropriate to require such an increase;
 - ii) require the lessees to upgrade and continually maintain the carparking area across The Esplanade adjacent to the eastern pedestrian entrance of the Club to the satisfaction of the City;
 - iii) remove the existing footpath along The Esplanade from the lease area; and
4. the City values the protection of public access to the river foreshore between the river wall and the lease boundary to approximately an average of 20 metres.

Mr. I. Hamilton, Director Technical Services returned to the meeting at 8.18 p.m.
Ms. R. Moore, Director Community & Strategy left the meeting at 8.25 p.m. and returned at 8.27 p.m.

PUT SEPARATELY

MOVED - Councillor Hodsdon

SECONDED - Councillor Horley

That the clauses of the amendment be put separately.

CARRIED 8/4

(Against: Crs. Hipkins Argyle Tan & James)

Condition q) and Clauses 3 (i), (ii), (iii) and 4 were then put separately as follows:

Clause q)

- q) prior to the issue of a Building License, plans shall be submitted to the satisfaction of the City showing the circulation roadways (excluding crossovers), buildings and car parking and hardstand areas to be fully within the lease boundaries;

CLAUSE q) CARRIED UNANIMOUSLY 12/-

Clause 3 (i)

Council agrees to pursue the renegotiation of the lease in order to:

- i) increase the rent if, after legal advice, it is considered that there is an increased commercial nature of the activity and it is considered appropriate to require such an increase;

CLAUSE 3(i) LOST 5/7

(Against: Mayor & Crs. Hodsdon Horley Mazzucchelli Smyth Argyle & Negus)

Clause 3 (ii)

- ii) require the lessees to upgrade and continually maintain the carparking area across The Esplanade adjacent to the eastern pedestrian entrance of the Club to the satisfaction of the City;

CLAUSE 3(ii) CARRIED 8/4

(Against: Crs. Hodsdon Horley Mazzucchelli & Argyle)

Clause 3 (iii)

- iii) remove the existing footpath along The Esplanade from the lease area; and

CLAUSE 3(iii) CARRIED 11/1

(Against: Cr. James)

Clause 4

4. the City values the protection of public access to the river foreshore between the river wall and the lease boundary to approximately an average of 20 metres.

CLAUSE 4 CARRIED 11/1

(Against: Cr. Argyle)

ADOPTION - The amended motion was put and

CARRIED 8/4

(Against: Crs. Tan Smyth Argyle & James)

COUNCIL RESOLUTION

1. Council recommends approval by the City of Nedlands to the Swan River Trust for an application for the land-based infrastructure at Perth Flying Squadron Yacht Club at Reserve 17391 (Lot 254), The Esplanade Nedlands in accordance with the application dated 13 October 2008 and plans dated 13 October 2008 and amended plans dated 6 February 2009 subject to the following conditions:
 - a) prior to the Building Licence being issued, a detailed landscaping plan for the lease area, shall be lodged by the Perth Flying Squadron Yacht Club, and approved by the City showing the following:
 - (i) the location and type of existing and proposed trees and shrubs;
 - (ii) any lawn/paving to be established;
 - (iii) reticulation of all areas that are to be landscaped, including lawn areas;
 - (iv) the paving of the 1.0m setback strip on the south-west boundary next to the boat storage area;
 - (v) management agreement of area outside of lease;
 - b) prior to the Building Licence being issued, a detailed landscape plan for the area located between the lease area and the river, shall be lodged by the Flying Squadron Yacht Club, and approved by the City showing the following:
 - (i) the location and type of existing and proposed trees and shrubs;
 - (ii) any lawn/paving to be established;
 - (iii) reticulation of all areas that are to be landscaped, including lawn areas;
 - (iv) the location and size of any existing and proposed retaining walls.
 - c) the landscaping plans, including reticulation, to be established prior to the development being first occupied, and thereafter being continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
 - d) the shared path shall be constructed to the satisfaction of the City with:

- i) a minimum distance of 2m from the rivers wall/edge;
 - ii) a minimum width of 2.0m;
 - iii) a clearance of 0.5m provided between the edge of the shared path and any obstacle; and
 - iv) signage in accordance with Australian Standard (AS 1742.9).
- e) the shared path shall be continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
- f) the parking bays, driveways and points of ingress and egress to be designed in accordance with Australian Standards and such areas are to be constructed, drained, marked and thereafter continuously maintained by the Perth Flying Squadron Yacht Club to the satisfaction of the City;
- g) the boat storage building shall be constructed in a colour that is suitable for the area and context and does not detract from the surrounding landscape, to the satisfaction of the City;
- h) 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 City 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 City may require the owner to treat the building/roof to reduce the reflectivity to a level acceptable by the City;
- i) prior to the Building Licence being issued, a Noise Management Plan for the construction phase of the development, shall be lodged by the Flying Squadron Yacht Club, and approved by the City;
- j) all storm water from building and paving areas (including driveways) shall be contained on site by draining to soak wells of adequate capacity to contain runoff from a 10 year recurrent storm event and the capacity of soak wells shall be a minimum of 1 cubic metre for every 80 m² of paved or roofed surface on the property;
- k) all crossovers to street shall be constructed to the Council's Crossover Specifications and the applicant to obtain levels

- of crossovers from the Council's Infrastructure Services under supervision on-site, prior to commencement of works;
- l) concrete footpath must be retained across crossovers;
 - m) all car parking onsite shall be available for the use of patrons who attend any events held within the lease area of the Flying Squadron Yacht Club;
 - n) prior to the Building Licence being issued, a site management plan shall be lodged by the Flying Squadron Yacht Club, and approved by the City showing the following:
 - (i) location and storage of site materials contained wholly within the lease area;
 - (ii) maintenance of public access during the construction phase.
 - o) an Environmental Management Plan be developed by the Club in a cooperation with the City for the ongoing management of the site prior to the commencement of operations of the proposed development; and
 - p) prior to the Building Licence being issued, the proponent shall engage the services of a suitably qualified acoustic engineer [who is suitable for Membership of either the Australian Acoustical Society (AAS) or the Association of Australian Acoustical Consultants (AAAC)] to prepare and lodge an acoustic report, and approved by the City, which includes the following –
 - i) noise impact prediction for the proposed terrestrial storage, fork lift truck and boat lifter operation;
 - ii) engineering and/or operational noise management solutions;
 - iii) noise modelling for impact on a number of noise sensitive receivers, taking into account meteorological and topographical effects;
 - iv) engineer's recommendations;
 - q) prior to the issue of a Building License, plans shall be submitted to the satisfaction of the City showing the circulation roadways (excluding crossovers), buildings and car parking and hardstand areas to be fully within the lease boundaries;

2. that a joint workshop is held with the Swan River Trust and Administration and Councillors to decide policy in relation to the use of the reserve;
3. Council agrees to pursue the renegotiation of the lease in order to:
 - (i) require the lessees to upgrade and continually maintain the carparking area across The Esplanade adjacent to the eastern pedestrian entrance of the Club to the satisfaction of the City;
 - (ii) remove the existing footpath along The Esplanade from the lease area; and
4. the City values the protection of public access to the river foreshore between the river wall and the lease boundary to approximately an average of 20 metres.

Advice Notes:

- a. All pre-sewer water treatment should be to the satisfaction of the Water Corporation;
- b. water re-use systems to comply with the *Health (Treatment of Sewage and disposal of effluent and liquid waste) Regulations 1974* – proponent must liaise with the Department of Health Waste Water Section regarding approvals;
- c. Asbestos cement products to be removed and disposed of in accordance with the *Health (Asbestos) Regulations 1992* and the *Environment Protection (Controlled Waste) Regulations 2004* and if any asbestos structures with a roof area exceeding 200m² are to be removed, work safe accredited contractors are required; and
- d. the applicant is advised that acid sulphate soils (ASS) are present in the development area and an appropriate ASS management plan should be prepared and submitted to the Swan River Trust for review prior to the commencement of works.

RECOMMENDATION TO COUNCIL

That a decision on this matter is referred back subject to the proponent engaging the services of a suitably qualified acoustic engineer [who is suitable for Membership of either the Australian Acoustical Society (AAS) or the Association of Australian Acoustical Consultants (AAAC)] to prepare and submit an acoustic report to the City, for assessment and recommendation to Council, which includes the following -

1. noise impact prediction for the proposed terrestrial storage, fork lift truck and boat lifter operation;
2. engineering and/or operational noise management solutions;
3. noise modelling for impact on a number of noise sensitive receivers, taking into account meteorological and topographical effects;
4. engineer's recommendations.

Background

At Council Meeting 28 April 2009 this item was referred back for administration to facilitate a site inspection to Yacht Clubs in Fremantle.

The site inspection was conducted on the 9 May 2009 to Aquarama Marina in East Fremantle and Fremantle Boat Park, Mews Road.

This report provides background and comment on the proposal and;

- Provides comment on the document tabled by the applicants at the 28th Council Meeting titled "*Perth Flying Squadron Yacht Club: Proposed Redevelopment: Additional Information/Issue Clarification*". (Refer to Attachment).

This document includes a Preliminary Acoustic Review of the potential boat lifting facilities by acoustical consultants 'Gabriels Environmental Design';

- Provides comment on several other issues which were raised at the site inspection to Fremantle.

