



City of Nedlands

Planning and Development Reports


Committee Consideration – 6 December 2016
Council Resolution – 20 December 2016

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Council: 20 December 2016

PD54.16	(Lot 248) No. 60 Monash Avenue, Nedlands – Proposed Home Business (Language Tutoring)
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Committee	6 December 2016
Council	20 December 2016
Applicant	Leader Education Pty Ltd
Owner	Cusar Pty Ltd
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2016/292 – MO1/60
Previous Item	Nil.
Attachments	<ol style="list-style-type: none"> 1. Photograph of the property from Monash Avenue 2. Photographs of classrooms

1.0 Executive Summary

In September 2016, concerns were received by the City with regard to a business operating at the subject property. A development application for a home business (language tutoring) was subsequently received.

An inspection of the property by the City revealed that there is not currently any person living at the property, as such it cannot be deemed to be a home business. How the business is currently operating resembles an educational establishment which is a use not permitted on a property zoned Residential under Town Planning Scheme No. 2 (TPS 2).

However, the applicant has confirmed in statutory declarations to the City that an employee of the business will be residing at the subject property from late January 2017, and that tutoring classes will cease on 16 December 2016 for the Christmas period and recommence on 4 February 2017.

Note: A full copy of the statutory declarations received by the City have been given to the Councillors prior to the Council meeting.

The applicant has been advised by the City that after the classes have ceased in December they are not to recommence until an employee associated with the proposed home business resides at the dwelling so as to comply with TPS 2, and all of the necessary approvals have been obtained.

The application was advertised for comment and during the advertising period 6 objections and 1 non-objection were received.

The application has been referred to Council for determination as officers do not have delegation to determine an application when an objection has been received, or refuse an application where discretion is available.

Classes for up to 12 students (toddlers, children and/or adults) are proposed to be held at the property. The home business is proposed to be operated by 3 people, 1 of whom is proposed to reside at the property from the end of January 2017. Due to the limited amount of space on site for vehicles to park and the scale of the proposed home business, it is likely that car parking will become an issue for nearby residents and businesses. The scale of the proposed use exceeds what would normally be expected for a home business in terms of the number of students on site at any one time and the frequency of the classes.

It is therefore recommended that the application be refused by Council.

2.0 Recommendation to Committee

Council refuses the development application for the proposed home business (language tutoring) at (Lot 248) No. 60 Monash Avenue, Nedlands, for the following reasons:

- 1. The scale of the home business exceeding what would normally be expected for such a use in a Residential area by virtue of the class sizes and the frequency of the classes, and as a consequence shall have an unacceptable impact on the local amenity.**
- 2. The proposal not satisfying provisions (m), (n) and (r) of the Planning and Development (Local Planning Schemes) Regulations 2015 cl.67, due to the inadequate amount of car parking space on the subject property, and the subsequent issues this will create in terms of pedestrian safety, and the availability of car parking bays on nearby commercial properties.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

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

4.0 Legislation / Policy

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations).*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Home Business (Home Business CP).
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

Within current approved budget: Yes No N/A
 Requires further budget consideration: Yes No N/A

6.0 Risk management

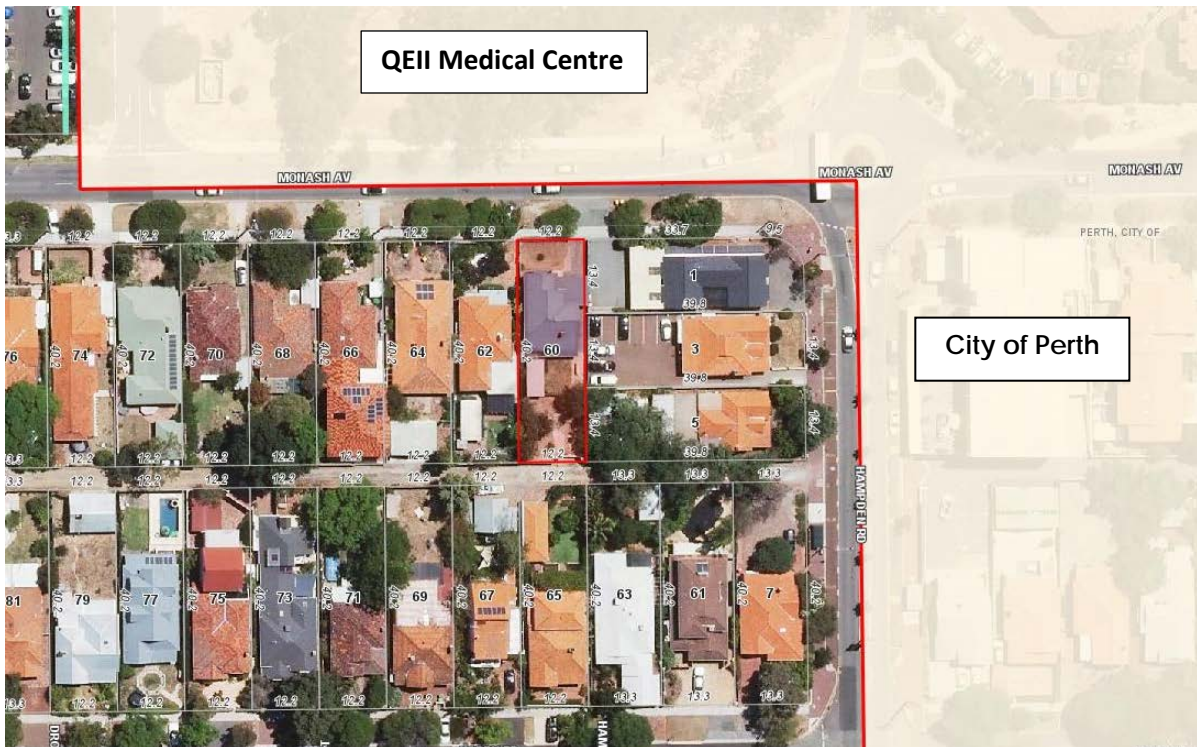
The proposal is for a use on a private lot, and therefore has no immediate budget or financial implications for the City, however should Council refuse the application, there may be financial implications through an appeal of Council’s decision.

7.0 Background

Property address		(Lot 248) No. 60 Monash Avenue, Nedlands
Lot area		490m ²
Zoning/ Reserve	MRS	Urban
	TPS 2	Residential R25

The property contains a single dwelling and associated outbuildings as shown on the locality plan below. Adjacent to the dwelling is a driveway able to accommodate up to 4 cars.

Nearby properties contain residential dwellings to the south and west and commercial activities such as retail, restaurants and offices to the east. Those properties on the northern side of Hampden Road fall within the City of Perth.



8.0 Application Details

The applicant seeks development approval for a proposed home business, the details of which are the following:

- The business previously operated from commercial premises at 2/189 Stirling Highway, Nedlands, and now operates from 60 Monash Avenue and from a property in Myaree.
- The proposed home business will be operated by 3 staff, 2 of whom will not reside at the above property. The one employee who shall reside at the property will do so from the end of January 2017.
- Two rooms inside the dwelling totalling 47sqm will be used as classrooms.
- Two classes will be run at a time, each attended by up to 6 students (toddlers, children and/or adults).
- The business will operate at the following times:
Monday – 3.30pm to 5.00pm.
Tuesday – 9.30am to 10.30am and 3.30pm to 5.00pm.
Wednesday and Thursday – 9.30am to 11.00am and 3.30pm to 4.30pm.
Friday – 9.30am to 10.30am and 3.30pm to 4.30pm
Saturday – 9.30am to 12.30pm

It should be noted that the above hours of operation differ to those currently being advertised on the applicant's website, which states that classes are held for toddlers, children and adults most days between 9.30am and 7.30pm. With regard to this the applicant has advised that *"for website and marketing purposes we put the full hours of operation for the convenience of customer enquiries. The hours I submitted are the actual hours that we use the home for business purposes"*.

9.0 Consultation

The development application was advertised to affected landowners by the City for comment in October and November 2016. Six objections and 1 non-objection were received during the consultation period.

