



City of Nedlands

Planning and Development Reports

Committee Consideration – 8 August 2017

Council Resolution – 22 August 2017

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Council: 22 August 2017

PD33.17 (Lot 579) No. 17 Viking Road, Dalkeith – Retrospective Amendments to DA14/514 (Three-Storey Single House)	
Committee	08 August 2017
Council	22 August 2017
Applicant	Rowe Group
Landowner	Hetty Indra
Director	Peter Mickleson – Director Planning & Development
Reference	DA17/142
Previous Item	PD35.15 – 8 September 2015 (withdrawn by applicant) PD42.15 – 13 and 27 October 2015
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. Applicant Justification 2. Applicant response to submission 3. Site photographs 4. Perspectives of the Development

1.0 Executive Summary

Retrospective development approval is being sought for amendments to the three-storey dwelling currently under construction at the subject property. The amendments are for an increase in wall height for a portion of the upper floor, and increase in wall length and decrease in setback to the ground floor – both adjacent to the eastern side lot boundary.

The amendments result in increased setbacks being required to the eastern side lot boundary under the deemed-to-comply provisions of the *Residential Design Codes 2015* (R-Codes) for a portion of the ground and upper floors. The application was advertised by the City to the adjacent neighbouring landowner for comment and one objection was received in relation to the reduced setbacks.

It is recommended that the application be approved as the lot boundary setback variations are considered to comply with the relevant design principles of the R-Codes. The dwelling's design addresses privacy with screening and obscured glazing to major openings and habitable areas and the lot orientation ensures both lots have access to sunlight and ventilation throughout the year.

2.0 Recommendation to Committee

Council approves the retrospective development application and plans dated 19 June 2017 for Amendments to DA14/514 (Three-Storey Single House) at (Lot 579) No. 17 Viking Road, Dalkeith subject to the following conditions and advice:

- 1. The development shall at all times comply with the approved plans.**
- 2. The previous development approval (DA14/514, dated 05 November 2015) and conditions there-in, remain in effect. This excludes the plans approved as part of the previous development application.**
- 3. The existing chimney being reduced in height in accordance with the approved plans prior to practicable completion of the dwelling, to the City’s satisfaction.**

Advice Note specific to this proposal:

- 1. The applicant shall make application to the City’s Building Services department for a Building Permit, to acknowledge the unauthorised works.**

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

Currently, there is a three-storey house being constructed at the subject property which was the subject of the initial development application to Council in September and October 2015. The property has a 2m slope from the street to the rear of the lot and the west side of the lot is approximately 0.5m higher than the eastern side of the lot. The adjoining properties to the east, west and north are all two-storey.

An aerial image showing the location of the property is shown on the following page.



4.0 Background

The original development application was considered by Council in September 2015 (PD35.15) where the committee recommendation was for refusal. The applicant subsequently withdrew the application from proceeding to Council and lodged amended plans to address building bulk as viewed from the eastern neighbouring property.

The amended plans were referred through to the October 2015 Council meeting (PD42.15) following further consultation with the eastern neighbouring landowner and subsequently were approved subject to conditions.

The City received a complaint regarding the construction of the dwelling in April 2017. A site inspection was conducted by the City and additional information requested from the applicants with regard to heights and setbacks of the building.

The builders had a survey undertaken by a licenced land surveyor which determined that the chimney was built over 10m above the midpoint of the lot, the skillion roof was pitched slightly higher than the approved height and the ground floor was built with some additional wall length and 0.1m closer to the lot boundary. The City informed the applicant that they had to reduce the height of the chimney and that they had the option of either modifying the building to comply with their planning and building approvals or lodge a retrospective development application for the variations.

The applicant elected to lodge a retrospective development application for the new lot boundary setback variations and reduce the height of the chimney to comply with the 10m height requirement (mandatory requirement, no discretion available). The application was received by the City on the 19 June 2017.

5.0 Specific Application Details

The applicant seeks retrospective approval for the increased height to the upper floor adjacent to the eastern side lot boundary, and an increased wall length and decreased setback to this wall length on the ground floor to the eastern side lot boundary. The modifications made are listed as follows:

- Increase in the ground floor wall length closest to the lot boundary from 8.92m now at 9.8m;
- Decrease in the setback of the ground floor wall length closest to the lot boundary from 1.1m down to 1.0m; and
- Increase in the upper floor wall height as taken from the upper floor balcony wall length from 9.37m to 9.67m.

These amendments create new lot boundary setback variations as detailed in the below tables comparing the original development approval:

Ground floor	Wall description	Length	Height	Major?	Required	Provided
Approved	Laundry to wet kitchen	8.92	4.3	N	1.1	1.1
Being built	Laundry to wet kitchen	9.8	4.3	N	1.5	1.0

Upper floor	Wall description	Length	Height	Major?	Required	Provided
Approved	Balcony to shower	14.61	9.37	N	2.5	2.3
Being built	Balcony to shower	14.61	9.67	N	2.6	2.3

By way of justification in support of the retrospective development application the applicant has provided justification which has been provided as an attachment to this report.

6.0 Consultation

The development application was advertised to the affected landowner for comment for the lot boundary setback variations as listed above. The following is a summary of the concerns raised:

- *“We strongly object to the proximity of the construction*
- *We maintain that a boundary setback of one metre or less at ground level is clearly not adequate and should be increased.*
- *The lack of adequate space is demonstrated by the significant overhang of the construction scaffolding which extends into our property by at least two plank widths.*
- *The close proximity of this massive structure to our boundary has severely impacted on the privacy and enjoyment of our family home and property.*
- *We maintain that much of the charm and appeal of the suburb of Dalkeith is dependent on its larger blocks and the increased space and privacy this greater mass provides between residences.*

- *The Council in enabling residences to be constructed within one metre of boundaries (or less as it appears) severely damages the lifestyle appeal of this suburb.”*

The applicant has provided response to the above concerns as detailed in a separate attachment to 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.

7.0 Assessment of Statutory Provisions

7.1 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.

7.2 Town Planning Scheme No. 2

7.2.1 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 amendments are considered minor in nature when compared to the previously approved plans and do not appear significantly different from the previously approved setbacks and design of the building. New developments within the area are seeking to maximise the City’s height limits and site cover requirements and hence are imposing in comparison to existing developments, however three-storey developments are permitted under cl. 5.11 of the City’s TPS2 for under-croft garages and storage areas and the maximum height is taken from the mid-point of the lot which permits heights to exceed 8.5m where the lot is lower than the mid-point of the lot.

The building is therefore considered to be in context within the locality in terms of bulk and scale and the favourable lot orientation ensures that the neighbouring property will still be able to use their property for outdoor living purposes without any loss of sunlight or privacy.

The setback variation is deemed minor and is a breach which normally would be unnoticeable other than to a person well-versed in the applicable legislation.

7.3 Residential Design Codes (State Planning Policy 3.1)

7.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings are setback from the lot boundaries in accordance with Table 2A and 2B of the R-Codes.	The ground floor has a wall length of 9.8m and 4.3m height, setback 1m in lieu of 1.5m.	No
	The upper floor has a wall length of 14.61m and 9.67m height, setback 2.3m in lieu of 2.6m.	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>“P3.1 Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> • <i>reduce impacts of <u>building bulk</u> on adjoining properties;</i> • <i>provide adequate <u>direct sun and ventilation</u> to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of <u>overlooking</u> and resultant loss of <u>privacy</u> on adjoining properties”.</i> 		
<p>The ground floor was originally approved with a 1.1m setback and a wall length of less than 9m, ensuring that the ground floor setback complied with the deemed-to-comply provisions of the R-Codes. The wall length was increased to 9.8m as a result of a plumbing duct addition, which increased the required setback to 1.5m. This wall length contains no major openings and hence ensures that privacy is maintained between the properties.</p> <p>Adjacent to the ground floor is a section of the neighbour’s dwelling which does not contain any major openings and is a landscaped rear yard. The lot slopes up towards the rear of the lot boundary ensuring that the maximum height of 4.3m is not adjacent to the landscaped rear yard.</p> <p>The increased wall height of the upper floor increases the required setback from 2.5m up to 2.6m in lieu of the required 2.3m. This wall length is designed for architectural appearance and is the tallest part of the building as viewed from the street and the neighbouring property. There are also no major openings in this section of wall length ensuring that privacy is maintained between the properties.</p> <p>In the location of the upper floor setback variation, the impacted eastern neighbour’s dwelling is also located approximately 3 - 3.5m away from the shared lot boundary, with the area adjacent to the reduced setback not used as an outdoor living area ensuring sensitive areas such as habitable rooms and outdoor living areas are not impacted. There is also some tall mature vegetation along the shared side boundary to somewhat screen the dwelling.</p> <p>The building has been articulated with height stepped back from the lot boundary to reduce the appearance of building bulk from the neighbour’s dwelling. Additionally, the orientation of the lot and the setbacks provided ensure sunlight and ventilation is available to the proposed dwelling and neighbouring dwelling during all periods of the year.</p>		

8.0 Other Issues Raised

The submitter has requested that a second survey of the property be undertaken as they dispute the setback of the ground floor being 1m from the lot boundary.

The City advised that the survey of the property was undertaken by a licenced land surveyor and hence is considered accurate and acceptable. The surveyor is required to sign a statement with the survey undertaken and state that the survey was undertaken within all relevant written laws. Therefore, for the submitter to dispute the survey undertaken, they would need to have another survey prepared by a licenced land surveyor.

At the time of writing this report, the City has not yet received a contradictory survey of the subject property.

9.0 Conclusion

The development is unlikely to have an adverse impact on local amenity. The proposed development complies with the with the visual privacy requirements of the R-Codes as the areas on the neighbouring property adjacent to the lot boundary setbacks variation are not outdoor living areas or major openings, and the lot orientation ensures both properties will receive adequate sunlight throughout the year.

Given the above, the development is considered to comply with the City's TPS2 and the relevant Design Principles of the R-Codes and is therefore recommended that Council approves the application subject to the recommended conditions.



Job Ref: 8313
16 June 2017



Chief Executive Officer
City of Nedlands
71 Stirling Highway
NEDLANDS WA 6009

Perth Office
L3, 369 Newcastle Street
Northbridge 6003
Western Australia

p: +618 9221 1991
f: +618 9221 1919
info@rowegroup.com.au
rowegroup.com.au

Attention: Ms Kate Bainbridge: Senior Statutory Planning Officer

Dear Ms Bainbridge

**Application for Development Approval: Amended Plans
Dwelling House - Single: 17 Viking Street, Dalkeith**

Rowe Group acts on behalf of the landowner in respect to the above-mentioned proposal.