Property Address:	Reserve 17391 (Lot 254), The Esplanade Nedlands (refer Locality Plan – Attachment)
MRS Zoning:	Public Purpose - Parks and Recreation
TPS No. 2 Zoning:	Public Purpose - Parks and Recreation
Lot Area:	2.11 ha (lease area)
Application Received Date:	13 October 2008
Advertised:	Two Storey Dwelling Notification: N/A
Variations:	N/A
Submissions:	N/A

The land is zoned "Public Purpose" – Parks and Recreation under both Town Planning Scheme No. 2 and the Metropolitan Regional Scheme. The site is owned by the City of Nedlands and leased to the Perth Flying Squadron Yacht Club.

The site is located within the Swan River Trust Development Control Area and as such the Trust has referred the application to the Council for its advice and comments in relation to the land-based components of the proposal. The Trust will then make a recommendation to the Minister for Environment who will determine the application.

History

The land area of the site is leased from the City of Nedlands and the marine-based area is leased from the State Government through Swan River Trust (SRT). The Club owns the infrastructure located within these two lease areas.

The current land lease area is 2.11 hectares and the Club has an exclusive lease for a period of 15 years from 28 September 2005 and therefore the lease has a further 12 years to run.

Details of Application

The application is for redevelopment of the Yacht Club facilities, including replacement of aging infrastructure. Land-based work includes removal of slipway and existing sheds and replacement with dry boat storage facilities. River-based work includes replacement of fixed jetties and boat pens and expansion of wave walls. The applicants state that the cost of the project is approximately \$11.1 million.

The following table outlines the changes to the car parking and boat storage capacity of the club.

Numbers	Existing	Proposed
Car bays	41 marked bays 74 overflow car bays	128 mark car bays
Boats	17 Boat single tier 9 Boats (380sqm shed) 131 Vessels berth (open bitumen bays) 192 boat pens	326 Dry Boat Storage 11 Yacht Hard stands 246 water pens

More specific works include:

- State-of-the-art environmental initiatives including triple interceptor filtration, below ground water tanks, recycling and landscaping.
- Refuelling and sullage facilities.
- Modern and efficient boat lifting equipment.
- An expended works area capable of servicing 15-20 boats concurrently.
- Public access initiatives including:
 - a 24hr, 7 day/wk path through site;
 - 24hr, 7 day/wk access to refuelling and sullage facilities;
 - Booking access to lift and work yard facilities;
 - Access to boat launching ramp (Fri-Sun during boating season). Club to provide paid staff to manage and assist launching;
 - Access to ablution facilities.

The clubhouse and nearby storage sheds will be retained but the remainder of the land component will be redeveloped.

Originally hardstands for yachts and wash bays were proposed outside the lease area. The plans have now been amended so the hardstands are now proposed to be integrated within the car parking area and the wash bays located within the new boat yard area.

Despite these amendments a small portion of the boat storage facility and hardstands extend beyond the existing lease boundary. Therefore, the report also recommends that Council approves an amendment to the lease boundary in order to incorporate the proposed development. This will also allow for the public footpaths along The Esplanade to be removed from the lease area. The amendments to the lease area will be minor.

Statutory Provisions

<u>Provision</u>	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Does it comply with Town Planning Scheme No. 2?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Comment:

The site is reserved under the Metropolitan Region Scheme (MRS) for Parks and Reserves and as such is not subject to Town Planning Scheme No. 2. *"Land reserved under the Metropolitan Region Scheme is not land reserved under the Scheme"* [TPS No. 2, Part II – Reserved Land Clause 2.1 a)].

Notwithstanding this, the applicants have spent a considerable amount of time in ensuring compliance with the Town Planning Scheme No. 2 with specific reference to the height requirements, so that the proposal will be in keeping with the City of Nedlands requirements.

The proposed dry storage accommodation (boat stores for 326 boats) to the west of the site has been redesigned to comply with Clause 5.11 Maximum Height of Buildings. The wall heights of the buildings do not exceed 8.5m and the roof heights do not exceed 10m as required by this Clause of the Scheme.

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Does it comply with Residential Design Codes?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Are any Council Policies Applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are any Residential Design Guidelines Applicable?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does it abut or is it within a Swan River Trust Development Control Area?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comment: The proposed development is located in the Swan River Trust Development Control Area. Therefore Council is only required to provide comment to the SRT, which will then make a recommendation to the Minister of Environment to determine the application.

Is it within a Bushland area?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is it a Heritage Building/Use?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is a Main Roads Referral Required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is a Department for Planning and Infrastructure Referral Required?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consultation

The Swan River Trust has commenced a three (3) week community consultation period and the documents are available for public viewing at the City. Three signs have been erected on site, one at either end of the walkways and one at the front of the property on The Esplanade. Advertisements have also been placed in the *West Australian* and *Western Suburbs Weekly*.

In addition an article on the proposed development in the *West Australian* newspaper on the 14 May 2009 advising of the consultation period.

The Swan River Trust advertising process is considered comprehensive and will give the opportunity for the community to comment. Following the completion of the consultation on the 29th May 2009 any comments received will be available to Council. These comments and administration response will be distributed to Councillors in full prior to this meeting.

Discussion

Noise

Gabriels Environmental Design has provided a Preliminary Acoustic Review ("the Review") of this equipment, for the Yacht Club (refer Attachment 1, pg 1 & 2).

The Review – Briefly:

- The escarpment provides some barrier effect in terms of noise transmission from the Yacht Club to the residences on Birdwood Parade (referred to in the Review as 'Birdwood Drive');
- Currently, boats are launched at the club using a small tractor;
- The proposed Mobile Boat Hoist Marine Travelift model 35BFMII (not the forklift) has an estimated sound power level of 95dB(A);
- The sound power level of typical forklifts is 85 to 95dB(A), with no specific sound power level stated for the proposed Mariner Forklift model M3500;
- The noise level from the equipment is similar to that of a typical four wheel drive vehicle;
- Based on 95dB(A) sound power level for the hoist and typical forklift sound power level, the noise level of the equipment at the residential boundary is expected in the order of 40 to 45dB(A);
- This equipment is often available with various noise control specifications and the Review recommends purchase of the quietest unit;
- Reversing beepers are the main concern as high frequency narrow band signal penetrates ambient noise and beepers are audible over great distance;
- The Review recommends that reversing beepers are deleted and replaced with an alternative safety device.

The Review identifies reversing beepers as the "...main area of concern in terms of acoustic emission from the site..."

In a publication by the Department of Environment, "Noise News" 1 September 2005, it states the following:

"Regulation 3 of the Environmental Protection (Noise) Regulations 1997 states that "nothing in these regulations applies to –

- (c) *noise emissions from safety warning devices fitted to motor vehicles, mining and earth moving machinery, vessels and buildings if –*
 - (i) *it is a requirement under another written law that such a device be fitted; and*
 - (ii) *it is not practicable to fit a safety warning device that complies with the written law under which it is required to be fitted and emits noise that complies with these regulations.*

Whilst in the past it has been easy to discount these complaints by advising complainants of their "exemption" under the Regulations, new products on the market mean that individuals or companies can meet OS&H requirements whilst also reducing their chance of creating a noise nuisance.

WorkSafe require a "safe system of work" and recommend that mobile plant that works near persons on the ground be equipped with a reversing alarm. There are, however, no specification requirements for reversing alarms.

UK company, Brigade Electronics have released a new type of reversing alarm. The "BBS-TEK BACKALARM" emits a multi-frequency broadband sound instead of the traditional "beep" of a conventional alarm, the sound dissipates much quicker, is directional, and is localised in the danger zone, so should result in a reduction in noise nuisance. More information is available from: <http://www.reverseinsafety.co.uk/products/bbstek.php>. An internet search has not located a WA distributor for this product, however eastern states distributors Airdraulic Birco Group http://www.abgpl.com.au/category28_1.htm and/or Jim Roylance's Pty Ltd could be contacted for further information.

In addition to "broadband" alarms, "Context Sensitive" or "Smart" alarms that adjust the output level of conventional beepers depending on the ambient noise level are also on the market. Many different brands of "context sensitive" or "smart" alarms are available on the market and can be easily found through an internet search.

Administration Comment:

- a) The provision of reversing alarms on the equipment should be investigated further.

- b) The Review states that, "...expected noise level of the equipment at the residential boundary is expected to be in the order of 40 to 45dB(A). Using the worst case scenario of 45dB(A), this would only meet the assigned level in the *Environmental Protection (Noise) Regulations 1997* for 7 a.m. -7 p.m. Monday to Saturday. In order to meet the all assigned levels in the Regulations for all times, the noise at the nearest residence would need to meet 35dB(A) or less.
- c) The Review does not state a specific sound power level for the Marine Travelift Mariner Forklift model m2500. The expected noise level at the residential boundary should use the specific sound power level value for this piece of equipment rather than a 'typical' sound power level for forklifts.
- d) The Review does not mention or detail the influence of meteorological effects (e.g. wind) on the noise from equipment, as it is received at noise sensitive residences. This should be investigated further.

It is recommended that the decision is referred back for a full acoustic report to be submitted before the Council makes a decision.

Lease Area

The lease boundary contains the majority of the proposed land-based infrastructure of the Perth Flying Squadron Yacht Club. However, the lease area does not extend to the river and as a result there is an approximately 20 metre strip of land located between the lease boundary and the river.