The following is a summary of the concerns received:

- The proposed use resulting in car parking difficulties within the local area.
- The business not operating as a home business.
- The size of the classes being a concern.
- There being a lack of security for toddlers.
- There being an inadequate amount of toilet and hand wash facilities for such a business.
- Staff potentially not having working with children certificates.

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

The impact the home business will potentially have on the local amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) and TPS 2 provisions which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

Under clause 1.8 (Interpretation) of TPS 2 a home business is not to:

- a) Employ more than 2 people not members of the occupier's household;
- b) Cause injury to or adversely affect the amenity of the neighbourhood;
- c) Occupy an area greater than 50 square metres;
- d) Involve the retail sale, display or hire of goods of any nature;
- e) In relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and
- f) Involve the use of an essential service of greater capacity than normally required in the zone.

The proposal complies with the above provisions apart from the impact it will have on the amenity of nearby residents and commercial uses in terms of car parking.

No TPS 2 car parking requirements exist for home businesses therefore it is at Council's discretion, however in accordance with State Planning Policy 3.1 – Residential Design Codes (R-Codes) a minimum of 2 car parking spaces are required for those residing at the dwelling.

It is proposed that up to 12 students will be on site at anyone time, as well as 2 employees and those residing at the property. The property's driveway is able to accommodate up to 4 cars. Taking this and the above R-Code requirement into consideration, there will be 2 car spaces available on the property for students and staff, meaning that up to 12 vehicles will have to park off site. The car parking situation being made worse if students arrive early for their scheduled lesson.

The following on street car parking restrictions exist within the local area:

- Monash Avenue – No parking at all times
- Hampden Road (west side) – 30 minutes between Monday and Friday 8.00am to 5.00pm, and Saturday 8.00am to 1.00pm
- Hampden Road (east side) – 1 hour between Monday and Friday 8.00am to 5.00pm, and Saturday 8.00am to 1.00pm

Considering this, and how long classes are proposed to be held for, there is the potential for vehicles to park illegally (on verges and/or overstaying in time restricted car bays), or park on nearby commercial properties which have a limited amount of onsite car bays available. Vehicles parking illegally will potentially create safety issues for pedestrians and potentially other road users.

The impact this will have on nearby properties is considered unacceptable.

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

Under Schedule 2 Part 9 clause 67 (Matters to be Considered by Local Government) of the Planning and Development (Local Planning Schemes) Regulations 2015, the following provisions are to be taken into consideration:

- a) The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the scale of the development.
- b) The amenity of the locality.
- c) The suitability of the land for the development taking into account the possible risk to human health or safety.
- d) Any submissions received on the application.

As advised in the previous section of this report, there is an inadequate amount of space available on the subject property for the amount of vehicles likely to be used by those attending the classes. The parking situation being made worse due to the lack of on street car parking available.

As a consequence vehicles are likely to park illegally or on nearby commercial properties.

A business of this scale is more suited to a commercial property rather than in a residential area.

11.0 Other Matters of Concern

During the advertising period concerns were also received with regard to:

- There being a lack of security for toddlers.
- There being an inadequate amount of toilet and hand wash facilities for such a business.
- Staff potentially not having working with children certificates.

Matters relating to the security of toddlers is dealt with under the Child Care Regulations 1968, whereas matters relating to working with children certificates is dealt with under the *Working with Children (Criminal Record Checking) Act 2004*. The City does not administer either of these pieces of legislation and therefore is not required to have regard to them when determining the application.

Matters relating to toilets and hand wash basins are dealt with under the Building Regulations and the Building Code of Australia. The amount provided is compliant with these pieces of legislation.

12.0 Conclusion

The scale of the proposal exceeds what is usually expected for a home business by virtue of the class sizes, how often classes are held and the potential impact this will have on car parking availability within the locality. Something of this scale is deemed more appropriate for a commercial property.

Accordingly it is recommended that Council refuses the application.

12.1 Recommendation if Application is Approved

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

Council approves the development application for the proposed home business (language tutoring) at (Lot 248) No. 60 Monash Avenue, Nedlands, subject to the following conditions and advice:

1. The home business approval being valid for a period of 12 months from the date of Council's decision in accordance with Council's Home Business Policy, after which time it is not permitted to continue operating unless a separate planning application has been approved.
2. The proposed use complying with the home business definition stipulated under the City's Town Planning Scheme No. 2 (refer to advice note 1).
3. The home business not commencing until an employee of the home business is residing at the property on a permanent basis.
4. The home business only being permitted to operate at the following times:
Monday – 3.30pm to 5.00pm.
Tuesday – 9.30am to 10.30am and 3.30pm to 5.00pm.
Wednesday and Thursday – 9.30am to 11.00am and 3.30pm to 4.30pm.
Friday – 9.30am to 10.30am and 3.30pm to 4.30pm
Saturday – 9.30am to 12.30pm
5. A maximum of 12 students being on site at any one time.

Advice Notes specific to this approval:

1. With regard to Condition 2, The applicant is advised that the use 'Home Business' is defined as being the following under the City's Town Planning Scheme No. 2:

"Home Business - means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which:


- i) does not employ more than 2 people not members of the occupier's household;*
- ii) will not cause injury to or adversely affect the amenity of the neighbourhood;*

- iii) does not occupy an area greater than 50 square metres;*
 - iv) does not involve the retail sale, display or hire of goods of any nature;*
 - v) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
 - vi) does not involve the use of an essential service of greater capacity than normally required in the zone.”*
2. 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.





PD55.16	(Lot 1) No. 2/1 Hampden Road, Nedlands – Proposed Change of Use (From Office – Professional to Consulting Rooms)
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Committee	6 December 2016
Council	20 December 2016
Applicant	F Hodges
Owner	The Estate of J P Wright
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2016/309 – HA6/1-U2
Previous Item	Nil
Attachments	1. Photograph of subject property from Monash Avenue

1.0 Executive Summary

This application is for the proposed change in use of Unit 2 from Office – Professional to Consulting Rooms (skin therapy, hair removal and remedial massage), which will result in a shortfall of car bays for the premises.

The proposal was advertised to nearby landowners for comment and during the advertising period 4 objections and 2 non-objections were received.

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

The application is recommended for approval despite not complying with the car parking requirements, as it is considered the nature of the proposed use means that an adequate amount of car parking bays will be available for the use.

2.0 Recommendation to Committee

Council approves the application for the proposed change of use (from Office – Professional to Consulting Rooms) and the installation of 2 non-illuminated wall signs at (Lot 1) No. 2/1 Hampden Road, Nedlands, in accordance with the application received on 12 October 2016, subject to the following conditions and advice:

- 1. The development shall at all times comply with the approved plans.**
- 2. The car-parking bays being maintained by the landowner to the City's satisfaction.**

3. The approved use complying with the definition for Consulting Rooms under the City's Town Planning Scheme No. 2 (refer to advice note 1).
4. A maximum of 2 practitioners on the premises at any one time.
5. The signage being maintained by the landowner to the City's satisfaction.

Advice Notes specific to this proposal:

1. With regard to Condition 3, the applicant/landowner is advised that in accordance with the City's Town Planning Scheme No. 2 the use Consulting Room is defined as being the following:

“Means a building or part of a building (other than a hospital) used in the practice of the profession of two or more practitioners who are legally qualified medical practitioners or dentists, physiotherapists, chiropractors, masseurs, or persons ordinarily associated with a medical practitioner in the prevention investigation or treatment of physical or mental injuries or ailments, and the practitioners may be of the one profession or any combination of professions or practices.”

2. 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.
3. Prior to commencing an application to register the business is required to be lodged with, and be approved by, the City's Environmental Health section. This is to demonstrate how the business will comply with the requirements of the *Health (Skin Penetration Procedures) Regulations 1998*.
4. A separate Planning application is required to be lodged and approved prior to the erection/installation of any signage on the lot.
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 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of Town Planning Scheme No. 2 (TPS 2).

4.0 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015*.
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

Within current approved budget: Yes No N/A

Requires further budget consideration: Yes No N/A

6.0 Risk Management

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

7.0 Background

Property address		(Lot 1) No. 2/1 Hampden Road, Nedlands
Lot area		526m ²
Reserve/ Zoning	MRS	Urban
	TPS2	Office

The subject site has frontages to Hampden Road and Monash Avenue as shown on the locality plan on the following page. The existing building on the property contains 2 different tenancies consisting of an office and consulting room uses.