Background

It has come to the attention of our Client that modifications have been undertaken to the building which are not in accordance with the Development Approval granted by Council at its meeting of 27 October 2015. This includes:

- Increased wall height of 8.5 metres to the eastern skillion roof and associated structure.
- Reduced setback of 1.0 metre to the eastern laundry and wet kitchen.
- Increased wall length of laundry and wet kitchen from 8.920 metres to 9.8 metres.

The above modifications to the approved plans are considered to be minor modifications to the proposed development.

In relation to the increase in building height to the skillion roof the City of Nedlands (City) has accepted that the height of the building complies with the requirements of Clause 5.11 of Local Planning Scheme No.3 (LPS3). Refer to the attached correspondence in this regard.

The modifications are addressed in detail below and are show "clouded" on the attached amended plans.

Increased wall height of 8.5 metres to the eastern skillion roof

The height of the skillion roof complies with Clause 5.11 of LPS3 as set out earlier within this advice and as discussed with the City. Given the proposed roof height complies with the requirements of LPS3 it is considered that the increase in wall height is acceptable.

Reduced setback of 1.0 metre to the eastern laundry and wet kitchen

The original Development Approval granted for the proposal had the eastern laundry and wet kitchen area setback 1.1 metres from the eastern boundary. As a result of construction the wall now achieves a 1.0 metre setback to the eastern boundary. The setback therefore, has decreased by 100mm.

Increased wall length of laundry and wet kitchen from 8.920 metres to 9.6 metres

Wall length has increased to the laundry and wet kitchen area from 8.920 metres to 9.8 metres. This represents an increase in wall length by 880 mm. The increase in wall length is to accommodate a plumbing duct.

Consideration proposed modifications

As discussed above the increase wall height to the skillion roof complies with the requirements of Clause 5.11 of LPS3.

The City has advised the following in respect to the modifications to the development:

As discussed this morning the modifications to the building result in a new lot boundary setback variation on the ground floor and an increase in an existing lot boundary setback variation as demonstrated in the following tables:

Upper floor	Wall description	Length	Height	Major?	Required	Provided	Complies?
Approved	Balcony to shower	14.61	9.37	N	2.5	2.3	N
Being built	Balcony to shower	14.61	9.67	N	2.6	2.3	N

Ground floor	Wall description	Length	Height	Major?	Required	Provided	Complies?
Approved	Laundry to wet kitchen	8.92	4.3	N	1.1	1.1	Y
Being built	Laundry to wet kitchen	9.8	4.3	N	1.5	1.0	N

The setback reductions are addressed below.

Ground floor

In terms of the reduced setback of 1.0 metres in lieu of 1.5 metres (acceptable development requirement of the Residential Design Codes (R-Codes)) for the laundry and wet kitchen the reduced setback is 100mm less than previously approved.

Given the setback does not meet the acceptable development requirements of Clause 5.1.3 of the R-Codes an assessment against the Design Principles is required. The Design Principles for side boundary setbacks are as follows:

P2.1 Buildings set back from lot boundaries so as to:

- *reduce impacts of building bulk on adjoining properties;*
- *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

The reduced setback to the side boundary for the laundry and wet kitchen was previously supported by Council in the approval of the proposed development.

In respect to the Design Principles of the R-Codes it is considered that the reduced setback is acceptable as:

- The setback is reduced by 100mm when compared with the previous development approval by the Council.
- The reduced setback is only for a section of the eastern boundary setback, and thus does not impose undue bulk and scale on the adjoining property.
- The area to which the reduced setback applies is partly screened by vegetation along the common boundary between the subject site and adjoining property.
- The reduced setback will not adversely affect light and ventilation to the adjoining property. The subject site and adjoining lots are orientated in a north south direction, and as such the proposed development will not significantly overshadow the adjoining residence to the east.
- The proposed will not result in any overlooking or privacy issues as there are no major openings to habitable rooms from the section of wall in question to the eastern boundary.

Having regard to the above, it is considered that the reduced setback to the laundry and wet kitchen should be approved.

Upper floor

The City has advised that the proposal results in an upper storey setback variation of 2.3 metres in lieu of 2.6 metres (acceptable development requirement of the R-Codes). A setback reduction of 300mm is therefore proposed. The setback reduction is 100mm less than that previously approved by Council.

Given the setback does not meet the acceptable development requirements of Clause 5.1.3 of the R-Codes an assessment against the Design Principles is required. The Design Principles for side boundary setbacks are as follows:

P2.1 Buildings set back from lot boundaries so as to:

- *reduce impacts of building bulk on adjoining properties;*
- *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

The reduced setback to the side boundary for the balcony to shower was previously supported by Council in the approval of the proposed development.

In respect to the Design Principles of the R-Codes it is considered that the reduced setback is acceptable as:

- The setback is reduced by 100mm when compared with the previous development approval by the council.
- The reduced setback is only for a section of the eastern boundary setback, and thus does not impose undue bulk and scale on the adjoining property.
- The area to which the reduced setback applies is screened by vegetation along the common boundary between the subject site and adjoining property.
- The reduced setback will not adversely affect light and ventilation to the adjoining property. The subject site and adjoining lots are orientated in a north south direction, and as such the proposed development will not significantly overshadow the adjoining residence to the east.
- The proposed will not result in any overlooking or privacy as there are no major openings to habitable from the section of wall in question to the eastern boundary.

Having regard to the above it is considered that the reduced setback to the balcony to shower should be approved.

Conclusion

The additional building height resulting from an increase in height of the skillion roof complies with the requirements of Clause 5.11 of LPS3.

In respect to the reduced setbacks of the laundry and wet kitchen and balcony to shower it is concluded that the proposed setback reductions meet the Design Principles of Clause 5.1.3 of the R-Codes for the reasons set out previously within this advice.

Given the above, it is respectfully requested that the Council grant Development Approval to the modifications to the building sought.

Should you require any further information or clarification in relation to this matter, please contact Aaron Lohman on 9221 1991.

Yours faithfully,



Aaron Lohman

Rowe Group



Attachment One

Summary of Submission Table

Summary of Submission Received from City of Nedlands	Applicant's Response
We strongly object to the proximity of the construction	Noted.
We maintain that a boundary setback of one metre or less at ground level is clearly not adequate and should be increased.	<p>In terms of boundary setbacks the original Development Approval granted for the proposal had the eastern laundry and wet kitchen area setback 1.1 metres from the eastern boundary. As a result of construction the wall now achieves a 1.0 metre setback to the eastern boundary. The setback therefore, has decreased by 100mm.</p> <p>The modification of the setback by 100mm is not a significant modification and would not have an appreciable affect on light and ventilation, privacy or bulk and scale as compared with the previously approved development.</p> <p>The proposal will not result in any overlooking or privacy issues in accordance with the Residential Design Codes as there are no major openings from habitable rooms from the section of wall in question to the eastern boundary.</p>
The lack of adequate space is demonstrated by the significant overhang of the construction scaffolding which extends into our property by at least two plank widths.	The overhang of construction scaffolding is not relevant to the consideration of the Application. It is not unusual that construction access will be required from an adjoining property.
The close proximity of this massive structure to our boundary has severely impacted on the privacy and enjoyment of our family home and property.	<p>As detailed earlier privacy is not affected by the proposed amendment. In particular, the proposal will not result in any overlooking or privacy issues as there are no major openings to habitable rooms from the section of wall in question.</p> <p>It is further noted that the objector's primary outdoor living areas appear to be located at the rear of their property around the swimming pool area. The building steps away from the boundary in this location and reduces in building height.</p> <p>The proposal is also located adjacent to the eastern boundary of the objector's property and thus does not significantly overshadow the adjoining dwelling, or appurtenant private open space. We further note that there is screening vegetation (tall trees) between the dwelling and the objector's property along part of the eastern boundary. This vegetation provides a visual barrier between the landholdings. This screening is shown in the image in Attachment 2.</p> <p>It is further noted that the eastern boundary wall along its length is articulated in such a manner so as to assist in 'breaking up' building bulk.</p>
We maintain that much of the charm and appeal of the suburb of Dalkeith is dependent on its	<p>The size of the dwelling is commensurate with the development in the locality.</p> <p>The photographs contained within Attachment 2 illustrate that the dwelling is of similar size and scale to that already present on Viking Road.</p>

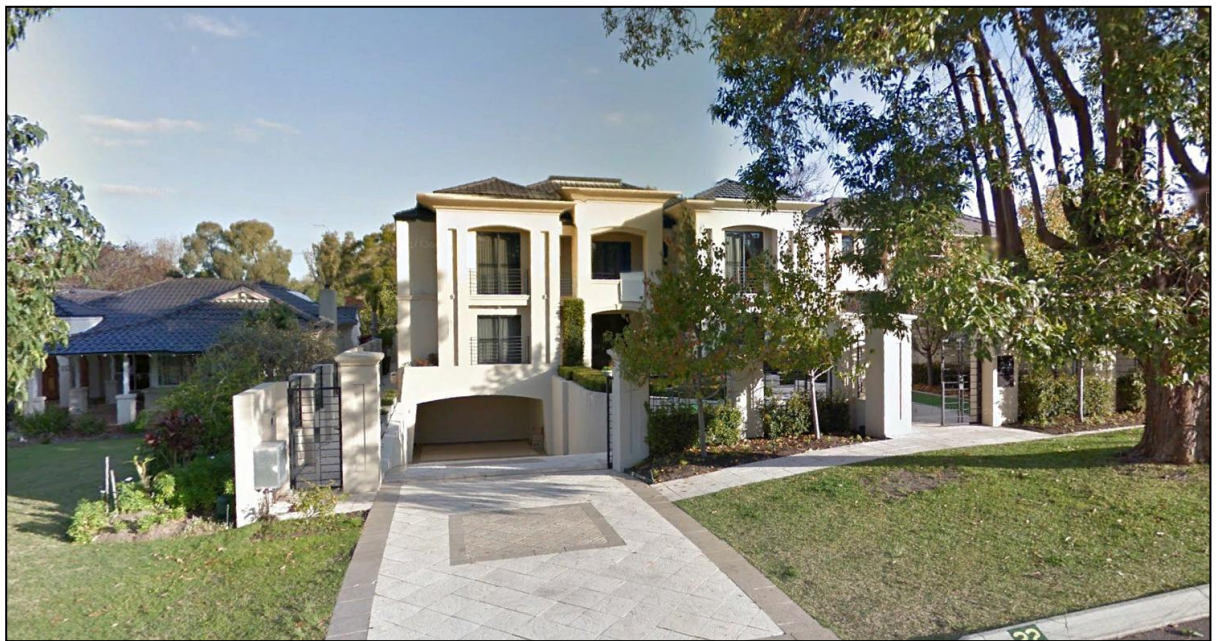
<p>larger blocks and the increased space and privacy this greater mass provides between residences.</p>	<p>The attached aerial photograph in Attachment 3 shows the size of the dwellings in relation to the lots to which the dwellings are contained. It is evident from a review of the aerial photograph that large dwellings are characteristic of the locality.</p>
<p>The Council in enabling residences to be constructed within one metre of boundaries (or less as it appears) severely damages the lifestyle appeal of this suburb.</p>	<p>We refer to the above-mentioned comments in respect to the building setbacks sought.</p> <p>The suburb of Dalkeith, is an affluent suburb with "high" land values. New buildings constructed within Dalkeith represent a significant level of investment commensurate with the value of the land i.e. new dwellings are generally expansive and "high end" construction. The dwelling constructed follows this trend. Thus, the character of Dalkeith is expected to continue to evolve along these lines.</p>