A small portion of the boat storage and hardstands encroaches beyond the lease area into this land. The lease area also extends into the verge along The Esplanade. As the verge cannot be redeveloped and as the Council is responsible for the maintenance of the verge and the public footpath, it is considered unnecessary for the lease boundary to incorporate this area.

Consequently it is recommended that the lease area be relocated south-east to exclude The Esplanade verge and footpath and include all the proposed development. Please refer to Attachment 5.

To readjust the lease boundary a deed of variation must be signed between the City and the Yacht Club. If Council chooses to approve the application, it is recommended that Council approves amendments to the lease agreement.

Height

The dry boat storage areas will increase the existing height and bulk of the current buildings and infrastructure on the site.

The proposed buildings will be colour bond metal clad over a steel framework with curved roof pitches and open spaces above end walls. Colour bond cladding has been chosen to provide a lightweight finish and also to enable a colour finish to be applied that subtly blends with the surrounding locality from both a river and landside view perspective.

Please refer to Attachments 13 and 14 for perspective view of the Boat Storage Structure from the river and The Esplanade.

To this end, it is recommended a condition ensures the colour is suitable for the area and context and does not detract from the surrounding landscape and does not result in glare to the satisfaction of the City.

Setbacks and Landscaping

There are no specific setbacks required for the site; however, the buildings have been setback from boundaries to allow for landscaping and revegetation.

The applicants have provided a concept plan (Attachment 8) which indicates proposed development will be screened and softened with appropriate vegetation.

The public land located between the lease boundary and the river is also proposed to be landscaped.

Landscaping is proposed to include provision to improve the urban water management and more sustainable approaches to the collection of water run-off and its environmental impact via the extensive use of infiltration swales.

Therefore, it is recommended that the applicants to provide the City with Landscape plans for the lease area and the surrounding public land. This will ensure the appropriate planting and species for the area and the continual maintenance of the lease area and public land.

Car parking

The redevelopment will include a complete redesign of the car parking area. The Town Planning Scheme does not offer any direction in regard to the use, however 128 car bays are proposed within the lease area. This is an increase of 87 formalised bays inside the lease area.

Australian Standard (AS3962-2001) – Design of Marina Structures and Facilities, does provide some direction in regards to car parking requirements and are tabled below:

Australian Standard	Provided	Required
0.3 – 0.6 car bays per wet berth	246 water pens	73.6 car bays
0.2 – 0.4 car bays per dry storage berth	326	65.2 car bays
0.5 car bays per marina employee	Up to 10 permanent and 3 casual employees (Average employees) 6	3 car bays
0.3 – 0.6 car bays per swing mooring licensed to the marina	Nil	Nil

The club is proposing 128 bays, with an additional 11 hard Yacht stands. Including informal car parking located on grassed areas within the site, the proposed would meet the minimum number of car bays recommended under the Australian Standard for Design of Marina Structures and Facilities. Further existing car parking will remain available outside the lease area as is the case at present.

Public access

Currently there is public access through the premises along the river's edge but this is not formalised and in fact, to the most extent is impractical and potentially dangerous due to the boat slips, surface and activity. The redevelopment will establish a defined and continuing access along the river's edge in a controlled manner which will provide reinforcement of the availability of the access and will also improve safety for people traversing the grounds.

Access for the public will be via a typical 2.0m wide formalised shared path, in accordance with the minimum standards required under Bikewest Shared Path Guidelines, and will be located on the river's edge. The Guidelines also require a 0.5m clearance between standard path and any obstacles and this clearance is recommended condition.

Also, where possible access will be controlled through planter beds and level changes. At the slipway areas a pedestrian 'railway style' crossing gate, with appropriate signage, will be installed. This will provide improved public access for foreshore users.

Nedlands Foreshore Enhancement and Management Plan

The Nedlands Foreshore Enhancement and Management Plan (the plan) was approved by the City in 2004 to guide the future use and management of the Nedlands foreshore.

The Perth Flying Squadron Yacht Club has been identified for Active Recreation use along the Nedlands Foreshore. The document notes the existing club is reasonably old and encourages suitable upgrade of the site to reflect the high quality of the foreshore landscape. The proposed development would satisfy the expectations of this document.

The adopted plan had a number of recommendations including three relating to the Yacht Club. The first (recommendation 10) requires the City to encourage the Club to develop an environmental management plan as part of their lease negotiations. This has been conditioned in the approval.

Recommendation 29 required the City to liaise with the Club regarding access and this is achieved through the upgrading and development of the foreshore area between the leased area and the river. In particular, the plan also discusses the need to ensure safe access, particularly across the hardstand and slipway area. The existing access is below standard and there is no doubt the proposal will significantly improve public access through the site and ensure this is continuously maintained by the Club, without Council financial input.

The third recommendation, number 48 required that the yacht club did not encroach further into the public area. With the exception of the minor encroachment of the boat storage and handstands into the public area the redevelopment of the site is located within the lease area.

The amendment to the lease boundary, which will include all the proposed development and exclude the public footpath along The Esplanade, will not increase the size of the lease area. Instead the lease boundary will be simply re-aligned to a more suitable location.

Launching Pond - Lay by Accommodation

The proposed marina will have lay by accommodation for 52 vessels. This can be doubled up (i.e. tying two boats together side by side) during peak demand and therefore a capacity for 104 boats on lay by. The applicants have advised this number is far in excess of either historical or projected demand. (Refer attachment 1, pg 6).

The applicant has advised that the operations will generally be between the hours of 7.30 a.m. - 6 p.m. Special arrangements will be put in place during peak periods i.e. Australia Day (refer Attachment 1, Fig 7, pg 6). These hours of operation will need to be taken into account in the acoustic report recommended.

Potential Run-off from Boat Storage and Car parking into Swan River

The run-off from these areas will be prevented by the following:

- A condition has been recommended requiring all storm water from building and paved areas to be contained on site;
- Bio-filtration Swales are proposed in the car park area and near the river to accommodate storm water run-off;
- The Club has provided a wash bay with a GPT (Gross Pollutant Trap) within the lease area.

Ultimately, the Swan River Trust has the responsibility for assessing the potential effects of the development on the Swan River, however, the measures set out above should provide reassurance that any run-off from the paved areas will be required to be contained within the site.

Conclusion

As per the Administration recommendation to Council Meeting on 28 April 2009 (memorandum dated 24 April 2009, M109/7755), Administration recommends the application is referred back for an Acoustic Report to be completed and submitted to Council.

Alternatively, if Council chooses to recommend approval of the proposal, conditions and advice notes are provided in Attachment 15. Clause 1 outlines conditions and advice notes - clause 2 proposes minor amendments to the lease boundary.

Budget Implications

Nil.

Strategic Plan Implications

KFA 4 – Community Wellbeing

- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
- 4.2 Encourage, support and provide for a range of recreation and leisure opportunities, both active and passive.

The proposed development encourages the use of the yacht club, which is a passive recreation, and will provide facilities to members of the club. The upgrade of the public area along the foreshore, including the construction of a shared path, will also benefit the broader community and community groups.

Attachments

1. Tabled Document at 28th Council Meeting titled: *"Perth Flying Squadron Yacht Club: Proposed Redevelopment: Additional Information/Issue Clarification"*
2. Locality Plan
3. Lease Area
4. Current Lease boundary
5. Proposed Lease boundary
6. Existing and Proposed Lease boundary – highlight area of change
7. Site Plan
8. Concept Plan
9. Floor Plan – Boat Storage
10. Elevation Plan – Boat Storage
11. Sections – Boat Storage, Elevation Plan/Floor Plan – Shipwrights workshop and Office
12. Roof Plan – Boat Storage
13. Perspective of Boat Storage Building from Marina
14. Current View and Perspective of Boat Storage Building from The Esplanade.
15. Conditions and advice notes should Council recommend approval.

Dated this _____ day of _____ Year _____

LESSOR/S SIGN HERE (Note 10)

THE COMMON SEAL of the CITY OF NEDLANDS was hereunto affixed by authority of a resolution of the Council in the presence of:))))

No. 557

[Signature]

MAYOR

[Signature]

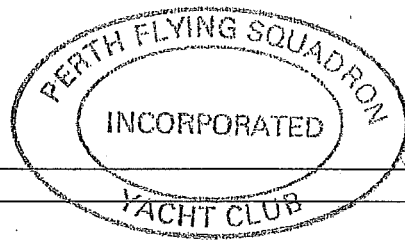
CEO

SHERYL FROESE

(PRINT FULL NAME)

GRAHAM THOMAS FOSTER

(PRINT FULL NAME)



LESSEE/S SIGN HERE (Note 10)

THE COMMON SEAL of PERTH FLYING SQUADRON YACHT CLUB INC was hereunto affixed in the presence of:)))

[Signature]

OFFICE HOLDER SIGN

Office Held: SEAL HOLDER.
Full Name: GRAHAM MERTON DAY
Address: 17 STUART-ST
MOSMAN PARK
WA 6012

[Signature]

OFFICE HOLDER SIGN

Office Held: SEAL HOLDER
Full Name: DONALD CHARLES DAVIES
Address: 17 VIEW STREET
SOBRADO W.A. 6008.