Nearby properties contain dwellings and commercial activities such as retail, restaurants and offices. Those properties on the eastern side of Hampden Road fall within the City of Perth.



8.0 Application Details

The application seeks approval to change the use of Unit 2 from Office – Professional to Consulting Rooms, details of which are as follows:

- a) At any one time there will be 2 practitioners and 1 administration employee on the premises.
- b) The use is proposed to operate at the following times:
Monday to Wednesday and Friday – 9.00am to 5.00pm.
Thursday – 10.00am to 5.00pm
Saturday – 9.00am to 4.00pm
- c) Patients will be by prior appointment only.
- d) Typically appointments will last for 40 minutes.
- e) Two non-illuminated 0.9sqm wall signs are proposed to be attached to the building's northern facade.
- f) The premises are proposed to contain 3 surgery rooms. With regard to this the applicant has advised the following:

“A 3rd room would be set up with different equipment (e.g. Intense Pulsed Light Treatment), which requires a room with non-reflective surfaces.”

9.0 Consultation

The proposal was advertised to nearby landowners for comment in October and November 2016 due to variations proposed to the amount of onsite car bays required. During the advertising period 4 objections and 2 non-objections were received.

Concerns received were with regard to the shortfall in car bays potentially resulting in car parking difficulties within the local area.

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

The potential impact the proposal will have on the area's amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of TPS 2 which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.2 Existing Car Parking Demand

Five (5) car bays exist for Unit 2 adjacent to the property's western boundary. Access to which is obtained via Monash Avenue. Currently a total of 5 car bays are required for the office use at Unit 2.

The car bays for Unit 1 on the subject property are in a separate area adjacent to the property's eastern boundary, access to which is obtained from Hampden Road.

The following on street car parking restrictions exist within the local area:

- Monash Avenue – No parking at all times
- Hampden Road (west side) – 30 minutes between Monday and Friday 8.00am to 5.00pm, and Saturday 8.00am to 1.00pm
- Hampden Road (east side) – 1 hour between Monday and Friday 8.00am to 5.00pm, and Saturday 8.00am to 1.00pm

10.1.3 Future Car Parking Demand

TPS 2 does not contain a prescribed minimum number of car bays for Consulting Rooms, therefore the number of car bays required is at the City's discretion. Other local governments' parking requirements for the use have been reviewed, and the following car parking requirements apply.

Local Government	Car Parking Provision	Car Parking Requirement	Car Bay Shortfall
City of Subiaco	<i>Consulting Rooms</i> 4 bays per consulting room	<i>Consulting Rooms</i> 12 bays required	7 car bay shortfall
City of Stirling	<i>Consulting Rooms</i> 6 bays for 1 health consultant	<i>Consulting Rooms</i> 12 bays required	7 car bay shortfall

Based on the above requirements, if the consulting rooms were approved there would be a shortfall of 7 car parking bays.

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

“Under Schedule 2 Part 9 clause 67 (Matters to be Considered by Local Government) the following [relevant] provisions are to be taken into consideration:

- b) The amenity of the locality.*
- d) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety.*
- e) Any submissions received on the application.”*

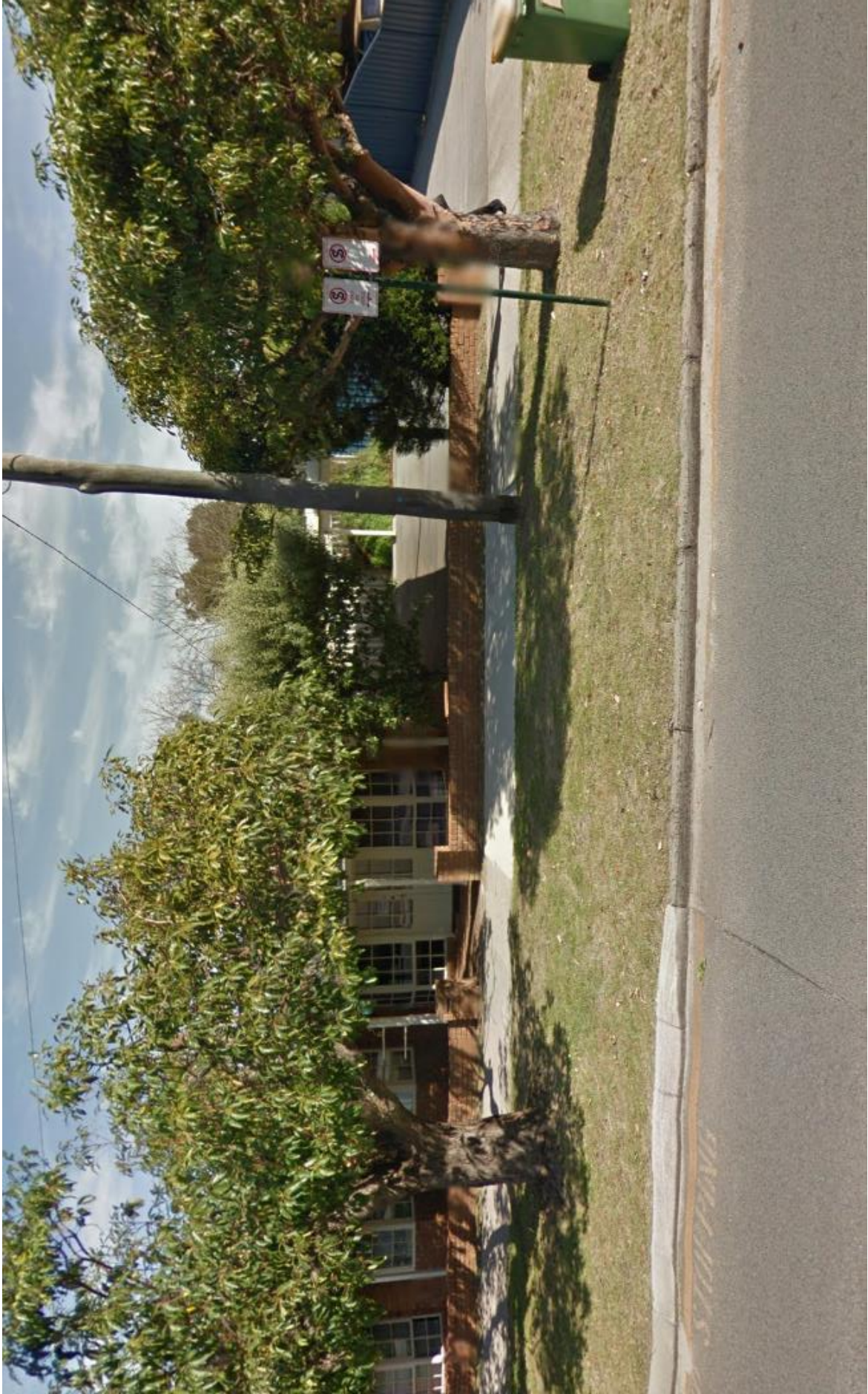
11.0 Discussion

Five on site car bays are available for Unit 2. The office use which previously operated from Unit 2 required 5 car bays.


The nature of the proposed use and that only two practitioners and 1 administration employee will be on site at any one time, means that only a few vehicles will be parked on the premises at the same time. Up to 2 car bays will available on site for patients and if any patients arrive early for their appointment potentially only 2 vehicles will need to park off site. Therefore despite what the car parking requirements are for Consulting Rooms in other local governments, the use will likely only result in a shortfall of 2 car bays, if/when patients arrive early for appointments.

12.0 Conclusion

Considering the nature and scale of the proposed use the shortfall in car bays is unlikely to have a significant impact on the local amenity. Accordingly it is recommended that Council approves the application.