Attachment Two

Dwellings of Similar Scale: Viking Street



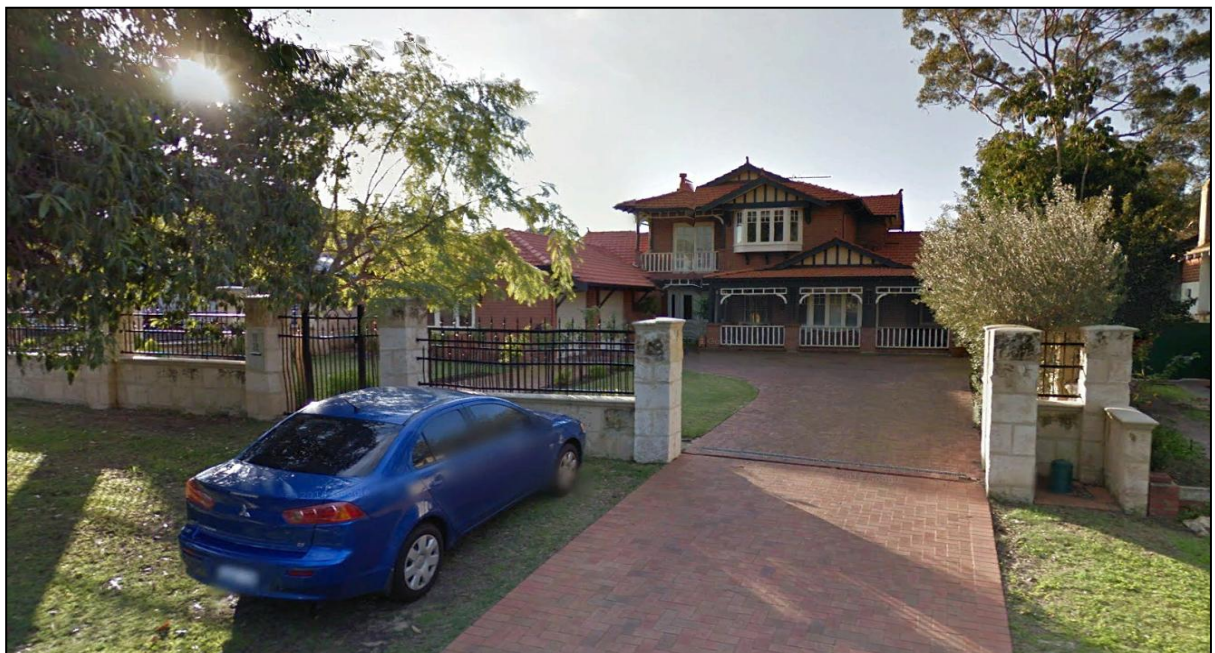
29 Viking Road



22 Viking Road



24 Viking Road



19 Viking Road (adjoining neighbour to the west)



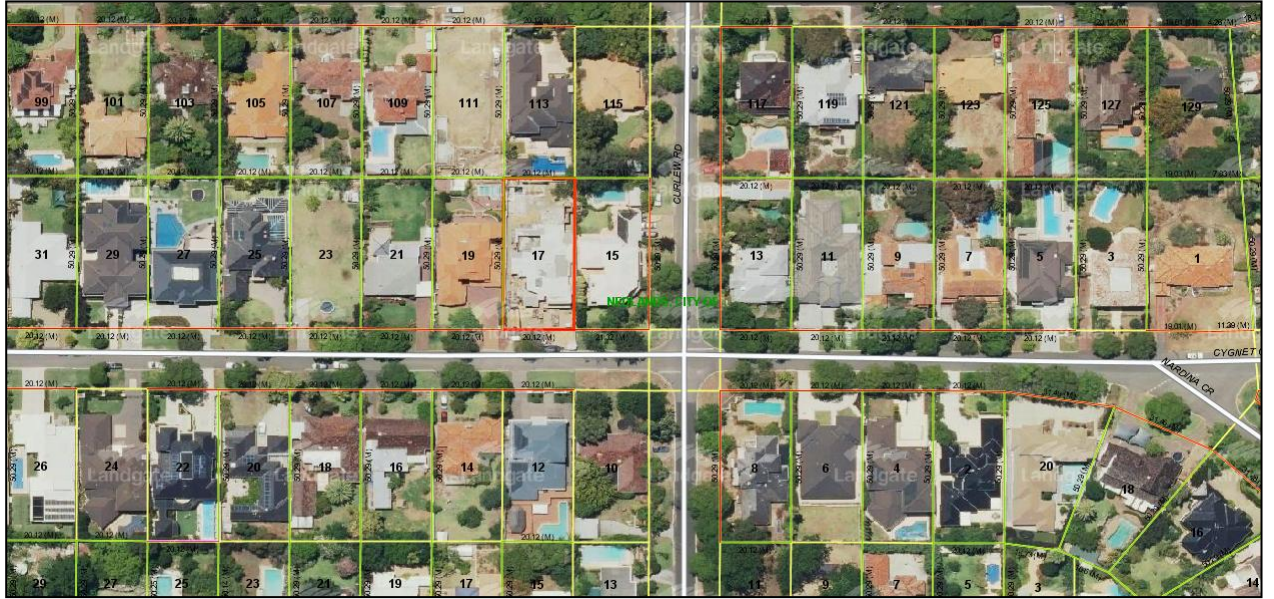
12 Viking Road (adjacent neighbour)



17 Viking Street – showing screening vegetation to eastern boundary

Attachment Three

Aerial Photograph



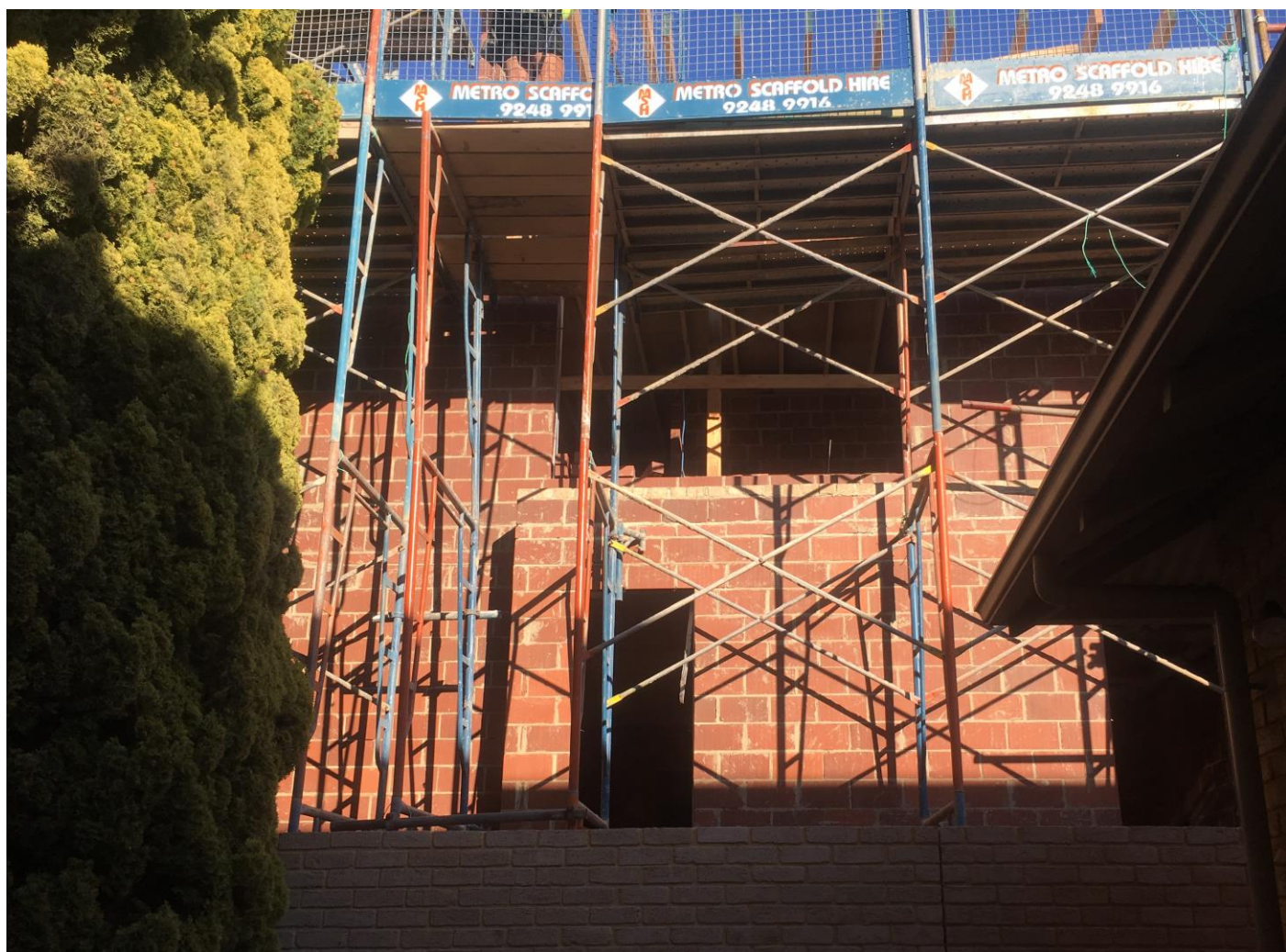
Photograph of rear section of the dwelling from eastern neighbouring property's rear yard



Photograph of rear section of the dwelling as taken from eastern neighbouring property's rear yard



Photograph of dwelling adjacent to eastern neighbour's western side of dwelling







PD34.17 (Lot 5) No. 70 Wood Street, Swanbourne – Proposed Patio Addition to Single House	
Committee	08 August 2017
Council	22 August 2017
Applicant	The Patio Factory
Landowner	Mr P J & Ms J C Sinclair
Director	Peter Mickleson – Director Planning & Development
Reference	DA17/123
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. Applicant justification

1.0 Executive Summary

Development approval is being sought for a proposed patio to the western side of the existing single house.