APPROVED FOR THE PURPOSES OF SECTION 18 OF THE LAND ADMINISTRATION ACT 1997
[Signature]
by Order of the Minister for Lands
This document is still subject to the registration requirements of the Transfer of Land Act 1893.

18/4/2011

INSTRUCTIONS

1. If insufficient space in any section, Additional Sheet, Form B1, should be used with appropriate headings. The boxed sections should only contain the words "see page ..."
2. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
3. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialed by the persons signing this document and their witnesses.
4. Where issued, the Duplicate Certificate of Title is required to be produced or if held by another party then arrangements must be made for its production.

NOTES

1. **DESCRIPTION OF LAND**
Lot and Diagram/Plan/Strata/Survey-Strata Plan number or Location name and number to be stated.
Extent - Whole, part or balance of the land comprised in the Certificate of Title to be stated. If part, define by recital and/or sketch.
The Volume and Folio number to be stated.
2. **ENCUMBRANCES**
To be identified by nature and number, if none show NIL.
3. **LESSOR**
State the full name of the Lessor/Lessors (REGISTERED PROPRIETOR) as shown in certificate of title and the address/addresses to which future notices can be sent.
4. **LESSEE**
State full name of the Lessee/Lessees and the address/addresses to which future notices can be sent. If two or more state tenancy e.g. Joint Tenants, Tenants in Common. If Tenants in Common specify shares.
5. **TERM OF LEASE**
Must exceed 3 years. Term to be stated in years, months and days or as the case may be. Commencement date to be stated. Options to renew to be shown.
6. **RECITE ANY EASEMENTS TO BE CREATED**
Here set forth any Easements to be created as appurtenant to the lease commencing with the words "together with" and/or any Reservations hereby created encumbering the lease commencing with the words "reserving to".
7. State amount in words.
8. State term of payment.
9. Insert any Covenants required.
10. **LESSOR/LESSEE EXECUTION**
A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The address and occupation of the witness must be stated.

EXAMINED

OFFICE USE ONLY

LEASE

LODGED BY

ADDRESS

PHONE No.

FAX No

REFERENCE No.

ISSUING BOX No.

PREPARED BY

ADDRESS

PHONE No.

FAX No.

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY.

TITLES, LEASES, DECLARATIONS ETC. LODGED HEREWITH

- | | |
|----------|-----------------|
| 1. _____ | Received Items |
| 2. _____ | Nos. |
| 3. _____ | |
| 4. _____ | |
| 5. _____ | |
| 6. _____ | Receiving Clerk |

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.

Entrance to the Club's lease premises and public access foreshore from Beaton Park
(All Abilities Play Space site)



Services cabinet at northern entrance to the public access foreshore adjacent to the Club's lease premises



Fire equipment shed, trailer, skip bin on public access foreshore





Boats stored in marked bays within the public access area of the reserve



Boats stored within the public access area of the reserve



Boats stored within the public access area of the reserve



Boats stored within the public access area of the reserve



The slipway with public access



The Slipway and boats on the public access foreshore







Form 1 – Application for Approval of Development

Swan and Canning Rivers Management Act 2006 – Part 5 – section 72(1)

1. Applicant – the applicant is required to sign the form at item No. 8

The applicant is the person with whom the Chief Executive Officer will correspond, unless an authorised agent has been appointed to act on behalf of the applicant, in which case correspondence will be sent direct to the agent.

Name of Applicant						
Name of Company (if applicable)						
Contact person						
Postal address						
Town/Suburb					Postcode	
Telephone	Work		Home		Mobile	
Facsimile						
Email						

2. Landowner(s) – landowners are required to sign the form at item No. 8

All owner(s) of the land **must sign this application**. Where land is owned by the Crown, or has a management order granted to a local government or other agency, this application must be signed by the relevant landowner as required under section 72(5)(a) of the Act. If there are more than 2 landowners, please provide the additional information on a separate page.

Details of 1st land owner

Full name						
Company/agency (if applicable)						
Position & ACN/ABN (if applicable)	Position		ACN/ABN No.			
Postal address						
Town/Suburb		State		Postcode		

Details of 2nd land owner (if applicable)

Full name						
Company/agency (if applicable)						
Position & ACN/ABN (if applicable)	Position		ACN/ABN No.			
Postal address						
Town/Suburb		State		Postcode		



Form 1 – Application for Approval of Development
Swan and Canning Rivers Management Act 2006 – Part 5 – section 72(1)

3. Appointment of an authorised agent – authorised agent is required to sign the form at item No. 8

Where the applicant has appointed an authorised agent to act on their behalf, the authorised agent must attach the written authority to this application.

Have you appointed an authorised agent to act on your behalf? YES [] NO []

Details of authorised agent

Table with 6 rows and 6 columns for authorised agent details including Full name, Company/agency, Position, ACN/ABN, Telephone, Postal address, Town/Suburb, State, and Postcode.

4. Certificate(s) of title information

Table with 7 rows and 4 columns for certificate of title information including Certificate of title, Volume, Diagram/plan/deposit plan no., Folio, Lot No. and location of subject lot, Reserve No., Street No. and name, Town/Suburb, and Nearest road intersection.

5. River reserve lease (Swan and Canning Rivers Management Act 2006 - section 29)

If you intend to apply for a lease in relation to this proposed development, you will need to complete a separate Form – Application for a River reserve lease – and lodge it concurrently with this application. Note: River reserve leases will not be granted for developments requiring approval under section 70 of the Act – to which the proposed lease relates – unless that approval has been granted.

Does the development require a River reserve lease? YES [] NO []

If the development requires a River reserve lease, please tick the appropriate box below.

Table with 3 rows and 2 columns for lease types: New lease, Renewal of a lease, and Modification of an existing lease.



Form 1 – Application for Approval of Development
Swan and Canning Rivers Management Act 2006 – Part 5 – section 72(1)

6. River reserve licence (Swan and Canning Rivers Management Act 2006 - section 32)

If you intend to apply for a licence in relation to this proposed development, you will need to complete a separate Form – Application for a River reserve licence – and lodge it concurrently with this application, eg. charter vessel operation, kayak, canoe tours, etc. Refer to the Licence Application Guidelines on how to apply for a River reserve licence.

Does the proposed development involve an activity in the River reserve that will require a River reserve licence?

YES [] NO []

If the development requires a River reserve licence, please tick the appropriate box below.

Table with 2 columns and 2 rows: New licence, Renewal of a licence

Modification of an existing licence (ie. change in area, purpose, etc.)

7. Details of proposed development

Please provide a written description of the proposed development (refer to the Development Application Guidelines for further details on what information to include in this section).

Form with three main sections: Estimated cost of development, Current use of land, Proposed development



Form 1 – Application for Approval of Development
Swan and Canning Rivers Management Act 2006 – Part 5 – section 72(1)

8. Signatures

Signed by Applicant

Applicant signature		
Date		
Print name and position (if signing on behalf of a company or agency)	Name	
	Position	

Signed by Landowner/s (if the landowner is not the applicant)

I consent to this application being made.		
Landowner signature		
Landowner signature		
Date		
Print name and position (if signing on behalf of a company or agency)	Name	
	Position	

Signed by Authorised Agent (if you are acting for the applicant)

I have attached a copy of the written authorisation for me to act on behalf of the applicant to this application.		
Authorised Agent signature		
Date		
Print name and position (if signing on behalf of a company or agency)	Name:	
	Position:	



Perth Flying Squadron Yacht Club Inc.

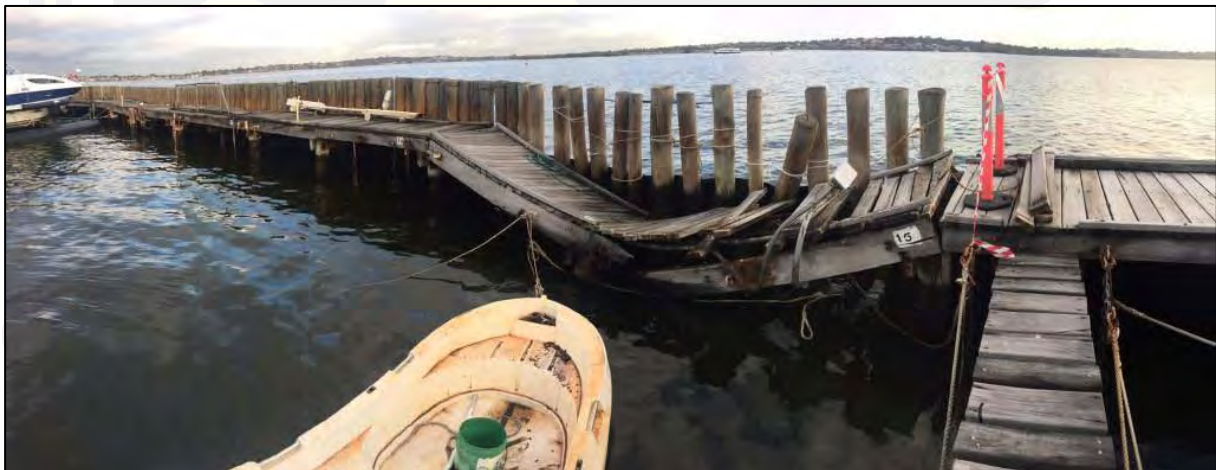
Esplanade, Dalkeith 6009
Telephone: 08 9386 6437 Fax: 08 9389 8600



Attachment 1. Development Application

A special General Meeting of the membership of the Perth Flying Squadron Yacht Club convened on April 21, 2017 and overwhelmingly voted in favour to authorise preparation and lodgement of the attached application to construct and install a suitable wave attenuator in order to protect the Club's fragile on-water infrastructure. This will then provide the Club with adequate protection from adverse weather, ferry and large vessel wash, thus allowing the Club to commence repairs and replacement of the damaged jetties. Without adequate protection from these elements, to repair and replace the existing infrastructure would be an exercise in futility and a waste of members hard earned membership fees.