PD56.16	(Lot 2) No. 79 Victoria Avenue – Additions to Dwelling
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Committee	6 December 2016
Council	20 December 2016
Applicant	G and N Dunthorne
Owner	G and N Dunthorne
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2016/226 – V11/79
Previous Item	Nil.
Attachments	<ol style="list-style-type: none"> 1. Photograph of the subject property from Victoria Avenue. 2. Photograph of the subject property from Watkins Road. 3. Photograph of the proposed cabana's and the existing studio's location 4. Photograph of the proposed decking's location

1.0 Executive Summary

Development approval is being sought for the construction of a cabana, an alfresco, over height primary street boundary fencing and various additions to an existing single dwelling.

The application was advertised to nearby residents for comment due to variations to the lot boundary setback, overlooking and fencing requirements. During the advertising period 2 objections were received.

The application has been referred to Council for determination, as officers do not have the delegation to determine applications when an objection has been received, or refuse (or part refuse) an application where discretion is available.

During the advertising period it was brought to the City's attention that a restrictive covenant has been registered on the subject property's Title which restricts the height of any building constructed within the north eastern and/or south eastern portions of the property. Based on legal advice received by the City, Council can have regard to the restrictive covenant when making its decision.

Note: A full copy of the subject property's restrictive covenant and of the legal advice received by the City has been given to the Councillors prior to the Council meeting.

The rear setback variation of the garage is considered to not satisfy the design principles of the R-Codes, as its height and length will have an adverse impact on the visual amenity of the adjoining neighbours due to its reduced setback from the eastern (rear) lot boundary. Its approval would set an undesirable precedent for low density coded properties.

It is noted that a garage already exists on this boundary however no record of this building being approved previously exists. An ample amount of space is available for the garage to be setback at least 1m so that its appearance from the property to the east is consistent with what would be expected if the eastern boundary of the subject property was also its side boundary.

The south east portion of the second storey addition to the dwelling does not comply with the restrictive covenant height restriction which applies to the property, and therefore does not comply with clause 5.5.1 (Preservation of Amenity) of Town Planning Scheme No. 2 (TPS 2).

Considering the above, the garage and second storey components of the application are recommended to be refused by Council.

The other components of the proposal are recommended to be approved by Council due to satisfying TPS 2, Council's Fill and Fencing Local Planning Policy (Fencing LPP) and the applicable design principles of the R-Codes.

2.0 Recommendation to Committee

Council:

- 1. Refuses the garage and upper storey addition components of the development application for (Lot 2) No.79 Victoria Avenue, Dalkeith, received on 5 August 2016, for the following reasons:**
 - a) The proposal not satisfying the design principles stipulated under clause 5.1.3 (Lot Boundary Setback) of the Residential Design Codes due to:**
 - i. The proposed setback of the garage not positively contributing to the streetscape and prevailing development context; and**
 - ii. The proposed garage increasing the impacts of building bulk on the adjoining property.**
 - b) A garage boundary wall of this scale in the R10 zone does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.**
 - c) The south east portion of the second storey addition not satisfy clause 5.5.1 of the City of Nedlands Town Planning Scheme No.2, due to its height exceeding what is permitted under the property's restrictive covenant and will therefore have an adverse impact on the neighbours' amenity.**
 - d) The proposal not satisfying provisions (m) and (n) of the Planning and Development (Local Planning Schemes) Regulations 2015 cl.67, as the proposal for a boundary wall is incompatible with low density zone and will negatively impact the character of the locality.**

2. Approves the street boundary fencing, decking, alfresco, cabana and studio components of the development application for (Lot 2) No.79 Victoria Avenue, Dalkeith, received on 5 August 2016, subject to the following conditions and advice:
- a) The development shall at all times comply with the approved plans.
 - b) This development approval pertains to the proposed street boundary fencing, decking, alfresco and studio only.
 - c) All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
 - d) The street boundary fencing being maintained by the landowner to the City's satisfaction.
 - e) The studio not being used as ancillary accommodation.

Advice Notes specific to this approval:

- a) 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.
- b) 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.
 - i. 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.
 - ii. 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.
- c) All street trees on the verge are to be retained and shall not be removed without written approval from the Manager Parks Services.
- d) Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.
- e) This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

3.0 Strategic Community Plan

KFA: Natural and Built Environment

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

4.0 Legislation / Policy

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations).*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Residential Design Codes of WA 2015 (R-Codes).
- Council Policy – Neighbour Consultation.
- Fill and Fencing Local Planning Policy (Fencing LPP)

5.0 Budget / Financial Implications

Within current approved budget: Yes No N/A
 Requires further budget consideration: Yes No N/A

6.0 Risk management

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

7.0 Background

Lot area	1,239m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No

The subject property contains a single storey dwelling and its topography falls westwards, as shown on the locality plan on the following page. The adjoining properties contained two storey single dwellings and associated outbuildings.

As the property is a corner lot it effectively has 2 side boundaries.

A restrictive covenant has been registered on the subject property's Title which restricts the height of any building constructed on it to 4.7m in height above natural ground level. Based on legal advice obtained by the City, Council can have regard to the restrictive covenant when making its decision.

The City is aware that the construction of the studio proposed as part of the application has already commenced. The landowners were requested to cease all work and as far as the City is aware no further work has been undertaken to date.



8.0 Application Details

The applicant seeks approval to:

- a) Construct a pergola, decking and an alfresco adjacent to the northern (side) boundary;
- b) Construct a cabana and a verandah to the rear of the dwelling;
- c) Remove an existing garage and replace with a garage and workshop adjacent to the eastern (rear) boundary;
- d) Erect new fencing along both street boundaries; and
- e) Construct upper storey additions to the existing single storey dwelling.

Retrospective approval is also being sought for an existing 29sqm studio at the rear of the dwelling to remain, which the applicants have confirmed will be used as a guest room and not ancillary accommodation.

The following variations are proposed:

- a) An alfresco and patio being setback 0.6m in lieu of 1m from the north (side) boundary.
- b) A studio and portion of a verandah being setback 5m in lieu of 6m from the east (rear) boundary.

- c) A cabana being setback 1.8m in lieu of 6m from the east (rear) boundary.
- d) A garage have a nil setback on the east (rear) boundary in lieu of 6m.
- e) Raised decking having a visual privacy setback 4.4m in lieu of 7.5m from the north (side) boundary.
- f) A solid portion of fencing along the primary street boundary being between 1.8m and 2.4m in height in lieu of 1.2m to provide screening for an existing swimming pool and outdoor living area.
- g) The south east portion of the upper storey addition to the dwelling being up to 8.8m in height above natural ground level in lieu of 4.7m permitted under the property's restrictive covenant.

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

“There is an existing double garage for which the roof used to rest on the eastern property wall.”

“The existing studio is also in keeping with the existing setback. There is an extreme privacy issue at that eastern boundary which is the main reason for the cabana and we are designing the roof of the cabana to avoid any obstruction to the views and keep within the height restriction.”

“The front of the adjoining property is much closer to Victoria than we are and the combination of the pergola and that angle of view make it more private than existing. We specifically are building the pergola at that angle to maintain the neighbours and our own privacy and the cone of vision of the proposed pergola gives screening to a height of 3metres at that boundary.”

“We are not over the nominated height above sea level of the civil covenant at that south eastern area. We also designed the roof so as to maintain any views for the neighbouring property and in fact the views will be superior to the present views as the existing garage is a gable running north/south.”

9.0 Consultation

The development application was advertised to affected landowners by the City for 14 days for comment. Two objections were received during the consultation period.

The following is a summary of the concerns received:

- a) Lack of privacy from the proposed patio and alfresco.
- b) The visual impact of the cabana, studio and garage due to their reduced rear boundary setbacks.

The potential impact the proposed development may have on the local amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations), Town Planning Scheme No. 2 (TPS 2), the R-Codes and the Fencing LPP which are not being met by the proposal are addressed in the following sections.

10.1 State Planning Policy 3.1 – Residential Design Codes

10.1.1 Side Boundary Setbacks

Deemed-to-Comply Requirement	Proposed
The alfresco and patio are required to be setback a minimum of 1m from the northern (side) boundary in accordance with Table 2a of the R-Codes.	The alfresco and patio are proposed to be setback 0.6m from the northern boundary.