The application was advertised for comment due to the patio proposing to be setback 0.5m in lieu of 1m from the western side lot boundary. An objection was received during the consultation period.

Subject to the patio being reduced in height, the proposed lot boundary setback variation is considered to comply with the City's Town Planning Scheme No. 2 (TPS2) and satisfy the design principles of the *Residential Design Codes 2015* (R-Codes). It is therefore recommended that the application be approved by Council.

2.0 Recommendation to Committee

Council approves the addition (Patio) to the single house received 26 May 2017 at (Lot 5) No. 70 Wood Street, Swanbourne, subject to the following conditions and advice:

1. This development approval pertains to the proposed patio only.
2. Amended plans shall be submitted with the building permit demonstrating the patio being lowered by 0.3m where it attaches to the dwelling and the eave and posts of the patio lowered to be the same height as the garage adjacent to the western side lot boundary.
3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
4. All footings to the proposed patio shall be constructed wholly inside the site boundaries of the Certificate of Title.

Advice Notes specific to this proposal:

1. **Stormwater shall be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.**
2. **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.**
3. **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.**
4. **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	741.1m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R15
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 house and the natural ground level slopes down approximately 1.5m from the eastern side down to the western side lot boundary. The dwelling has a split level on the ground floor with the garage and area on the western side of the dwelling being at natural ground level and the ground floor finished floor level being approximately 1m higher.

The neighbouring landowner to the west has excavated 1m lower than the level at the lot boundary and therefore the difference in the finished floor levels between the subject property dwelling and the western neighbour's dwelling is approximately 2m.

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 patio on the western side of the house with the posts on the boundary and the eaves setback 0.5m.

By way of justification in support of the development application the applicant has provided a justification which is summarised as follows:

- The purpose of the patio is to provide roof cover to the dwelling's drying area and is not proposed to be used as an outdoor living area;
- The patio is proposed to be an open structure with the eave setback 0.5m to reduce the impact of building bulk and still permit sunlight and ventilation to the dwelling and open spaces of the adjoining property;
- There will be no overlooking or loss of privacy as the area is used as a drying court and will continue to be used as a drying court;
- The patio has the posts on the boundary and the eave setback 0.5m to provide effective use of space and comply with fire separation requirements; and
- A setback of 1m is unlikely to provide the cover required for this area and will impede pedestrian access around the dwelling.

5.0 Consultation

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

- The bulk and scale being excessive in the context of the existing building and levels;
- The location of the patio is adjacent to bedrooms of our dwelling and the outdoor living area of our property and hence use of this area for outdoor living area purposes will impact upon the use of these rooms and areas;

- The owner of no. 70 Wood Street has advised that the patio will also block out line of sight from the laundry of the dwelling, however the patio will be 1.3 – 1.7m higher than the dividing fence and hence not provide any additional privacy;
- With the 15.8m² roof area of 5-degree slope towards the boundary there is inadequate information on the plans to detail how stormwater will be contained on site;
- There are other areas on the 744m² property to provide a drying area and undercover storage away from the western lot boundary and a large roof area of 16m² is not required for this purpose;
- We would not object to a roof area being provided over the laundry alcove only.

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 neighbouring landowner in their submission provided photographs annotated with their interpretation of the likely appearance of the proposed patio.

To reduce the impact of building bulk and scale as viewed from the neighbouring property a condition of planning approval is recommended to reduce the height of the patio both where attached to the dwelling and adjacent to the lot boundary.

The applicant has advised that the owner intends to use the covered area for storage and a covered drying court. Given the location of the garage and laundry adjacent to this area and width of the setback provided to the dwelling, it is reasonable to believe this will be the case, with any other use (such as secondary outdoor living or sleeping area for a pet) still likely to be residential in nature and hence not considered to have an adverse impact on the amenity of the locality and neighbouring properties from a planning perspective.

6.3 Residential Design Codes (State Planning Policy 3.1)

6.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
<p>The patio is required to be setback in accordance with Table 2A and 2B of the R-Codes. The wall length is less than 9m and the height is less than 3.5m and hence the required setback is 1m to the western side lot boundary.</p>	<p>The posts are on the western lot boundary and the eave is setback 0.5m.</p>	<p>No</p>
<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>“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><i>Buildings built up to boundaries (other than the street boundary) where this:</i></p> <ul style="list-style-type: none"> • <i>makes more effective use of space for enhanced privacy for the occupants or outdoor living areas;</i> • <i>does not have an adverse impact on the adjoining property;</i> • <i>ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and</i> • <i>positively contributes to prevailing development context and streetscape.”</i> 		
<p>Administration Comments</p> <p>The area is not considered to be the dwelling’s main outdoor living area with covered space provided at the rear of the dwelling on the eastern side of the lot.</p> <p>The western neighbour’s main outdoor living area is located further south towards the rear of the property, away from the proposed patio ensuring that the neighbour’s outdoor living area will not be impacted by the proposed patio.</p> <p>The lot orientation ensures that the main outdoor living areas will still receive adequate winter sun and the open nature of the patio ensures that there will be no impact on the dwelling and neighbour’s dwelling’s ventilation. It is recommended that the height of the proposed patio and the posts on the boundary are reduced to mitigate the impact of building bulk as viewed from the neighbouring property.</p> <p>The posts being located on the lot boundary provide adequate space for clothes drying and pedestrian movement from the garage and laundry of the dwelling into the rear yard area and hence the variation can be considered to make effective use of space.</p> <p>There is no change in privacy given there is no change in levels proposed, only the cover of an existing outdoor area designed to be used for access and clothes drying. The area on the neighbour’s property adjacent is landscaped and contains solid fencing.</p>		

There are a number of boundary wall developments within proximity of the subject property which are visible from neighbouring properties and the streetscape ensuring that the development is not inconsistent with the development context of the locality.

If the patio was setback 1m to the post and the eave still setback 0.5m from the side lot boundary, the provided setback would be considered compliant due to the methodology of lot boundary setback assessment within the R-Codes.

7.0 Other Issues Raised

The neighbouring landowner raised additional concerns within their submission which are addressed as follows:

7.1 Noise concerns

The patio will increase the noise from the air-conditioner due to reflection from the under-side of the patio.

Until the patio is installed, we will not be able to measure the noise to determine if the noise will exceed permitted levels. If the noise levels do not comply, then the air-conditioner can be relocated or other measures implemented to reduce noise.

7.2 Use of Garage concerns

The garage has been converted into a games room/entertainment area and is furnished accordingly with an air-conditioner installed and insulation provided to the garage. This has apparently increased noise in this area and resulted in breaches of the permitted noise levels.

The air-conditioning installation and insulation being installed within the garage is not considered a breach of the City's TPS2 if the access to the garage for car parking is not impeded. Breaches of noise levels from use of the garage for entertainment is not a matter that can be taken into consideration in a planning decision.

8.0 Conclusion

Subject to a reduction in the proposed patio's height, the patio addition is considered to meet the relevant design principles of the R-Codes in terms of building bulk and scale and impact on the neighbouring property given the open nature of the structure and purpose of the area designed for clothes drying and pedestrian access.

Considering the above, the proposed development is unlikely to have a significant impact on the local amenity and/or the streetscape. Accordingly, it is recommended that Council approves the application.



28th June 2017

TO: The City of Nedlands
RE: Proposed Patio – 70 Wood Street, Swanbourne
Letter of Justification

To whom it may concern,

In accordance with the Residential Design Codes 5.1.3 Lot Boundary Setback design principles, please be advised of the following:

1. The purpose of the proposed patio is to allow the property owner's roof cover from their laundry to the wall mounted clothes line, so they can access this area during rainy days to facilitate hanging of clothing to dry under the patio area without getting wet. Please note that the proposed patio will not be enclosed and will not be used as an outdoor living area.
2. The patio as proposed has been designed to reduce impacts of building bulk on the adjoining property by providing adequate direct sunlight and ventilation to the building and open spaces on the site and adjoining property with the roof line of the proposed patio set-back 500mm from the boundary fence which will not have any diverse impact on the amenity of the adjoining property.
3. There will be no extent of overlooking in to the adjoining property and will not result in any loss of privacy on the adjoining property.
4. The proposed set-back of the patio roofline 500mm from the adjoining property with the patio posts adjacent to the boundary fence will make more effective use of space for enhanced privacy for the occupants whilst accessing this area for purpose of laundry duties; which does not compromise the design principle contained in Clause 5.1.3 P3.1.
5. The patio design also ensures direct sunlight to major opening to habitable rooms and outdoor living areas is not restricted; and positively contributes to the prevailing development context of the existing dwelling it will be attached to.
6. Due to the relatively small area of floor space available under the proposed patio, it is not practical to set-back the patio posts 1000mm from the fence, as this would impact free and unimpeded pedestrian access under the patio roof.
7. In regards to the existing air conditioning unit located adjacent to the wall of the existing dwelling near the proposed patio area, please be advised that the A/C unit is not located under the proposed patio; and any noise suppression measures should not be required as the patio will not in any way amplify the noise of the said unit and therefore not have any bearing on this determination and will not cause breach of the City of Nedlands noise regulations as a result of the patio being built.

SPECIALISTS IN QUALITY DIY PATIO KITS

In conclusion, the property owners at 70 Wood Street Swanbourne look forward to your favourable decision regarding the proposed patio.

If you have any other queries, please do not hesitate to contact me.