In assessing this application, the Club would ask all relevant authorities to remain cognisant of the Club's exposed positioning on the river and by extension, the significantly greater adverse weather conditions it is subjected to than its metropolitan peers. Sited just east of Point Resolution on the Dalkeith headland, the Club is buffeted daily by easterly and south westerly winds that can generate swells across the surrounding fetch with the capacity to sink large craft moored in the existing marina. Over the past two years we have had four vessels sink in their moorings in the marina, as recently as Saturday, 29 April, 2017 waves from a squall that swept through Perth from the south west flooded and sank the 48' vessel "Marko" in little more than 30 minutes. Following this, on 4 July, 2017 the Club suffered catastrophic Jetty failure due to the swell created from passing vessels (Picture below).



Although wave attenuation would have prevented these incidents, the Club is of the view that it should not be penalised for having to request additional riverbed area to accommodate a structure to make safe a site that it was required to move to by the State in order to facilitate the 1960-61 construction of the Narrows Bridge. The Club fully understands that it did need to relocate for the good of the city but equally believes it should not be unduly penalised for such cooperation.

Early this year the Department of Transport completed a review of aquatic use arrangements of the Swan Canning Riverpark to improve the safe, equitable and sustainable use of this important waterway. As a result of this review an 8 knot speed restriction has been implemented in all waters

of Matilda Bay for vessels over 10 metres in length. The Department of Transport stated that “Vessels larger than 10 metres travelling faster than 8 knots create significant wake and wash which can have detrimental impact on the stability of other vessels and cause damage to marine facilities. Reducing the wash and wave energy created by passing vessels provides for safe, equitable and sustainable use of the waters”.

Over the last 15 months the Perth Flying Squadron have lodged 4 applications to the Department of Parks and Wildlife to carry out emergency repairs to its failing infrastructure, due primarily to the wake and wash of vessels and adverse weather conditions by easterly and south westerly winds that generate large swells across the surrounding fetch. These emergency repair applications include:-

- 20 April, 2016 – Emergency repairs to replace 5 broken piles and finger jetties at a cost of \$30,000 (Permit No P11734);
- 13 September, 2016 – Emergency repairs to repair crumbled concrete at a cost of over \$4,000 (Permit No P11812);
- 9 January, 2017 – Emergency repairs to replace 4 broken piles at a cost of over \$30,000 (Permit No P11882); and
- 4 July, 2017 – Emergency repairs to replace 15m of jetty and 10 piles that collapsed into the Swan River at a cost of over \$40,000 (Permit No P11990).

Understandably, the Club cannot continue to sustain these regular recurring emergency repair costs, no club can; as soon as we complete one emergency repair, another one occurs. Unless we are able to protect the marina with a suitable wave attenuator to prevent this ongoing damage, the club will slowly but surely dissolve, thus losing one of the oldest Yachting Clubs in Western Australia.

In 2008 the Club recognised the need for this protection, and as such lodged an application to redevelop the Club’s river and land-based infrastructure. At a projected cost of over \$11 million, including an increased riverbed lease of more than 28%. This redevelopment application was approved; and then subsequently granted a time extension which expired on Friday, 24 October, 2014 (Part 5 Approval Number: SRT755-17; Section 84 File Number: SRT5222).

However, the global financial crisis of 2008, considered by many economists to have been the worst financial crisis since the Great Depression of the 1930s had a devastating flow on effect to the funding of that proposal to the point where the financing could no longer be secured. As a result, the development was shelved, costing the Club more than \$1 million in consulting, architectural, environmental and planning fees. At this point the Club found itself in the unenviable position of “sink or swim”. With the bank account depleted, dilapidated infrastructure, and no sound ideas on the horizon, morale was at an all-time low. However, members of the Perth Flying Squadron Yacht Club are tenacious and resilient, known as the working man’s club, we were determined to pull ourselves back up again.

Three years on, the Club has worked extremely hard to pull itself out of a hefty financial overdraft to the point where it is once again self-sustainable and financially stable. With this in mind, in conjunction with the City of Nedlands and the Swan River Trust, the Club is proposing a long-term redevelopment program incorporating state of the art jetties and services. However, we must crawl before we run, and learn from previous mistakes, which is why the total marina redevelopment is

projected to be staged over a much more manageable timeframe with this application being stage one of what will be a multi-stage process.

The Club is committed to undertaking a complete redevelopment commencing within 2 – 3 years following the completion of the attenuator; and has given that commitment to the City of Nedlands, and the Department of Biodiversity, Conservation and Attractions. The framework of that Master Plan, with estimated commencement timelines following stage 1, is as follows:

- Stage 1 – Design, construct and install Wave Attenuator;
- Stages 2 – 5
 - Redevelopment of the Slipway, and installation of Public Access Pathway along the foreshore (2 – 3 years after completion of attenuator);
 - Repairs and replacement of existing damaged jetties (3 – 4 years after completion of attenuator); and
 - Club house redevelopment (4+ years after completion of attenuator).

The Club is committed to working closely, collaboratively and consultatively with the City of Nedlands and the Department of Biodiversity, Conservation and Attractions in order to provide significant Community benefit as a result of this Master Plan. The timeframe for stages 2 – 5 will be within a reasonable timeframe and will only be restricted by funding. As soon as the Club has sufficient funds available it will immediately move to the next stage of the Master Plan.

Moreover, the Club is committed to utilising state of the art design and equipment such as the slipway, jetties and Club House. The slipway, in its existing format will be decommissioned and replaced with new technology, thus eliminating any possible contamination of the river and/or soils. The design and configuration of the new facilities is unknown at this stage as there are a number of options, such as Boat Lifter with Jetties (similar to Royal Perth Yacht Club), or possibly a hydraulic trailer utilising a boat ramp. It is too early to design at this stage, as in two years from now there may be new technologies developed which render both of the above obsolete. The important thing to consider is that the Club is committed to implementing new environmentally safe and sustainable technologies.

The Club is also fully committed to implementing a Public Access pathway for the benefit of the community to enjoy the amazing Swan River and foreshore. With this in mind, the Club has already engaged a professionally qualified construction company in Roads 2000, who have already provided the Club with a preliminary design and costing for the pathway (design attached as Attachment 2). However, it is not desirable to install the new pathway at this stage for two reasons:

1. The existing slipway would block the continuity of the pathway; and
2. If the attenuator sections were to be constructed on-site, the weight of these sections could damage the newly laid pathway when entering the water.

It is envisaged that the slipway redevelopment and the public access pathway will be performed concurrently.

Summary

It is the intention of the Club to immediately go to tender for the design, construction and installation of the Attenuator once development approval has been received. Following that, the Club will lodge an application for a riverbed lease extension, and a jetty licence with the Department of Transport to suit the development. Once the successful tender has been selected, the successful company will develop and submit all engineering plans, certified by a qualified and practising marine engineer showing the design, structural and construction detail of all in-water structures for approval by the General Manager, Swan River Trust on advice from the Department of Transport. The successful company will be bound by the relevant Australian Standards pre, during and post construction. They will also be bound by all conditions relevant that were stipulated on The Club's previous Development Application.

It is important to note, that the Club is not requesting any approvals for anything that hasn't already been previously approved in the 2008 development application, in fact we are requesting approval for much less. The 2008 development application was approved with an increase in total riverbed lease area of 28.3%; this application is only requesting an increase of 19%.

Existing Area	46619 SQ M;
Relinquish	5009 SQ M;
Additional	14000 SQ M;
Total	55610 SQ M;
Increase	19%

Please find below schematics and illustrations of the development application.



Perth Flying Squadron Yacht Club Inc.