Variations to the Deemed-to-Comply requirements can be considered subject to satisfying the following Design Principle provisions:

Design Principles	Assessment/Comment	Complies
Impact of Building Bulk	The proposed structures will be partially screened by an existing 1.8m high solid dividing fence and vegetation on the subject property. They will also not be adjacent to any outdoor living areas on the adjoining property. The potential visual impact of the structures is therefore not anticipated to be significant.	Yes
Positively contributes to the prevailing development context and streetscape.	For the reasons given above, the reduced setbacks of the proposed structures are not anticipated to create a significant visual impact on the adjoining property. What impact, if any, the structures may have on the streetscape will be minimised due to their setbacks from the street boundary, vegetation along the Victoria Avenue verge, and due to the proposed masonry wall along portion of the primary street boundary.	Yes
Access to direct sunlight and ventilation	The location of the structures and orientation of the property means that any overshadowing created will be compliant with the R-Codes.	Yes
Overlooking and privacy loss	No overlooking will be possible from the alfresco nor the patio due to their finished floor levels not being more than 0.5m above natural ground level.	Yes

10.1.2 Rear Boundary Setback

Deemed-to-Comply Requirement	Proposed
<p>The cabana, studio and garage are required to be setback a minimum of 6m from the eastern boundary in accordance with Table 1 of the R-Codes.</p>	<p>The studio is proposed to be setback 5m from the eastern boundary.</p> <p>The cabana is proposed to be setback 1.8m from the eastern boundary.</p> <p>The proposed garage is proposed to have a nil setback from the eastern boundary.</p>

Variations to the Deemed-to-Comply requirements can be considered subject to satisfying the following Design Principle provisions:

Design Principles	Assessment/Comment	Complies
<p>Impact of Building Bulk</p>	<p><u>Studio</u></p> <p>The subject property is a corner lot and adjoins the side boundaries of 2 other lots to the north and east. The eastern boundary is deemed to be the subject property’s rear boundary as Victoria Avenue is its primary street.</p> <p>The proposed studio is compliant with the side boundary setback deemed-to-comply provisions of the R-Codes. Therefore its appearance from the property to the east will be the same as if the eastern boundary of the subject property was also its side boundary.</p> <p>A 6sqm portion of the studio, which is single storey in nature, encroaches into the setback area. Its height complies with the property’s restrictive covenant.</p> <p>Its potential impact on the neighbouring properties is therefore not anticipated to be significant.</p> <p><u>Cabana</u></p> <p>The cabana will be 4m in overall height and 7.5m in length. It will comply with the property’s restrictive covenant.</p> <p>The cabana will have the same visual impact from the adjoining lot to the east as if it were an outbuilding. Under the R-Codes an outbuilding can be setback as close as 1m from a lot boundary.</p>	<p>Yes</p>

10.1.3 Visual Privacy

Deemed-to-Comply Requirement	Proposed
The decking adjacent to the existing verandah at the front of the dwelling is required to be setback 7.5m from the northern lot boundary due to its finished floor level being more than 0.5m above natural ground level.	The decking is proposed to be setback 4.4m from the northern lot boundary.

Variations to the Deemed-to-Comply requirements can be considered subject to satisfying the following Design Principle provisions:

Design Principles	Assessment/Comment	Complies
Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through: <ul style="list-style-type: none"> • building layout and location; • design of major openings; • landscape screening of outdoor active habitable spaces; and/or • location of screening devices. 	Any overlooking possible from the decking will be into the street setback area of the adjoining property, and towards a section of the neighbour's dwelling which does not contain any outdoor living areas nor major openings. The variation will therefore not have a significant impact on the neighbours' amenity.	Yes

10.3 Local Planning Policy – Fill and Fencing (Fencing LPP)

Fencing is proposed along both street boundaries of the subject property, most of which is compliant with the Fencing LPP except for a 17m long section on the primary street (Victoria Avenue) boundary which is solid between 1.8m and 2.4m in height in lieu of 1.2m in order to provide privacy for an existing authorised swimming pool within the street setback area.

When variations are proposed to the provisions of the Fencing LPP consideration is required to be given to the potential impact it may have on the local amenity.

The proposed fencing will be between 1.8m and 2.4m in height above natural ground level due to the topography of the land. Existing vegetation along the adjoining portion of verge will remain and therefore partially screen the fencing from public view. The fencing will not obstruct the sightline of drivers leaving the subject property nor the adjoining property. Solid fencing of 2m in height exists along the street boundaries of the property directly opposite on Victoria Avenue.

Considering the above, the fencing will not have a significant impact on the streetscape nor the neighbours' amenity and is deemed acceptable.

10.4 Town Planning Scheme No. 2

TPS 2 Provision	Assessment/Comment
<p>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.</p>	<p>A covenant exists on the subject property's Title which restricts development to 4.7m in height above natural ground level within the south eastern portion of the lot. An upper storey addition of up to 8.8m in height is proposed to the south eastern portion of the existing dwelling.</p> <p>The proposed addition exceeds what the restrictive covenant permits and therefore will have an adverse impact on the neighbours' amenity.</p> <p>In addition to this, as advised previously, the proposed garage will have an unacceptable impact on the neighbours' amenity due to its reduced setback.</p>

10.5 Planning and Development (Local Planning Schemes) Regulations 2015

Clauses	Assessment Comment
<p>Planning and Development (Local Planning Schemes) Regulations 2015</p> <p><i>Under Schedule 2 Part 9 clause 67 (Matters to be Considered by Local Government) the following provisions are to be taken into consideration:</i></p> <p>a) <i>The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.</i></p> <p>b) <i>The amenity of the locality.</i></p>	<p>As advised previously, the proposed second storey addition's height and the setback of the garage will have an unacceptable impact on the neighbours' amenity.</p>

11.0 Conclusion

The rear setback variation of the garage is considered to not satisfy the design principles of the R-Codes due to its height and length. Likewise the upper storey addition will also have an adverse impact on the neighbours' amenity due to its height being greater than that permitted by the restrictive covenant. As such, these components of the proposed development will have an adverse impact on the neighbours' amenity.

Considering the above, the garage and second storey components of the application are recommended to be refused by Council.

The other components of the proposal are recommended to be approved by Council due to satisfying TPS 2, the Fencing LPP and the applicable design principles of the R-Codes.

11.1 Recommendation if Application is Approved

If Council resolves to approve the garage and the second storey addition components of the application the following wording and conditions are recommended.

Council approves the upper storey addition, street boundary fencing, decking, alfresco, cabana, garage and studio components of the development application for (Lot 2) No.79 Victoria Avenue, Dalkeith, received on 5 August 2016, subject to the following conditions and advice:

1. The development shall at all times comply with the approved plans.
2. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
3. The street boundary fencing being maintained by the landowner to the City's satisfaction.
4. The studio not being used as ancillary accommodation.
5. The parapet wall being finished to a professional standard by the landowner within 14 days of the garage's practicable completion, and be maintained thereafter by the landowner, to the City's satisfaction.
6. The workshop not being used for commercial purposes.

Advice Notes specific to this approval:

1. 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.
2. 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.
 - a) 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.
 - b) 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.
3. All street trees on the verge are to be retained and shall not be removed without written approval from the Manager Parks Services.
4. Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.
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.










77 Victoria Avenue

Decking's proposed location

PD57.16	No. 227 (Lots 13072 and 13073) Stubbs Terrace, Shenton Park – Additional Buildings for Shenton College
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Committee	6 December 2016
Council	20 December 2016
Applicant	JCY Architect and Urban Designs
Owner	Department of Health and Department of Education
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2016/287, DA2016/288, DA2016/289
Previous Item	Nil.
Attachments	Nil.

1.0 Executive Summary

In October 2015, the Education Minister announced plans to expand Shenton College. Two new education buildings and an extension to an existing gymnasium building are proposed to accommodate up to 1,000 additional students.

The proposed development is to be located on the western portion of the site, partially encroaching onto an adjoining Lot (Lot 13072) which is owned by the Department of Health. Lot 13072 is reserved 'Public Purpose – Hospital' whereas Lot 13073 is reserved 'Public Purpose – High School' under the Metropolitan Region Scheme (MRS).

Given that the land is reserved under the Metropolitan Region Scheme (MRS) the provisions of Town Planning Scheme No. 2 (TPS 2) do not apply, however Council can have regard to them when making its decision.