Yours faithfully,



George Bushney
THE PATIO FACTORY
Director

PD35.17	(Lot 554) No. 83 Bruce Street, Nedlands – Additions to Single House
Committee	8 August 2017
Council	22 August 2017
Applicant	Mr K & Mrs K D'Silva
Owner	Mr K & Mrs K D'Silva
Director	Peter Mickleson – Director Planning & Development
Reference	DA16/353
Delegation	In accordance with Clause 6.7.1 of the City's Instrument of Delegation, Council is required to determine the application as discretion exists for Council to approve the variation under the City's Town Planning Scheme No. 2.
Attachments	1. Site Photographs

1.0 Executive Summary

Development approval is being sought for single-storey additions to the existing dwelling at the subject property.

The development proposes lot boundary setback variations to the northern secondary street, western rear and southern side lot boundaries as required by the deemed-to-comply provisions of the *Residential Design Codes 2015 (R-Codes)*. Submissions of no objection were received.

It is recommended that the application be refused by Council as it is considered to not comply with the design principles of the R-Codes due to the development not complying with the development context of the locality which is dominated by larger setbacks to the street and lot boundaries.

2.0 Recommendation to Committee

Council refuses the development application for the proposed additions to the single house at (Lot 554) No. 83 Bruce Street, Nedlands, received on 15 November 2016, and the amended plans dated 23 March, 01 June and 21 June 2017, for the following reasons:

- 1. The proposal not satisfying the design principles stipulated under clause 5.1.2 (Street Setbacks) of the Residential Design Codes due to the proposed reduced setback to the northern secondary street lot boundary increasing the impact of bulk and scale as viewed from the streetscape.**
- 2. The proposal not satisfying the design principles stipulated under clause 5.1.3 (Lot Boundary Setback) of the Residential Design Codes due to the proposed nil boundary setback of the dwelling and garage to the western rear lot boundary and the reduced southern side lot boundary setback increasing the impacts of building bulk on adjoining properties and the streetscape and reducing neighbour's property's access to sunlight during winter months.**

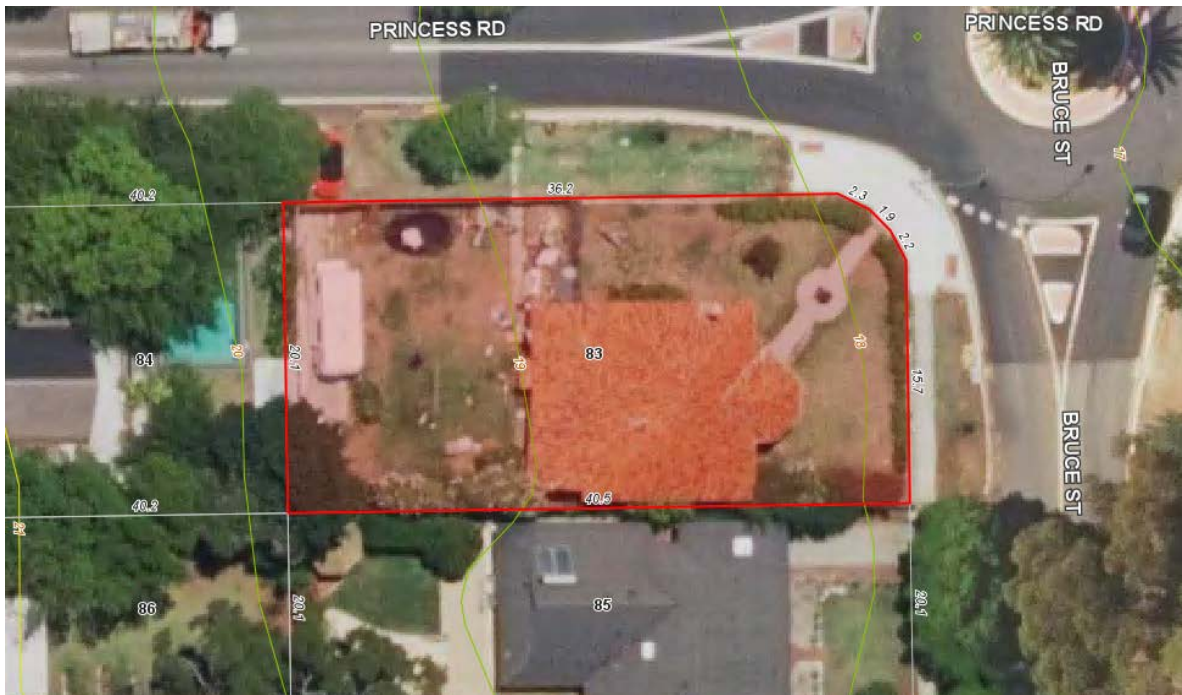
3. The proposal setting an undesirable precedent in terms of a boundary wall development within the rear setback area within a low-density area.
4. The boundary wall development proposed within the R12.5 density code does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.
5. The proposal not satisfying provisions (b), (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.

3.0 Site Details

Lot area	807m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R12.5
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. The property has a 2m slope across the site from the eastern front lot boundary to the western rear lot boundary as shown on the locality plan below.

An aerial image showing the location of the property follows.



4.0 Specific Application Details

The applicant seeks approval for additions to the existing dwelling, details of which are as follows:

- The additions to the dwelling are proposed to be setback a minimum of 1.366m and the detached garage (outbuilding) is setback 1.565m in lieu of 2m to the secondary street setback boundary;
- The additions to the dwelling accommodating the master bedroom and ensuite are proposed to have a nil setback in lieu of 6m to the rear lot boundary;
- The additions are proposed to be setback 1.07m in lieu of 5.7m to the southern side lot boundary;
- The detached garage (outbuilding) is proposed to have a nil setback in lieu of 1m to the western rear lot boundary; and
- The detached garage (outbuilding) is proposed to have a 3.65m wall height in lieu of 2.4m.

5.0 Consultation

The proposal was advertised to nearby landowners for comment in February 2017. During the advertising period, no concerns were received.

The applicant also sought comments from the western rear neighbouring landowner in relation to the proposed boundary wall development which were received by the City in April 2017.

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.”

Whilst it can be acknowledged that the development additions seek to retain the existing dwelling and keep the development to a single level, the number of setback variations, coupled with the height of the additions proposed are likely to result in

the development having an adverse impact on the amenity of the streetscape and neighbouring properties.

The proposed development within the rear setback area for the dwelling additions is not common for the area, with the majority of development within the rear setback area being for garages and pool houses, leaving a portion of area open and available for outdoor living area purposes.

The development of both an outbuilding (to be used as a garage) and the dwelling additions will likely have an adverse impact in terms of building bulk proposed to be located up to the rear lot boundary, with reduced setbacks to the northern secondary street and southern side lot boundaries, this would likely be imposing when viewed from the adjoining properties.

6.2.2 Potential use of dwelling

The City has received an annotated plan from the landowner which demonstrates the kitchen being removed from the existing portion of the dwelling. If the kitchen does remain contrary to the approved plan then the development will propose two self-contained buildings (dwellings or ancillary accommodation). This is not permitted in accordance with the City’s TPS2 due to the floor areas of the existing dwelling and the proposed addition exceeding the maximum 60m² permitted for ancillary accommodation and the R12.5 density coding and lot area of the subject property not permitting an additional dwelling on the subject property. If Council elects to approve this application, a condition is recommended requiring the existing kitchen is removed.

6.3 Residential Design Codes (State Planning Policy 3.1)

6.3.1 Street setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings setback from the secondary street lot boundary 2m.	The secondary street setbacks are proposed to be a minimum of 1.366m to the dwelling additions and 1.565m to the detached garage (outbuilding) in lieu of 2m.	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>“Buildings set back from street boundaries an appropriate distance to ensure they:</i></p> <ul style="list-style-type: none"> • <i>contribute to, and are consistent with, an established streetscape;</i> • <i>provide adequate privacy and open space for dwellings;</i> • <i>accommodate site planning requirements such as parking, landscape and utilities;</i> <i>and</i> • <i>allow safety clearances for easements for essential service corridors.</i> 		

Buildings mass and form that:

- *uses design features to affect the size and scale of the building;*
- *uses appropriate minor projections that do not detract from the character of the streetscape;*
- *minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and*

positively contributes to the prevailing development context and streetscape.”

Administration Comments

The reduced setback to the secondary street is amplified by the additions having a 5m wall height. Given the single-storey built form, the height can be considered bulky and not in keeping within the character of the locality. The reduced setback cannot be considered a minor projection as it is of substantial height and is dominated by blank wall, with only two small minor openings proposed.

The setback to the dwelling can be increased to 2m to comply with the deemed-to-comply requirements of the R-Codes through re-orientation of the additions or reduction in the size of the additions.

The reduced setback for the garage can be increased to 2m to comply with the secondary street deemed-to-comply requirement to ensure that the development is more consistent with the surrounding residential development adjacent to Princess Road. The increased setback will ensure that the development contributes positively to the prevailing development context of having vehicle access to Princess Road rather than the primary street.

6.3.2 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Building on boundary is permitted in R12.5 when there is an existing or proposed boundary wall on the adjacent property of similar height and length. Otherwise buildings are to be setback from the rear lot boundary 6m.	The additions are proposed to have a nil setback in lieu of 6m to the western rear lot boundary.	No
Building setback from the side lot boundary in accordance with Table 2B.	The additions are setback 1.07m in lieu of 5.7m to the southern side lot boundary.	No

Design Principles

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

“Buildings set back from lot boundaries so as to:

- *reduce impacts of building bulk on adjoining properties;*
- *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

- Buildings built up to boundaries (other than the street boundary) where this:*
- *makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;*
 - *does not compromise the design principle contained in clause 5.1.3 P3.1;*
 - *does not have any adverse impact on the amenity of the adjoining property;*
 - *ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
 - *positively contributes to the prevailing development context and streetscape.”*

Administration Comments

The reduced rear lot boundary setback is not characteristic of the locality with the majority of development within the rear setback being incidental development such as outbuildings and pool houses rather than the dwelling extending into the rear setback area. The dwelling extension substantially reduces the outdoor living area available for the dwelling and will have an adverse impact on the amenity of the surrounding landowners in terms of access to sunlight and the impact of building bulk.

The reduced setback to the southern side lot boundary reduces the amount of sunlight available during the winter months into the southern neighbour’s rear outdoor living area. The wall height of the additions is proposed to be 4.5m which is substantial for a single-storey development and therefore the setback of 1.07m will increase the impact of building bulk as viewed from the southern neighbour’s rear yard adjacent to the proposed additions.