Esplanade, Dalkeith 6009
Telephone: 08 9386 6437 Fax: 08 9389 8600



Figure 1 : Wave Damage at Perth Flying Squadron Yacht Club



Figure 2 : Existing Facilities and Lease Area

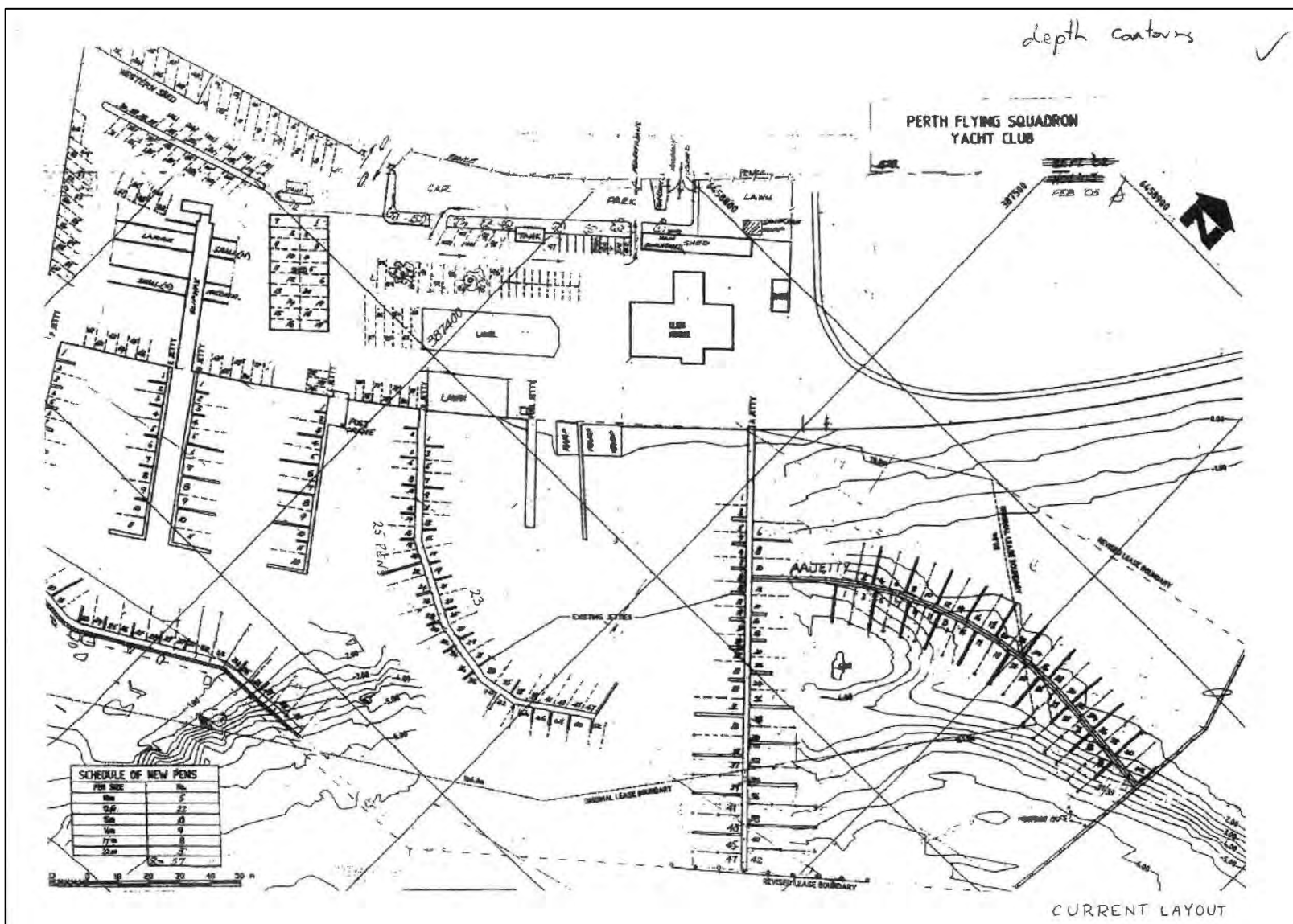


Figure 3 : Previously Approved Lease Extension (2008)

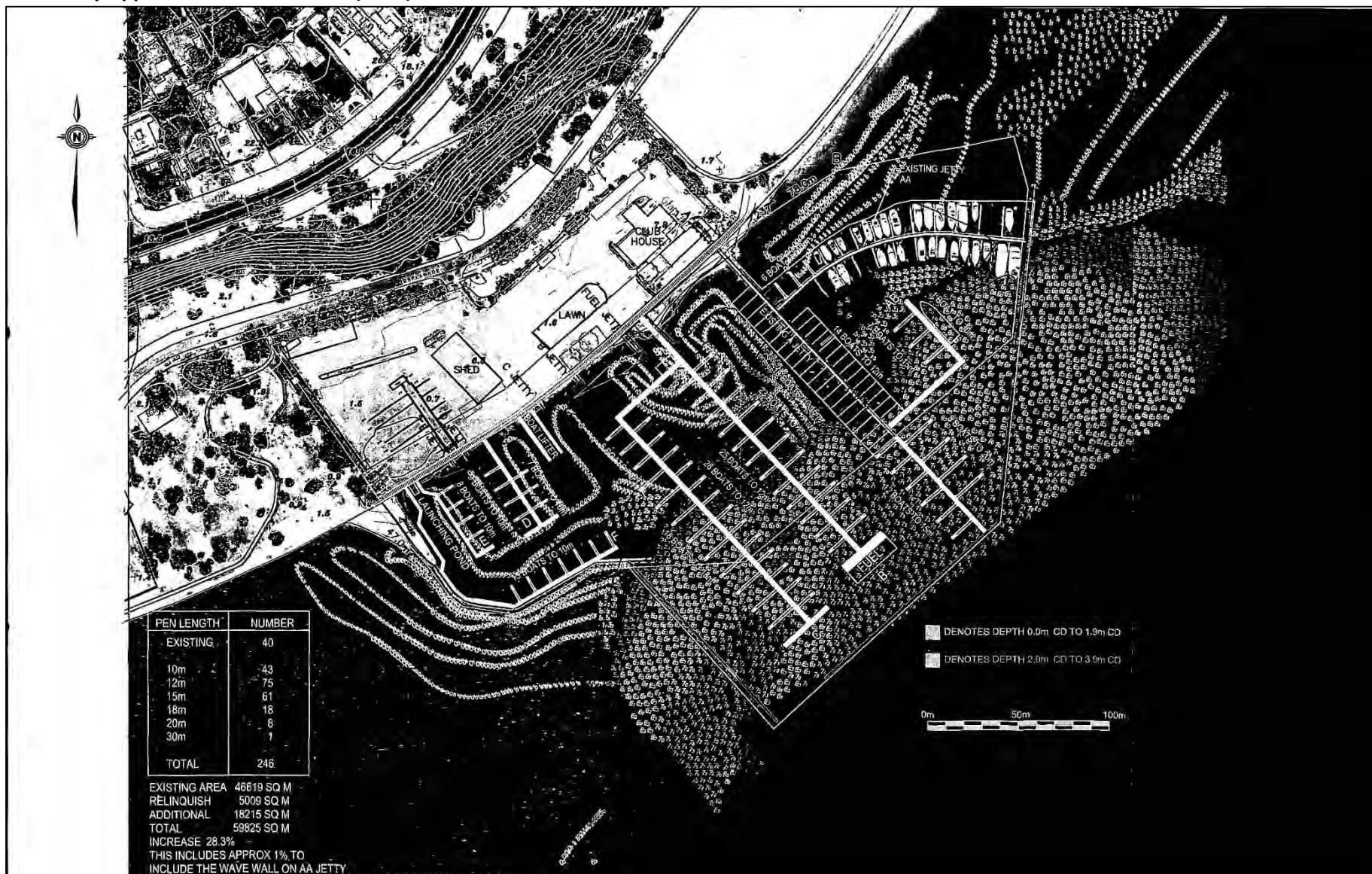


Figure 4 : Proposed Lease Extension Area (2017)