As the subject lots are reserved Public Purpose under the MRS Council is required to provide a recommendation to the WAPC.

2.0 Recommendation to Committee

Council:

- 1. Advises the Western Australian Planning Commission that it does not support the additional education buildings proposed at Lot 13072 and 13073 (227) Stubbs Terrace, Shenton Park, for the following reasons:**
 - a) The portion of Lot 13072 Stubbs Terrace, Shenton Park affected by the proposal being reserved ‘Public Purpose – Hospital’ under the Metropolitan Region Scheme, and the proposed development not being consistent with the intended purpose of this reservation type.**
 - b) The Bushfire Management Plan being prepared on the assumption that the partial acquisition and transferral of Lot 13072 will be approved and subsequently the vegetation will be able to be cleared to reduce the BAL rating. As this has not been granted to date a BAL rating of ‘BAL – Flame Zone’ and ‘BAL – 40’ currently applies to the proposed development and in accordance with State Planning Policy 3.7 - Planning in Bushfire Prone Areas should not be supported at this stage.**
 - c) The amount of vegetation proposed to be removed to achieve a lower bushfire risk level being excessive. Some of the vegetation can be retained to achieve a ‘moderate’ bushfire risk level which will still allow for the development to occur.**
 - d) The proposal resulting in approximately 2,000sqm of vegetation having to be cleared by the City on Shenton Bushland in order to comply with the fire break requirements under the *Bush Fires Act 1954*, which is considered to be excessive.**
 - e) An insufficient number of car bays are provided for the use, thus potentially creating parking issues for nearby property and result in vehicles parking illegally elsewhere.**
 - f) The proposed single lane access potentially resulting in traffic queuing off site which will obstruct public transport (bus) routes and prevent traffic travelling eastward along Stubbs Terrace from turning into Lot 13073 (227) Stubbs Terrace, Shenton Park.**
- 2. Advises the Western Australian Planning Commission that in the event that it decides to approve the development application, it is recommended that it be subject to the following conditions and advice:**
 - a) The development shall at all times comply with the approved plans.**
 - b) All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

- c) **The car parking bays and access ways being constructed, marked and drained by the landowner prior to the practicable completion of the proposed development, and be maintained thereafter by the landowner to the City's satisfaction.**
- d) **Prior to submitting a building permit application to the City a construction management plan shall be submitted to and be approved by the City which details how the proposed construction will be managed to minimise environmental impacts. This is to address the following:**
- i. The staging plan for the entire works;**
 - ii. The applicable timeframes and assigned responsibilities for tasks;**
 - iii. The on-site storage of materials and equipment;**
 - iv. Parking for contractors;**
 - v. Waste management;**
 - vi. Dust management;**
 - vii. The management of noise in accordance with the requirements of the *Environmental Protection (Noise) Regulations 1997*;**
 - viii. The management of vibrations; and**
 - ix. Complaints and incident procedures.**

Refer to advice note a).

- e) **The landowner complying with the approved construction management plan to the City's satisfaction.**
- f) **Prior to submitting a building permit application to the City a detailed landscaping plan shall be submitted to and be approved by the City which details:**
- i. How the remaining landscaping will be protected during the construction phase of the proposed development;**
 - ii. The specie types, location and quantities of any proposed plants; and**
 - iii. The location of all proposed and remaining landscaped areas in relation to the remaining and proposed buildings, car parking areas, cycle routes and power poles.**

Refer to advice note a).

- g) **The landscaping shown on the approved landscaping plan being protected and maintained by the landowner to the City's satisfaction.**
- h) **During the construction phase sumps, ponds or other water bodies shall be maintained by the landowner to the City's satisfaction such that mosquitoes are prevented from breeding.**

- i) **Prior to commencement of works, investigation for soil and groundwater contamination is to be carried out to determine if remediation is required.**

If required, remediation, including validation of remediation, of any contamination identified shall be completed prior to the issuing of titles to the satisfaction of the Western Australian Planning Commission on advice from the Department of Environment and Conservation, to ensure that the lots created are suitable for the proposed use (refer to advice note b)).

- j) **A pedestrian footpath being provided by the landowner to link the internal school path network to the Perth-Fremantle Principal Shared Path north of the Stubbs Terrace intersection prior to the practicable completion of the proposed development, to the City's satisfaction.**
- k) **The existing on road cycle lanes, and any other markings and associated redundant cycle infrastructure at the Stubbs Terrace intersection being removed by the owner of Lot 13073 (227) Stubbs Terrace, Shenton Park, prior to the proposed development's practicable completion to the City's satisfaction.**
- l) **A dedicated left turn slip lane being provided for access into Lot 13073 (227) Stubbs Terrace, prior to the practicable completion of the proposed development, to the City's satisfaction.**

Advice Notes specific to this approval:

- a) **With regard to Conditions d) and f), based on advice received from the State Heritage Office the applicant is advised that:**
 - i. **Appropriate measures are put in place prior to and during construction to protect the existing landscaping, in particular the Aleppo Pine Tree. These measures are to be included in the construction management plan and the landscaping plan, and the plans are to be to the satisfaction of the State Heritage Office.**
 - ii. **The original alignment of the driveway and outline of the northwest garden wing shall be interpreted in a distinctive material that references the original width and finish, and be distinguishable from the new brick footpath elements.**
 - iii. **The landscaping of the area in front of the Lemnos Hospital Administration Building shall reference the curve of the original alignment as apparent in the historical photographic evidence.**
- b) **The applicant/landowner is advised that Condition i) is based on advice from Department of Environment and Regulation. Investigations and remediation are to be carried out in compliance with the *Contaminated Sites Act 2003* and current Department of Environment and Conservation**

Contaminated Sites Guidelines. (Department of Environment and Conservation).

- c) 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.**
- d) 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.**
- e) Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.**
- f) All street trees on the verge are to be retained and shall not be removed without written approval from the City's Manager Parks Services.**
- g) All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, lobby 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.**
- h) Prior to clearing any bushland as shown on the approved site plan, the applicant is advised to contact the Department of Environment Regulation to obtain a clearing permit.**
- i) The applicant is advised to liaise with the Commonwealth Department of the Environment and Energy to ascertain what their obligations are under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* with regard to clearing the vegetation.**
- j) This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of Town Planning Scheme No. 2 (TPS 2).

KFA: Governance and Civic Leadership

Part of the Council's leadership role is to comment on and influence the final outcomes of developments occurring within the City.

4.0 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act)
- Metropolitan Region Scheme (MRS)
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Council Policy – Neighbour Consultation.
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas
- Planning for Bush Fire Protection Guidelines (2015)
- State Heritage Register
- *Heritage of Western Australia Act 1990*

5.0 Budget / Financial Implications

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

6.0 Risk Management

Not applicable.

7.0 Background

The existing Shenton College site (Lot 13073) comprises land reserved under the MRS for 'Public Purpose – High School'. A locality plan on the following page shows the location of the lot.

A portion of the site comprises remnant buildings from the former 'Lemnos Hospital' facility. This part of the site is included on the State Heritage Register and the City's Municipal Heritage Inventory as a Category A meaning:

“Worthy of the highest level of protection: recommended for entry into the State Register of Heritage Places which gives legal protection; (some places in this category are already in the State Register of Heritage Places); development requires consultation with the Heritage Council of WA and the local government; provide maximum encouragement to the owner under the City of Nedlands Town Planning Scheme to conserve the significance of the place. Incentives to promote heritage conservation should be considered.”

The portion of Lot 13072 affected by the proposed development comprises land reserved under the MRS for 'Public Purpose – Hospital'.

The subject lots have been identified as falling within a bushfire prone area under the Statewide Bushfire Prone Area Mapping.

The subject lots fall outside of the odour buffer for the Subiaco Wastewater Treatment Plant nearby.

Surrounding properties contain bushland and various commercial and industrial uses. The site immediately to the north is proposed to be redeveloped into high density residential and mixed use development under the WAPC's Shenton Park Hospital Improvement Scheme.