The fundamentals of lot boundary setbacks as stated within the explanatory guidelines within the R-Codes is to have larger setbacks as they increased in height and length. The setback for the additions being the same as the existing dwelling increases the appearance of building bulk and scale as viewed from the neighbouring landowners. The major opening proposed within the additions adjacent to the southern lot boundary will be partially screened by the dividing fence and is not proposed to be openable and therefore privacy should be maintained between the properties. An increased setback of 1.5m will provide some articulation in building bulk and decrease the overshadowing to the southern neighbouring landowner.

6.3.2 Outbuildings

Deemed-to-Comply Requirement	Proposed	Complies?
Outbuildings are setback from the side and rear lot boundaries in accordance with Table 2A of the R-Codes.	The detached garage is proposed to have a nil, setback in lieu of 1m to the western rear lot boundary.	No
Wall height is 2.4m above natural ground level.	The maximum wall height proposed is 3.65m above natural ground level.	No

Design Principles

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

“Outbuildings that do not detract from the streetscape or the visual amenity of residents or neighbouring properties.”

Administration Comments

The outbuilding is proposed to be utilised for covered car parking (i.e. a garage) and the height of the garage is proposed to be 3.65m above natural ground level at the highest point and 2.9m at the lowest point with a flat roof design. The plate height of the garage is proposed to be 3.086m. The garage height provides additional headroom for larger vehicles and is not uncharacteristically large for garages (attached to the dwelling) to new dwellings within the locality.

The garage is proposed to be built up to the western rear lot boundary in lieu of the required 1m. There are some boundary walls developments of this nature within the immediate locality at no. 81 Bruce Street, No. 84 and No. 82 Archdeacon Street. No. 81 Bruce Street has a garage approved with a 1m setback, however a subsequent change in the location of the lot boundary adjacent, decreased the setback to 0m. The boundary wall at no. 84 Archdeacon Street is for a pool house with a plate height of 2.4m and is not visible from the streetscape. The boundary wall at no. 82 Archdeacon is for another detached garage, however the setback provided to Princess Road is over 5m, reducing the visibility of the boundary development from the streetscape.

The combination of both the outbuilding and the dwelling development within the rear setback area is considered to be contradictory to the development context of the locality with development pushed to the rear and southern side boundaries and the northern street boundary. Should either the dwelling additions or the outbuilding be removed from the proposal, the impact of the development in terms of building bulk will be reduced and the development will be more reflective of the development context of the locality with only one side of the lot having development within the rear setback area.

7.0 Conclusion

The reduced secondary street, rear and southern side lot boundary setbacks would not positively contribute to the streetscape and have a negative impact on the amenity of adjoining properties.

The setbacks to the northern street and western and eastern lot boundaries can be increased and still ensure plenty of habitable space for the living areas of the dwelling and increase the amount of outdoor living area available on the property in single-storey additions. Alternatively, the additions could be re-designed to be two-storeys to decrease the building footprint.

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

7.1 Recommended Conditions if Application is Approved

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

Council approves the proposed additions to the single house at (Lot 554) No. 83 Bruce Street, Nedlands, received on 15 November 2016, and the amended plans dated 23 March, 01 June and 21 June 2017 subject to the following conditions and advice:

1. This approval only pertains to the rear additions, detached garage and secondary street fencing as shown on the approved plans and subject to the below conditions.
2. Amended plans shall be submitted with the building permit demonstrating the following amendments:
 - a) The secondary street setback being increased to 2m for the dwelling additions and the garage; and
 - b) The southern side lot boundary setback being increased to 1.5m for the additions.
3. The kitchen within the existing dwelling shall be removed within 14 days of practicable completion of the additions to the City's satisfaction.
4. The secondary street fencing shall have a maximum height of 1.8m above natural ground level at the base of the wall.
5. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
6. The parapet walls to the western rear lot boundary being finished to a professional standard by the landowner within 14 days of practicable completion, and be maintained thereafter by the landowner, to the City's satisfaction.
7. All footings and structures to the parapet walls, retaining walls and fencing shall be constructed wholly inside the site boundaries of the Certificate of Title.

Advice Notes specific to this approval:

1. Dividing fences behind the front setback line with a height no greater than 1.8m above approved levels are deemed-to-comply with the Scheme and do not require further planning approval.
2. 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.

3. The proposed crossover shall be constructed to the Council's Crossover Specifications and the landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
4. All street trees on the verge are to be retained and shall not be removed without written approval from the Manager Parks Services.
5. Stormwater shall be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
6. 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.
7. The landowner is advised that all mechanical equipment (e.g. air-conditioners, swimming pool pump) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.
8. 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.
9. The swimming pool fencing installed is to comply with the *Building Act 2011*, the *Building Regulations 2012* and Australian Standard S 1926.1-1992.
10. The swimming pool, whether partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
11. 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.

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.

Site Photographs from Princess Road



Site Photographs from Bruce Street



PD36.17	(Lot 233) No. 2 Wavell Road, Dalkeith – Proposed Street Setback Area Fencing and Swimming Pool
Committee	8 August 2017
Council	22 August 2017
Applicant	T Murie
Owner	T Murie
Director	Peter Mickleson – Director Planning & Development
Reference	DA2017/119
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. Site Photographs

1.0 Executive Summary

A development application has been received for street setback area fencing and a swimming pool at the property.

The fencing is proposed to be solid to a height of 1.8m for a length of 5.5m along the northern boundary and 11.1m along the eastern boundary. The remaining open style fencing proposed in the front setback area partially exceeds 1.8m in height to a maximum height of 2.1m. The proposal does not comply with Council's Fill and Fencing Local Planning Policy which requires fencing greater than 1.2m in height, to a maximum height of 1.8m, to be visually permeable within the front setback area.

A below ground swimming pool is proposed within 3m of the primary street boundary. The proposal does not comply with the *Residential Design Codes 2015* (R-codes) which requires that excavation within 3m of the street alignment is to not exceed 0.5m.

The application was advertised for these variations. During the advertising period one objection was received and one non-objection was received.

It is recommended that the application be approved by Council as the proposal is unlikely to have a significant adverse impact on the local amenity and will provide some privacy for the main outdoor living area on the property.

2.0 Recommendation to Committee

Council approves the development application dated 25 May 2017 to construct street setback area fencing and a swimming pool at Lot 233 (2) Wavell Road, Dalkeith subject to the following conditions and advice:

1. The development shall at all times comply with the approved plans.
2. This planning approval only pertains to the street setback area fencing and swimming pool.
3. All footings and structures shall be constructed wholly inside the site boundaries of the Certificate of Title.
4. The street setback area fencing must be finished to an acceptable standard to the satisfaction of the City.

Advice Notes specific to this proposal:

1. 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.
2. All swimming pool fencing installed is to comply with the Building Act 2011, the Building Regulations 2012 and Australian Standard S 1926.1-1992.
3. 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.
4. 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	865m 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 property is located on the corner of Wavell Road and Gallop Road. A new single dwelling is currently being constructed on the lot. On the opposite side of Gallop Road to the subject property is Nedlands Golf Course. An aerial image showing the location of the property is provided below.



4.0 Background

A single house was approved for the property in August 2016 with an amended development approval issued in November 2016. The dwelling is orientated towards Wavell Road with a 9m front setback applying to Gallop Road. The lot is orientated North-South with the outdoor living area provided in the northern end of the lot.

5.0 Specific Application Details

The applicant seeks approval to construct street setback area fencing and a swimming pool within the primary street setback area, details of which are as follows:

- Solid fencing to a height of 1.8m for a length of 5.5m along the northern boundary and a length of 11.1m along the eastern side boundary, within the 9m primary street setback area.
- Open style post fencing is proposed for the remaining street boundaries. The posts are proposed to have a width of 50mm with gaps of 90mm. The

post height varies across the length of the boundaries between 1.8m and 2.1m above natural ground level.

- A below ground swimming pool is proposed within the front setback of the property.

6.0 Consultation

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

- Solid fencing may have an adverse impact on the streetscape of Gallop Road;
- The fencing can be constructed to comply;
- No valid justification for the solid fencing. Privacy may be achieved through planting of trees/shrubs;
- If approved the development may set an undesirable precedent; and
- Location of the pool pumps in regards to noise.

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

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

- A solid section of fencing will provide privacy around the pool sitting area;
- The northern area of the property is to be used as the 'back garden'.

7.0 Assessment of Statutory Provisions

7.1 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.

7.2 Town Planning Scheme No. 2

7.2.1 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.

It is noted there are no residential lots directly facing the front solid wall, with the Golf course being opposite the subject property on Gallop Road.

The solid fencing does not create sight line issues, with the driveway to the eastern neighbouring lot (24 Gallop Road) being setback 6m from the solid fencing. Vehicle access for the subject property is gained from Wavell Road and is not impacted by the fencing.

With regards to the pool pump location, it is noted that noise from swimming pool pumps are required to comply with the assigned noise levels set out in the Environmental Protection (Noise) Regulations 1997.

It is unlikely that the solid fencing and over-height open-style fencing will have a detrimental impact on the amenity of the surrounding area or streetscape of Gallop Road.

7.3 Fill and Fencing Local Planning Policy

The proposal is not compliant with the following provisions of Fill and Fencing Council Policy as follows:

Policy Requirement	Proposed	Complies?
<p>4.3 In primary street setback areas, solid fencing to a maximum height of 1.2m above natural ground level, and visually permeable fencing to a maximum height of 1.8m above natural ground level.</p>	<p>The open style fencing is proposed to have a maximum height of between 1.8m to 2.1m above natural ground level.</p> <p>The solid fencing has a height of 1.8m for a length of 5.5m along the northern boundary and 11.1m along the eastern side boundary in the north-eastern corner of the lot, within the primary street setback area.</p>	<p>No</p>
<p>Variations</p> <p>When considering variations to the Policy requirements, due regard is to be given as to its likely impact on the local amenity.</p>		
<p>Administration Comments</p> <p>The open style fence height varies across the length of the boundary with the majority of the fence being 1.8m in height.</p> <p>The solid fencing provides privacy to the northern outdoor space, and is proposed for a portion of the boundary. The remaining fencing is open style and is considered to positively contribute to the streetscape and provide adequate surveillance to the street. The solid fencing and over-height open style fencing is supported.</p>		

7.4 Residential Design Codes

Deemed-to-comply Requirement	Proposed	Complies?
5.3.7 Site works Excavation or filling between the street and building, or within 3m of the street alignment, whichever is the lesser, shall not exceed 0.5m, except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling.	Excavation within 3m of the street alignment for a swimming pool	No
	The fill proposed within the street setback area shall not exceed 0.5m above natural ground level.	Yes
<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>“Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i></p> <p><i>Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site as viewed from the street.”</i></p>		
<p>Administration Comments</p> <p>The swimming pool is not raised greater than 500mm above natural ground level and is therefore not considered to impact the streetscape. The levels at the street boundary are proposed to be maintained.</p> <p>The swimming pool is considered to meet the Design Principles of the R-codes and is supported.</p>		

8.0 Conclusion

The solid fencing is considered to provide privacy to the northern main outdoor area on the property without compromising the amenity of the street. The section of open style fencing exceeding 1.8m is considered marginal and is not expected to have a noticeable impact. The swimming pool is not proposed to be raised more than 500mm above natural ground level with current levels maintained at the boundary. Accordingly, it is recommended that the application be approved by Council.