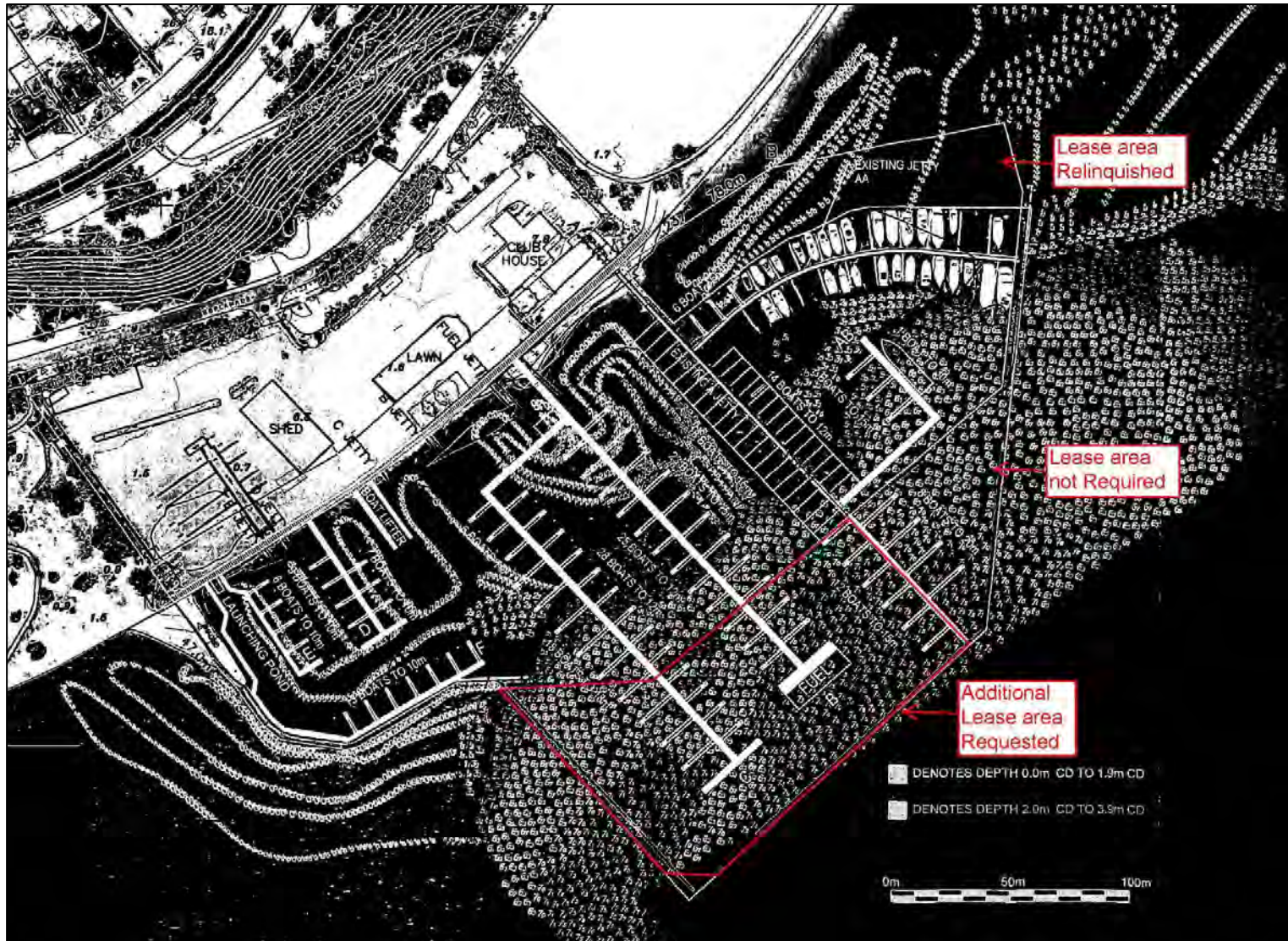


Figure 5 : Proposed Facilities (Bellingham Wave Attenuator)