8.0 Application Details

The details of the proposal are as follows:

- The construction of a learning hub building where currently tennis courts exist, and which will partially encroach onto Lot 13072. The building being 11.6m in height above natural ground level and having a gross floor area of 11,228sqm.
- The construction of a materials technology building in the north west portion of Lot 13073. The building being 5.9m in height above natural ground level and having a gross floor area of 1,392sqm.
- The extension of an existing gymnasium building adjacent to the college's playing field. The extension being 9.6m in height above natural ground level and having a gross floor area of 1,028sqm.
- Currently up to 179 staff and 1,600 students can be accommodated within the existing buildings. If the application is approved by the WAPC this will increase to up to 250 staff and 2,600 students.

Note: Various documents were provided by the applicant which outline the potential impact of the development from an environmental, bushfire, traffic and heritage perspective. A full copy of this documentation has been given to the Councillors prior to the Council meeting and are discussed in this report under Section 10 onwards.

9.0 Consultation

The proposal was advertised for 14 days to nearby landowners for comment in October 2016 due to variations proposed to the amount of onsite car bays required under Town Planning Scheme No. 2 (TPS 2). During the advertising period 1 non-objection was received.

Due to the subject lots being within close proximity of Shenton Bushland, containing remnant vegetation and a portion of Lot 13073 being included on the State Heritage Register, the application was referred to various government agencies, 'Friends of Shenton Bushland' and the City's Heritage Consultant for comment. The comments received and the potential impact the proposal will have on the area is discussed in the following sections.

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

10.0 Clearing of Vegetation

Portions of the site area totalling 1.89ha, including land to be transferred from the Department of Health site (Lot 13072), include areas of native vegetation which are proposed to be cleared to;

- a) Facilitate the proposed new building works;
- b) Manage areas of 'Low Threat Vegetation' in relation to the assessed bushfire risk; and
- c) Establish an 'Asset Protection Zone' surrounding the proposed new buildings.

As vegetation is proposed to be cleared and the subject lots abut Shenton Bushland, the application was referred to 'Friends of Shenton Bushland' and the following comments were received:

"The Friends of Shenton Bushland draw to your attention the following extracts from the listing of the Banksia Woodlands of the Swan Coastal Plain that are applicable to the Shenton College proposal.

'The 3 key approaches to achieve the conservation objective are:

- *PROTECT the ecological community to prevent further loss of extent and condition;*
- *RESTORE the ecological community within its original range by active abatement of threats, revegetation and other conservation initiatives,*
- *COMMUNICATE WITH AND SUPPORT researchers, land use planners, landholders, land managers, community members, including the Indigenous community, and others to increase understanding of the value and function of the ecological community and encourage their efforts in its protection and recovery.*

Actions inconsistent with these recommendations that are likely to significantly affect the ecological community should not be undertaken'."

"Clearing is proposed to accommodate car parking and playing areas and provide an Asset Protection Zone (APZ). Area = 1.2ha. This clearing becomes a vector for introduction of weedy species into the adjacent bushland."

"Hazard Separation Zone is within the boundaries of an A-Class reserve, Shenton Bushland, vested with the City of Nedlands and will negatively impact over 10% of the reserve."

"In addition to the proposed clearing of endangered Banksia Woodlands, the proposal will also involve removal of mature Jarrah and Tuart trees that provide habitat to the endangered Carnaby's Cockatoos."

"There are two positive locations currently available for extending Shenton College that could avoid the environmental issues raised by the current proposal:

- a) *relocating the proposed building to the current Hockey Stadium (Shenton Turf). This facility was originally constructed when UWA ran sporting facilities on the former Lemnos Hospital site. UWA subsequently withdrew from this facility. The facility could be relocated to UWA's McGillivray playing fields.*
- b) *Royal Perth Rehabilitation Hospital site. This site is currently vacant and is proposed for housing development. Relocating the expansion of Shenton College to this site would greatly alleviate the current (and forecast) overcrowding at Shenton College (see proposal below for proposed splitting of Shenton College into a Senior and Junior school)."*

The application was also referred to the Department of Environmental Regulation (DER) and the following comments were received:

"The application for planning approval advises that the clearing may be exempt under Regulation 5, Item 1 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004, clearing to construct a building. This exemption does not apply within environmentally sensitive areas (ESAs) declared under section 51B of the EP Act. Lot 12019 is mapped as an ESA, therefore, this exemption is not valid and a clearing permit is likely to be required to clear native vegetation for this purpose."

"Note that if clearing is likely to impact on significant habitat for threatened black cockatoo species and the threatened ecological community 'Banksia Woodlands of the Swan Coastal Plain', it may be considered a controlled action under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. The proponent should contact the Commonwealth Department of the Environment and Energy to discuss its obligations in this regard."

If the application is approved by the WAPC it will mean that an area of approximately 2,000sqm will be required to be cleared by the City on Shenton Bushland in order to comply with the fire break requirements under the Bush Fires Act. This will potentially impact the threatened ecological community 'Banksia Woodlands of the Swan Coastal Plain', which is currently considered to be in good to very good condition. Alternative locations for the proposed development should be investigated so that the required fire break areas on the adjoining lots are reduced.

It is understood that some vegetation is proposed to be removed on Lots 13072 and 13073 so as to reduce the bushfire attack level to 'low', however more vegetation can be retained to achieve a 'moderate' bushfire risk level which will still allow for the development to occur.

Whilst the DER has no concerns, it is still recommended that as much vegetation as possible be retained and any degraded areas be rehabilitated.

11.0 Bushfire Management

The subject lots have been identified as falling within a bushfire prone area under the Statewide Bushfire Prone Area Mapping therefore as part of the application a bushfire attack level (BAL) assessment and a bushfire management plan (BMP) have been provided by the applicant.

The BAL assessment and the BMP were forwarded to the Department of Fire and Emergency Services and the following comments were received:

“General

- i. The bushfire risk to the proposed buildings as detailed in the BMP is based on the assumption that the parcel of land on the western boundary will be acquired by Shenton College and subsequently cleared of vegetation in order to reduce the current risk.*
- ii. Evidence is to be provided that Shenton College has acquired the parcel of land on the western boundary.*
- iii. Evidence is to be provided that environmental considerations have been addressed and relevant approvals provided for any proposed clearing.*
- iv. Once the above information is provided within an updated BMP, a further detailed assessment can be undertaken.*

Recommendation

The Bushfire Management Plan has not demonstrated to the satisfaction of DFES that the bushfire protection criteria have been met.”

The application includes the proposed partial acquisition of Lot 13072 which contains Banksia woodland. As part of the proposal this area of vegetation will be cleared to make way for new car parking bays and buildings. The clearing of the land will result in a BAL rating of ‘BAL-Low’.

Whilst there have been preliminary discussions between the Department of Health and the Department of Education regarding the partial acquisition and transferral of Lot 13072, to date this has not been approved by the Minister of Planning. Without this having been approved there is no assurance that the vegetation on Lot 13072 can be cleared in order to achieve the low BAL rating.

Considering the above, a BAL rating of ‘BAL – Flame Zone’ and ‘BAL – 40’ currently applies to the sites and in accordance with State Planning Policy 3.7 - Planning in Bushfire Prone Areas (SPP 3.7) should therefore not be supported at this stage.

12.0 Traffic and Car Parking

The application proposes 219 new car parking bays on-site, a dedicated drop-off and short-term parking area near the Stubbs Terrace site access, and a second point of egress from the site onto Stubbs Terrace.

In accordance with TPS 2 the proposed development would require 269 parking bays. A shortfall of 50 car bays would therefore exist if the development was approved.

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

“This is significantly in excess of the number of briefed parking bays (170) which the Department of Education (through the Secondary School Planning Guide) determines on a ratio of 10 staff bays per 100 students (for this project, 1000 students = 100 staff bays, as listed above); and general parking at a ratio of 7 bays per 100 students (70 general bays).”

The City often receives complaints regarding vehicles associated with the college parking illegally and/or obstructing access to nearby properties. It is therefore likely that the situation will only be made worse if the proposed development is approved.