Photo from Gallop Road



Photo from eastern neighbouring property



Photo from Wavell Road



PD37.17	Scheme Amendment No. 206 – Waratah Avenue, Dalkeith
Committee	8 August 2017
Council	22 August 2017
Landowner	Various
Applicant	J and M Rattigan
Director	Peter Mickleson – Director Planning & Development
Previous Item	CEO Item Council Meeting 28 February 2017 Council Meeting 23 June 2015 (PD30.15)
Attachments	1. Summary Schedule of Submissions 2. Map of proposed Scheme Amendment

1.0 Executive Summary

The purpose of this report is to present to Council recommendations on Scheme Amendment No. 206 – Waratah Avenue for final consideration.

Scheme Amendment No. 206 proposes to rezone Lots 225 – 236 and 340 – 348 Waratah Avenue, Dalkeith from ‘Residential R10’ to ‘Residential R20’.

This Scheme Amendment was undertaken in response to an order issued by the Minister for Planning under s.76 of the *Planning and Development Act 2005*. As such, the City advertised the proposal for a period of 90 days from 10 April 2017- 9 June 2017.

A summary of submissions received during the advertising period and Administration’s response is outlined in this report. This provides the justification for Administrations recommendation to Council to not support the Scheme Amendment due to the lack of mechanisms to control built form, the density coding not being consistent with the intent of the Local Planning Strategy and the imminent nature of the new Local Planning Scheme No. 3.

2.0 Recommendation to Committee

Council

1. In accordance with s.41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* does not support the complex amendment to Town Planning Scheme No. 2, for the following reasons:
 - a) The application does not propose a Local Development Plan to ensure development would achieve a high quality built form outcome, as indicated in the draft Local Planning Strategy;
 - b) The low density coding does not adequately contribute to the City’s housing density target and support the surrounding activity centres; and
 - c) The proposed amendment will prejudice work being undertaken as part of the new Local Planning Scheme No. 3.

3.0 Strategic Community Plan

KFA: Natural and Built Environment

The proposed scheme amendment concerns the Natural and Built Environment in regard to amending the controls set out in TPS2. This will affect land use planning, development approvals, streetscape and compliance.

4.0 Background

Property address:	Lots 225 – 236 and 340 – 348 Waratah Avenue, Dalkeith
Lot area:	1,163m ² (north side) and 1,012m ² (south side)
Current zoning:	Residential R10
Proposed zoning:	Residential R20
Metropolitan Region Scheme:	Urban

The lots subject to this proposed scheme amendment consist of 17 single residential dwellings, two strata lots and two properties with additional uses. Additional Use 51 is an Aged Persons Unit on 112 (Lot 225) Waratah Avenue and Additional Use 2 is a Church on 123 (Lot 342) Waratah Avenue.

The area is within proximity to the Waratah Avenue Neighbourhood Centre to the east and Local Centre to the west on the corner of Waratah Avenue and Robert Street.

5.0 Key Relevant Previous Council Decisions

Council Resolution Meeting Minutes 28 February 2017

“Council Resolution / Recommendation to Council

Council

1. *Adopts proposed Scheme Amendment No. 206 to rezone lots 225 to 236 and 340 to 348 Waratah Avenue, Dalkeith from Residential R10 to Residential R20.*
2. *In accordance with Planning and Development (Local Planning Schemes) Regulations 2015 s.35(2) Council is of the opinion that the Amendment is a Complex Amendment because it is “(d) an amendment to comply with an order made by the Minister under section 76 or 77 of the Act”.*
3. *In accordance with Planning and Development (Local Planning Schemes) Regulations 2015 s.37(2) Council directs Administration to forward the proposed amendment to the Commission and proceed to advertise the complex amendment.”*

Council Resolution Meeting Minutes 23 June 2015

“Council Resolution / Committee Recommendation / Recommendation to Committee

Council:

Pursuant to Section 75 of the Planning and Development Act 2005, Council does NOT initiate an Amendment to Town Planning Scheme No. 2 to recode Lots 225 – 236 and 340 – 348 Waratah Avenue, Dalkeith from ‘Residential R10’ to ‘Residential R20’ for the following reasons:

- 1. The scheme amendment is premature due to the lack of suitable Local Planning Framework, specifically a Local Planning Strategy, being in place.*
- 2. Waratah Avenue Neighbourhood Centre and surrounds is appropriately zoned to meet the minimum density requirements as required by State Planning Policy.*
- 3. The built form outcome would be significantly different from the character of the area and there are no provisions to aid in planning for a quality built outcome.”*

6.0 Legislation / Policy

*Planning and Development Act 2005 (P&D Act)
Planning and Development (Local Planning Schemes) Regulations 2015
City of Nedlands Town Planning Scheme No. 2 (TPS 2)*

City of Nedlands draft Local Planning Strategy

7.0 Consultation

7.1 What consultation process was undertaken?

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

Following Council resolution at the meeting of 28 February 2017, consultation was undertaken for 60 days from Monday 10 April to Friday 9 June in accordance with s.38 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. The Regulations requires the following:

- Advertising in local newspapers (Post and Western Suburbs Weekly);
- Notices displayed in libraries and Administration building;
- Letters to government organisations and agencies considered affected; and
- Information and copies available for download on the website.

In addition, letters were sent addressed to those properties within the Scheme Amendment area, and those properties surrounding that have potential to be impacted by the proposal. This resulted in a total of 346 letters being sent to landowners and residents.

A total of **29 submissions** were received, of which **16 were in support, 9 object and 4 stated** that they did not provide any comment in regard to the proposal.

A summary schedule of submissions is provided in Attachment 1. A full copy of submissions is available to Councillors on request.

The following provides a brief overview of the key themes raised in the submissions:

Main points of submissions in support of the proposal:

- The proposal would allow long term residents to down size and remain in the area, 'ageing in place';
- The properties are located on a bus route and within walking distance to activity centres;
- The amendment area is relatively small and contained;
- The proposal provides for an opportunity to set future design controls to enable appropriate housing;
- Privacy should be addressed as part of the design considerations;
- The amendment area is ideally located between a Local and Neighbourhood Activity Centre;
- The Local Planning Strategy outlines a need to increase residential density and facilitate greater diversity in dwelling type;
- Some of the lots have access off a rear laneway;
- The density increase would allow the removal of the over 55's aged restriction;
- Waratah Avenue does not have a homogenous and distinct character that should be retained;
- This proposal would be consistent with the existing range of housing types in the area such as single-storey dwellings, mansions, new apartment, four-storey apartments, retail centres and aged persons accommodation;
- Building design can appropriately ensure that development is sensitive to the character and context of the area;
- Many of the existing single dwellings have significant building footprint and impact on the streetscape, which is considered to have greater impact than what can be achieved as a grouped dwelling;
- There is a need to cater for changing household types; and
- The amendment should entertain greater densities such as R40.

Administration comment:

It can be reasonably inferred from these comments that those who provided detailed comments, support the rezoning of these properties subject to high quality built form controls to ensure that designs address privacy, access off laneways and maximise the accessibility to surrounding centres and public transport. Many of the submissions supporting the proposal did not provide any comments, therefore it is assumed they are in support of the proposal as is.

Main points of submissions that object to the proposal:

- The proposal will have a negative impact on existing character of the area (Dalkeith as a Garden Suburb);
- The amendment area is not located on a high transit route or adjacent to large-scale activity centres that warrant a greater density increase (density should be increased in busy areas like Stirling Highway and Broadway);
- The City has not indicated future planning for density increases in the area;
- Dividing lots into two does not sufficiently contribute to the issue of urban sprawl;
- The proposal will result in increased vehicle traffic and parking congestion in a quiet suburb;
- The increase in density would effectively permit the future removal of the over 55's restriction;
- The area chosen has not been properly considered in relation to the wider catchment (the proposal fails to consider other lots which would make sense to be included in the amendment area for rezoning);
- Increased dwelling numbers will result in noise pollution;
- This proposal does not suitably provide for 'ageing in place';
- The boundaries of the centre have not been established and therefore the proposal would effectively encourage more ad-hoc rezoning of land;
- Subdividing lots will fragment landownership and make redevelopment more difficult in the future;
- Amending TPS 2 will divert necessary resources away from draft Local Planning Scheme No. 3; and
- Infill development results in loss of private gardens and open space.

Administration comment:

It can be reasonably inferred from the comments received that those people not in support of the scheme amendment do not consider that it is appropriate given its location in a low density suburban area, citing reasons to do with public transport, proximity to centres and that there are alternative areas where greater density could be more appropriately accommodated instead.

Other concerns raised were regarding the potential increase in traffic and congestion resulting with more people needing to park in the area and the number of cars needing to enter Waratah Avenue from the subject area. This was considered to be the biggest impact on the amenity of the area with a number of submissions including comments to this effect.

The built form was also raised as a concern, with comments regarding the impact of on the established character of the area.

A number of submissions also questioned the Scheme Amendment in context of State and local planning frameworks, with comments on how the proposal was contributing to reducing urban sprawl and the future planning of the area not having highlighted changes in Dalkeith.

Main points of submissions that were neither supported/objected to proposal:

- These submissions were generally by government organisations and agencies stating that the proposed development is not significant enough to warrant a response.

Administration comment:

The City can reasonably assume that the proposed development can suitably be accommodated within existing infrastructure resources, if this was to be a concern to these agencies it would be raised in the submissions.