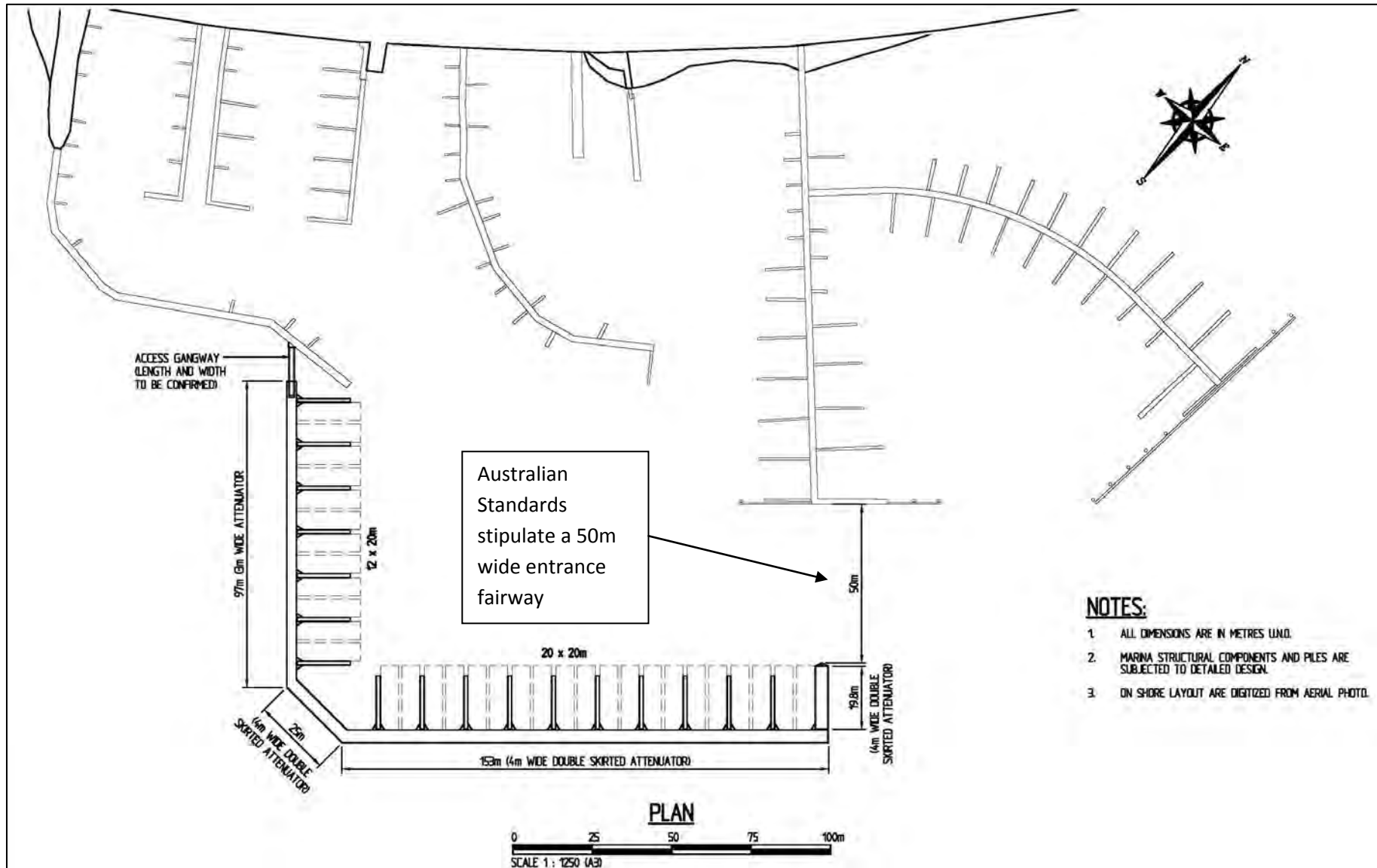


Figure 6 : Bellingham Attenuator preventing Wave Damage



Figure 7 : Bellingham Wave Attenuator Dimensions

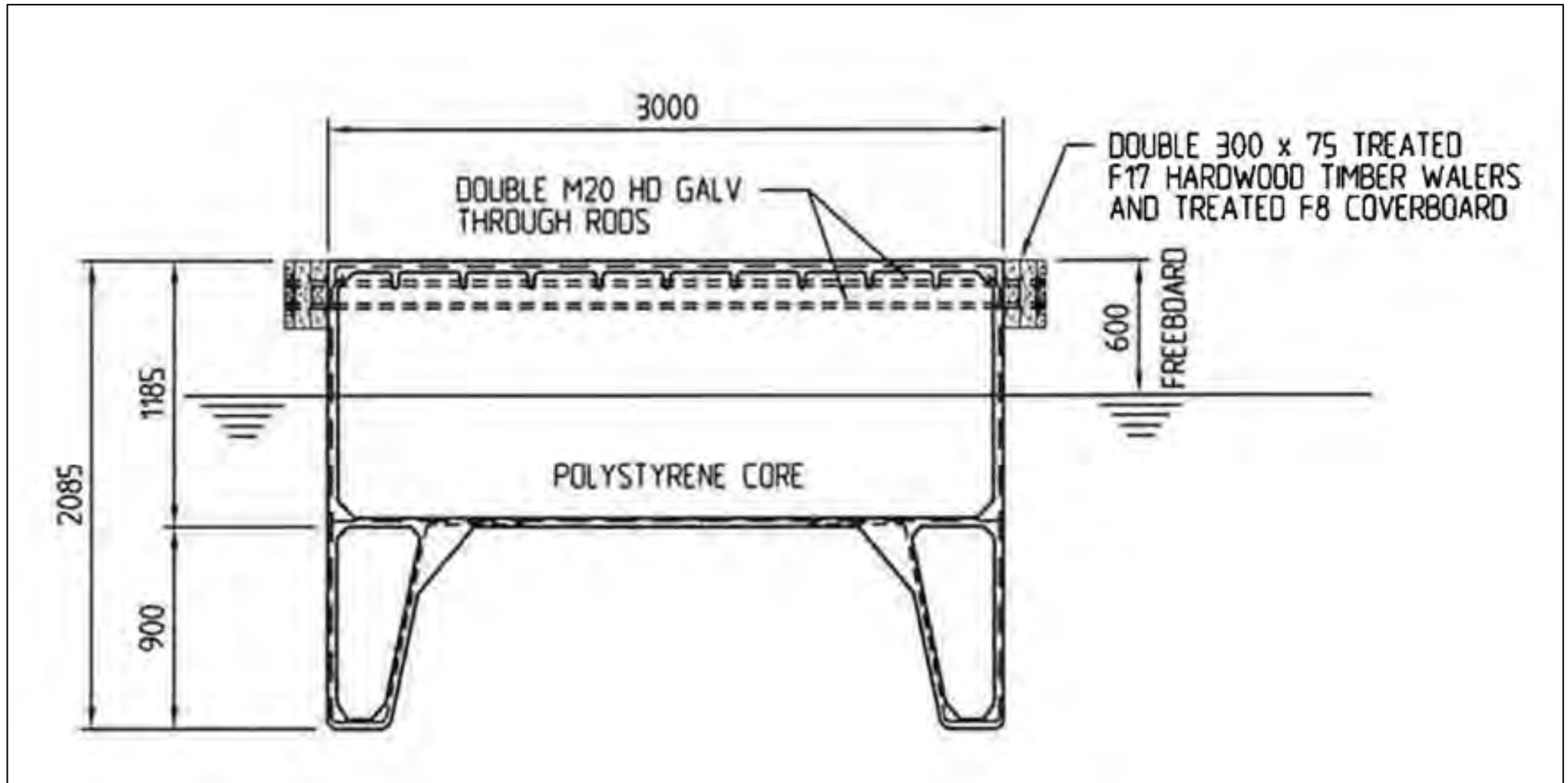
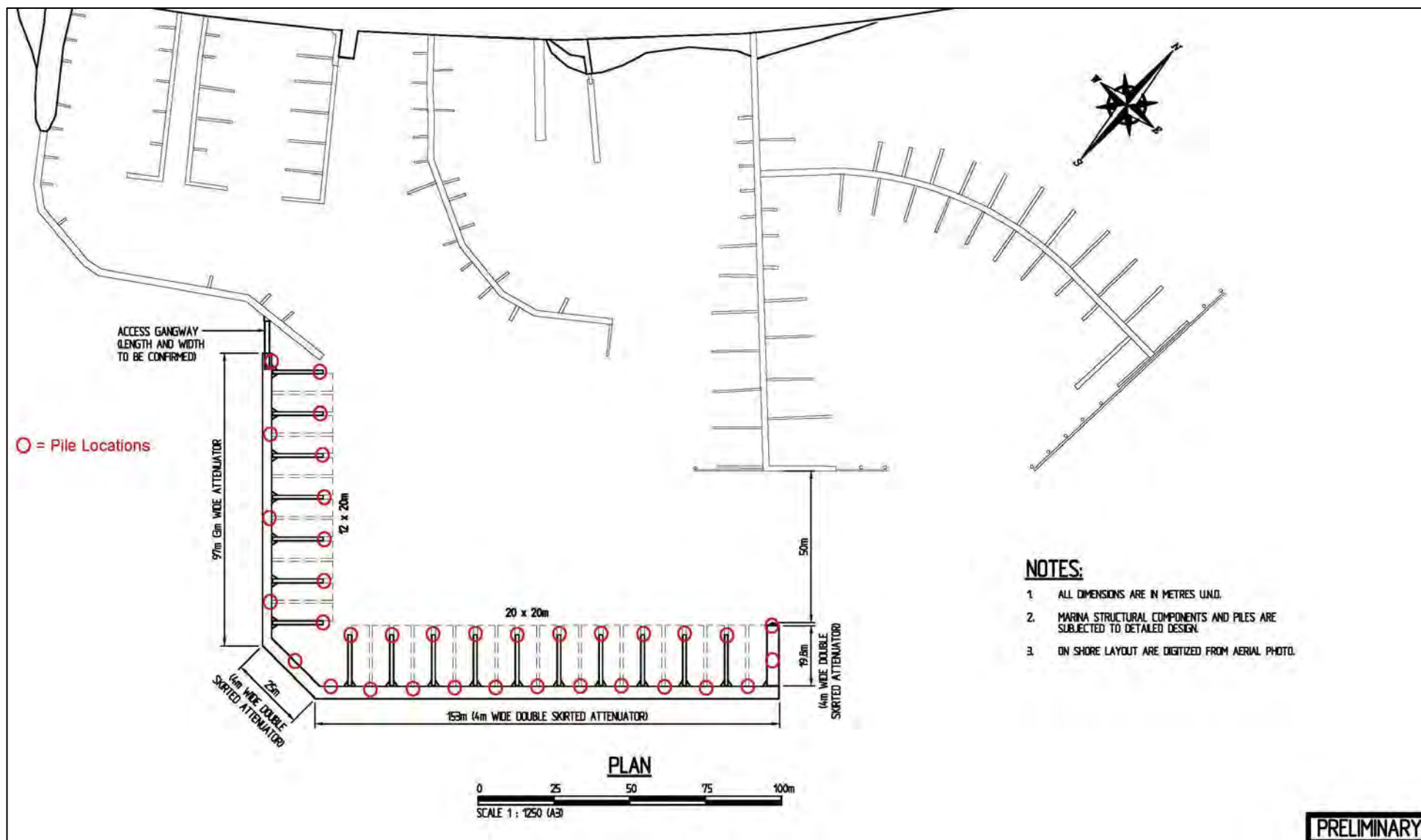


Figure 8 : Bellingham Wave Attenuator



Figure 9 : Bellingham Wave Attenuator (Preliminary Pile Locations)



Roads 2000
 Suite 8, 88 Walters Drive
 Herdsman Business Park
 Osborne Park WA 6017
 Tel: 08 9202 0800
 Fax: 08 9202 0810
 Email: finance@pcsg.com.au
 ABN: 77 081 677 71

Account # 595
Quote Date 07-Sep-2016
Quote No. 13503

Job Title PATHWAY FLYING SQUADREN

Invoice To :

Perth Flying Squadron Yacht Club
 PO BOX 3181
 Broadway
 Nedlands
 6009

Site Address :

Perth Flying Squadron Yacht Club
 Esplanade
 Dalkeith

Job Details

Description	Quote Qty	Unit Price	Line Total
PATH WORKS			
BOX OUT AND PREP GRASS AREA PER M2	172.0000	85.80	\$14,757.60
<i>Price allows for 86m long by 2m wide box out to 150mm deep and remove from site. Supply and install new roadbase 100mm deep for grassed area only.</i>			
LINE MARKING PER M	540.0000	7.00	\$3,780.00
30MM THICK RED ASPHALT LAT / GRAN 1% OXIDE PER M2	540.0000	35.23	\$19,024.20
<i>Price allows to lay new 30mm thick red asphalt over new base works and existing asphalt 270m2 long x 2m wide = 540m2.</i>			
<i>Client to confirm mix type prior to laying. No charge if client wishes to change stone size from 7 mm up to 14 mm. No charge if client wishes to change from 50 blow to 75 blow. Additional mobilisations will be charged at \$2,000.00 plus GST.</i>			
<i>Rates based on entire area being ready to lay prior to crews arrival. Corrector for uneven surfaces will be charged at \$190.00 per tonne plus GST or rate stated (higher rate will be applicable). Core testing if required at \$210.00 for one core test plus \$150.00 per additional core test plus GST, per mobilisation (rates only applicable for projects 30 km from Malaga). Core testing greater than 30 km from Malaga will be charged at cost + 10% plus GST. Handworks included in rates based on supplied drawings and information only. Additional/unforeseen handwork if required will be charged at \$400.00 per tonne plus GST or rate stated (higher rate will be applicable). Rates based on asphalt being laid prior to installation of wheel stops (where applicable) otherwise handworks rate will be charged. Works based on clear site access and clear runs available for 3.0 m wide and 3.5 m high asphalt paver. Inductions for crew over 30 minutes charged at \$360.00 per hr plus GST. Stand down for crew and machines will be charged at \$600.00 per hr plus GST. Roads 2000 will not accept any financial liability for delays due to inclement weather. Price based on quantities quoted. Client to check quote meets specification and requirements. Any changes in quantities will result in a variation to price/rates. Total price dependant on exact square meters and tonnages. Rates based on quantities stated on quote to be laid as a minimum. Lower quantities to that stated will attract a minimum charge and increase in rate quoted.</i>			
<i>Unless stated quote excludes: Work outside of normal working hours, traffic management, asphalt core testing, lighting towers, base compaction test, retention, liquidated damages, bank guarantees, road profiling, asphalt cutting, primer seal, tie-ins profiling, sweeping, polymer binder, oxide and Sasobit.</i>			

Thicknesses are "Average Compacted" unless stated otherwise on this quotation. One mobilisation is included in price. Additional mobilisations will be additional charge unless stated otherwise on this quotation.

Roads 2000
 Suite 8, 88 Walters Drive
 Herdsman Business Park
 Osborne Park WA 6017
 Tel: 08 9202 0800
 Fax: 08 9202 0810
 Email: finance@pcsg.com.au
 ABN: 77 081 677 71

Account # 595
Quote Date 07-Sep-2016
Quote No. 13503

Job Title PATHWAY FLYING SQUADREN

Invoice To :

Perth Flying Squadron Yacht Club
 PO BOX 3181
 Broadway
 Nedlands
 6009

Site Address :

Perth Flying Squadron Yacht Club
 Esplanade
 Dalkeith

Job Details

Description	Quote Qty	Unit Price	Line Total
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Quote valid for 30 days from date of quotation and is subject to rise and fall in the GMP of bitumen. Terms of payment for non-account holders are 90% deposit on acceptance of quotation and balance of payment on completion of works.

Client or client's representative must be available on site to sign documentation at completion of works.

Bank Details ANZ BSB: 016-412 Account: 2616 83356 Name: Roads 2000

Any costs incurred in collection of outstanding monies will be passed directly to the client.

Thank you for the opportunity to quote on these works.
 If this quote is accepted please sign below indicating the items chosen where applicable and fax to 9202 0800.

Quote accepted by _____
 Name

 Signature

Sub Total	\$37,561.80
Tax Total	\$3,756.18
Total	\$41,317.98



Perth Flying Squadron Yacht Club Inc.



Esplanade, Dalkeith 6009
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Attachment 2. Public Access Pathway – Indicative Design (2017)