A Traffic Management Plan provided as part of the application concludes the following:

- *“The analysis results shows that a 40-metre right turn pocket length is sufficient to cater for the projected right-turn inbound traffic demand. Even allowing for a margin of error, this would be sufficient and queues would not exceed the right turn pocket nor extend back to the upstream intersection with the bus bridge. This would be the case even with the unrealistic 'Scenario II' worst-case traffic generation.*
- *The analysis results also show that it would not be necessary to provide 2 inbound traffic lanes at the access.*
- *The analysis results also show that it would not be necessary to provide a left-turn slip for the entry from Stubbs Terrace west.*
- *The required widening for the right-turn pocket of approximately 1.5 metres (to be confirmed by survey) could easily be provided within the existing kerb-lines by removal of the on-road cycle lanes. Given that a new shared cycle/pedestrian path has recently been provided on the south side of Stubbs Terrace, constructed to Principal Shared Path standards, it is considered unnecessary to retain the on-road cycle lanes. The new shared cycle/pedestrian path is a safer option for cyclists. There is also a footpath on the northern side of Stubbs Terrace, which suggests that the 'shared path' would very likely be used almost exclusively by cyclists, this giving a level of service similar to a dedicated cycle lane.*

- *Street trees could feasibly be moved, as required to accommodate the right-turn pocket. One of the existing trees is in fact an obstruction to visibility currently. HV power poles would not need to be moved as the on-road widening would be done within the existing kerb-lines (by the removal of redundant on-road cycle lanes).*
- *The design of the internal car park circulation will minimise the risk of entering traffic from experiencing levels of internal congestion such that it queues back to the external road.*
- *The worst-case traffic generation assessment has shown that any impact will be internal to the Site. If these conditions do eventuate, many people who would otherwise drive to the Site would switch mode to train or bus. As discussed, the Site's availability of non-car transport modes is excellent and as such, most students and teachers travel to the Site by non-car modes. Accordingly, it is considered that if the theoretical worst-case conditions (which primarily affect the internal site roads) did eventuate, many would mode-switch as per existing students and teachers.”*
- The City's Technical Services have assessed the Traffic Management Plan and have advised that the following:
 - A path connection is required to link the internal school path network to the recently constructed Perth-Fremantle Principal Shared Path north of the Stubbs Terrace intersection. This is required to provide access directly from the school to the Principal Shared Path. This will need to be approved by Main Roads Western Australia (MRWA).
 - Due to the impact of the roadworks design on Stubbs Terrace, the existing on road cycle lanes will need to be terminated, and any markings and associated redundant cycle infrastructure at the Stubbs Terrace intersection are to be removed. All line marking will need to be approved by MRWA
 - Single lane access into the site from Stubbs Terrace is not supported as it is likely to result in traffic queuing off site, subsequently obstructing public transport (bus) routes and preventing traffic travelling eastward along Stubbs Terrace from turning into the property.
 - No details have been provided with regard to the location of existing and proposed landscaping, power poles and cycle routes on site.

13.0 Reservation under Metropolitan Region Scheme (MRS)

The existing Shenton College site (Lot 13073) comprises land reserved under the MRS for 'Public Purpose – High School'. Whereas the portion of Lot 13072 affected by the proposed development comprises land reserved under the MRS for 'Public Purpose – Hospital'.

Whilst there have been preliminary discussions between the Department of Health and the Department of Education regarding the partial acquisition and transferral of Lot 13072, to date this has not been approved by the Minister of Planning.

No MRS amendment has been initiated to date by the WAPC for the portion of Lot 13072 affected to be changed to 'Public Purpose – High School' so as to be consistent with the development type proposed upon it.

14.0 Heritage

The former Lemnos Hospital buildings and a portion of the associated garden areas are included on the State Heritage Register and the City's Municipal Heritage Inventory as a Category A. The location of these facilities coincides with the extent of the development proposed on Lot 13073.

The application was therefore referred to the City's Heritage Consultant and the following comments were received:

"It is recommended that the applicant:

- 1. Recognises the importance and opportunities for the timely apotheosis of the Lemnos Hospital and Pine Trees within the Shenton College campus;*
- 2. commissions a Conservation and Interpretation Plan for the remaining elements comprising Lemnos Hospital and Pine Trees including garden areas;*
- 3. Considers providing an Interpretative garden or space in front of the Administration Building by means of the compromise to relocate all parking in that space to the north west of the Administration Building; and*
- 4. Consider verdant screening and relocating the through-traffic between the Administration Building and the tennis court behind the screening."*

The application was also referred to the State Heritage Office and the following comments were received:

"The proposed development, in accordance with the plans submitted, is supported subject to the following:

- 1. Appropriate measures are put in place prior to and during construction to protect the existing landscaping, in particular the Aleppo Pine Tree. These measures are to be included in the Construction Management Plan, and the Plan shall be provided to the satisfaction of the State Heritage Office Executive Director prior to the application for a Building permit.*

2. *The original alignment of the driveway and outline of the northwest garden wing shall be interpreted in a distinctive material that references the original width and finish, and be distinguishable from the new brick footpath elements.*
3. *The landscaping of the area in front of the Lemnos Hospital Administration Building shall reference the curve of the original alignment as apparent in the historical photographic evidence.”*

None of the heritage buildings nor the associated garden areas are proposed to be altered or removed as part of the application.

The proposed layout seeks to draw all the parking away from the heritage buildings, directing them to the western side of the campus.

The design and proximity of the development to the heritage buildings and the associated gardens means that the proposal will not have a significant impact from a heritage perspective.

If the application is approved by the WAPC it is recommended that appropriate conditions and advice be included based on the advice received from the State Heritage Office above.

15.0 Site Contamination

A Notification on the subject lot's Titles states '*Possibly contaminated – investigation required*'. The DER is in the process of classifying to what extent the land is possibly contaminated and recently advised the City that the site is likely to be classified as '*contaminated – remediation required*' under the Contaminated Sites Act 2003.

As part of the application a Preliminary Site Investigation has been provided which indicates areas of potential concern due to the lots previously being used as a market garden. Comment was sought from the DER regarding this, and the following comments were received:

“Given the uncertainties regarding the contamination status of the development area, and noting the sensitive nature of the development, DER considers that potential contamination should be managed through a condition being placed on any approval granted for the development. In its referral response to the Western Australian Planning Commission (WAPC), DER is likely to recommend that contamination condition EN9 and advice ENa2, as published in ‘Model Subdivision Conditions Schedule’ (Department of Planning and WAPC, October 2012) are included in any approval granted by the WAPC.”

The condition and advice referred to in the DER's response are the following:

- “EN9 a) Prior to commencement of works, investigation for soil and groundwater contamination is to be carried out to determine if remediation is required.*
- b) If required, remediation, including validation of remediation, of any contamination identified shall be completed prior to the issuing of titles to the satisfaction of the Western Australian Planning Commission on advice from the Department of Environment and Conservation, to*

*ensure that the lots created are suitable for the proposed use.
Investigations*

Investigations and remediation are to be carried out in compliance with the Contaminated Sites Act 2003 and current Department of Environment and Conservation Contaminated Sites Guidelines. (Department of Environment and Conservation)

ENa2 Where advice from Department of Environment and Conservation provided indicates site is potentially contaminated and further investigation and remediation is required.”

If the application is approved by the WAPC it is recommended that the above condition and advice be included.

16.0 Conclusion

The development has been designed on the assumption that the partial acquisition and transferral of Lot 13072 will be approved. As this has not been finalised to date a BAL rating of ‘BAL – Flame Zone’ and ‘BAL – 40’ currently applies to the proposed development and in accordance with State Planning Policy 3.7 - Planning in Bushfire Prone Areas should not be supported at this stage.

If the partial acquisition and transferral of Lot 13072 is approved more of the vegetation can be retained to achieve a ‘moderate’ bushfire risk level which will still allow for the development to occur.

In addition to the above, the portion of Lot 13072 affected by the proposal is reserved being ‘Public Purpose – Hospital’ under the MRS, and the purpose of the proposed development is not consistent with the intended purpose of this reservation type.

The amount of onsite car parking to be available and the proposed access arrangements will likely result in car parking and traffic movement off site becoming an issue.

Accordingly it is recommended that Council advises the WAPC that it does not support the application.