Aged Care Restriction

The following information has been provided to address specific concerns regarding Aged Care Restrictions which has been raised in both support and objection to the scheme amendment, which was not previously discussed with Council.

Currently one lot within the amendment area is zoned Residential R10 with an Additional Use 61 “Two Senior Persons Dwellings”. The existing two dwellings on the lot are permitted because of the Additional Use which restricts the use of the dwellings as Senior Persons Dwellings. If the scheme amendment were to be approved, rezoning the lot to Residential R20, this property would comply with the average lot size requirement. Given that the two dwellings would be permitted, the lot would no longer be restricted to only being Senior Persons Dwellings and the residents could apply to have the 70A notification removed from the Certificate of Title.

8.0 Budget / Financial Implications

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

This proposed scheme amendment has no budget or financial implications for the City. The applicant is responsible for meeting the costs associated with the processing of this application.

9.0 Risk management

Section 87 of the *Planning and Development Act 2005* states that an amendment to a local government scheme requires the approval of the Minister for Planning. The Minister has the following abilities:

- a) Approve the amendment;
- b) Require the City to modify the amendment to be resubmitted for the Ministers approval; or
- c) Refuse to approve the amendment.

If Council resolves not to support the proposed amendment, the Minister for Planning may approve the scheme amendment or instruct the City to modify the amendment for the Ministers approval.

10.0 Discussion

The scheme amendment proposes to recode Lots 225 – 236 and 340 – 348 Waratah Avenue, Dalkeith from 'Residential R10' to 'Residential R20'.

In accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* the City has 90 days to consider the submissions and pass a resolution:

- a) To support the amendment to the local planning scheme without modifications; or
- b) To support the amendment to the local planning scheme with proposed modifications to address issues raised in the submissions; or
- c) Not to support the amendment to the local planning scheme.

10.1 Planning Context

Generally, the State planning documents require Local Governments to provide greater housing diversity for inner city metropolitan areas, this will mean housing infill resulting from increased density. The State Planning Framework sets out specific housing targets for each Local Government and the City should be working to achieve these objectives, with a focus to provide concentrated development in activity centres and along transit corridors.

The Local Planning Strategy aims to achieve the State's housing targets by focusing redevelopment in 'Targeted Infill Areas', identified as properties along Stirling Highway, Hampden Road and Broadway. These areas are being planned to a minimum medium density (medium density defined in the Strategy as density between R40-R80). This scale of development provides benefits such as significant number of dwellings, diversity in housing product (multiple apartments) and community benefits associated with substantial redevelopment (i.e. upgrades in infrastructure and greater investment into place activation). The trade-off being that the City deters low scale redevelopment in suburban areas. The rationale behind this is that lots dividing into only a few additional dwellings does not realistically contribute to the density target and does not provide any greater benefits to the community. The Local Planning Strategy therefore makes a clear distinction between the two scales of development and the City's position on such developments.

The draft Local Planning Strategy is consistent with *State Planning Policy 4.2 - Activity Centres* which states that Local Governments should have strong planning mechanisms, such as Local Development Plans to identify key activity centres, define the boundaries of these centres and control the built form outcome for increased density. This is emphasised in the intentions of the Strategy to ensure high quality design in redevelopment areas and the protection of the underlying character of an area. Streetscape design is considered fundamental in protecting the character of existing residential areas, especially in areas such as Dalkeith.

10.2 Built Form Outcome

The proposed scheme amendment involves recoding Lots 225 to 236 and 340 to 348 Waratah Avenue from 'Residential R10' to 'Residential R20'. Lots within the amendment area to the north have an area of 1,163m² while the lots to the south have an area of 1,012m².

If the scheme amendment was to be approved, changing the zoning to Residential R20, the lots in the amendment area could be subdivided, with R20 lots required to provide a minimum lot area of only 350m² and an average of 450m².

The applicant has not included in the proposal any changes to the City's Town Planning Scheme No. 2 to control subdivision or built form outcomes. Subdivision could be in the form of battle-axe style or side-by-side style. For those lots to the North, the lack of built form controls means that vehicle access could be obtained from Waratah Avenue or Gerygone Laneway, or provide access to both roads.

The City's Local Planning Framework discourages the continual spread of low density residential development which results in unplanned built form changes and lasting ad hoc lot configuration. The draft Local Planning Strategy encourages excellence in urban design and greater land use mix. To provide built form controls, the scheme amendment would need to include the requirement for a Local Development Plan which would allow the City to control the built form outcomes of future development.

It is therefore considered that this amendment should not be entertained without first the implementation of Local Development Plan to ensure development does not have an adverse impact on the streetscape and the surrounding area. It is also noted that there may be a need for the upgrading and widening of Gerygone Lane which would be required to accommodate any increased traffic caused by increased housing density if this amendment were to proceed. This would also require considerable input from an engineering perspective and careful consideration and specific planning controls regarding its treatment.

11.0 Conclusion

Administration recommend that Council, not support the amendment to Town Planning Scheme No. 2. It is considered that this low density rezoning proposals will prejudice what has been set up in the Strategy by removing the opportunity for the City to comprehensively plan for these centres as part of producing the new Local Planning Scheme No. 3.

As part of public consultation, the City received an overwhelming number of submissions in support compared to those that object to the proposed scheme amendment. These submissions of support however still raised issues regarding built form such as privacy, accessing off the rear laneway, building height and overall character.

Given that the proposed scheme amendment does not include any built form controls it is considered that there would be a need to include suitable planning controls such as a Local Development Plan. A Local Development Plan needs to be adopted under the scheme in which it acts, therefore it is considered by

Administration more appropriate to create these documents under draft Local Planning Scheme No. 3, given TPS 2 will soon be superseded.

By not supporting the proposed Scheme Amendment to TPS 2, this recommendation is also consistent with the decision by Council at 26 May 2015 meeting, where it resolved not to initiate further amendments to Town Planning Scheme No. 2, to direct all resources to drafting a new Local Planning Scheme No. 3.

11.1 Alternative Recommendation to Council

If Council, were of the opinion to support the proposed scheme amendment, Administration recommend that a Local Development Plan is conditioned as a requirement to provide built form controls to address the concerns raised in the submission and this report. Importantly controls needs to be in place for the widening and access of Gerygone Lane.

Council

1. In accordance with s.41(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports the complex amendment to Town Planning Scheme No. 2, subject to the following condition:
 - a) The Scheme Amendment area is subject to comply with a Local Development Plan approved by the City in accordance with Part 6 Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

Submissions Received

Disclaimer: the following is a summary of submissions received.

Submitter numbers do not relate to the date order in which submissions were received, nor do they relate to any hierarchy of importance.

Where two submissions were received from the same address they were summarised separately but counted as one submission.

Submitter Number: 1
Interest: Government Agency

Summary of Submission: No Comment
No objection to proposed scheme amendment.

Submitter Number: 2
Interest: Landowner

Summary of Submission: Support
Support proposed scheme amendment.

Submitter Number: 3
Interest: Landowner

Summary of Submission: Support

- Would like to see duplex blocks permitted on one side of the street only.
- There would be congestion of visitors parking and extra cars owned by the residents.
- Suggest section of Philip Road would be more suitable for a few duplex blocks to break up the suburb more suitably.

Submitter Number: 4
Interest: Landowner

Summary of Submission: Support

- Suggest any dwelling in the amendment area must be no greater than two storeys or the privacy of the adjoining homes will be substantially compromised.

Submitter Number: 5
Interest: Landowner

Summary of Submission: Support
Support proposed scheme amendment.

Submitter Number: 6
Interest: Government Agency

Summary of Submission: No Comment
No objection to the proposed amendment.

Submitter Number: 7
Interest: Landowner

Summary of Submission: Support
Support proposed scheme amendment.

Submitter Number: 8
Interest: Landowner

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

Summary of Submission: Support
Support proposed scheme amendment.

Submitter Number: 9
Interest: Government Agency

Summary of Submission: No Comment
No objection to proposed scheme amendment.

Submitter Number: 10
Interest: Landowner

Summary of Submission: Object

- Subdivision of blocks will directly impact the characteristics of Dalkeith that attracted use and so many other families to the area.
- Request Council to protect that characteristics of Dalkeith that set it apart from other suburbs.
- Developers may consider that their subdivision will have negligible impact, but collectively subdivision will result in the loss of open space and with it, trees, lawns and gardens that will be replaced by oversized two storey houses with no gardens that overlook the neighbours.
- The Minister of Planning is supporting subdivision in the Western Suburbs to achieve in-fill targets and to reduce urban sprawl on the city fringes. Do not support the solution. Apart from the aesthetic impact, increasing the density of housing in a suburb with no rail link and surrounded by water on three sides is no viable.
- Suggest density is better accommodated in vibrant high-density hubs. Example Subi Centro where density has been built around train stations and major road intersections.
- There are no such areas planned in the Nedlands council area and would be very supportive of this approach.
- The benefits of building hubs at train stations in Perth's northern and southern approaches would far outweigh any benefit from subdividing blocks in Dalkeith that are motivated by financial gain rather than any desire to resolve urban sprawl.

Second submission was received from the same address:

- The area is not adjacent to a public transport hub, making it reliant on cars and existing buses.
- The area is not well served by local amenities; nor is there the space to create more.
- There is no provision for additional parking. School places, parks or road infrastructure to support an increased population.
- Dalkeith is a family neighbourhood with a strong community exists where the majority of people are owner-occupiers with a long-term commitment to the area.
- Property directly behind the amendment area and would result in a loss of privacy.
- Request Council to consider rezoning areas that are adjacent to railway station, major transport hubs and shopping centres, particularly where there is the potential for increased amenities to be built. The lots on Waratah

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

Avenue fit none of these criteria and should be left with their existing Residential R10 zoning.

Submitter Number: 11
Interest: Landowner

Summary of Submission: Support

- No objection to your proposed zoning changes subject to the 'aged restriction' being removed.

Submitter Number: 12
Interest: Landowner

Summary of Submission: Support

- Allow long time residents to down size and remain in the area they have lived in for some years.
- Also amendment area is on a bus route and all the amenities are within walking distance which is a good thing as people age.
- Suggest Council to look ahead with higher density along this central road.

Submitter Number: 13
Interest: On behalf of Landowner

Summary of Submission: Support
Support rezoning proposal.

Submitter Number: 14
Interest: Landowner

Summary of Submission: Object

- Waratah Avenue has always been a busy street.
- There have been increasing side road parking on the street at the area proposed for R20 with increasing cars travelling the road, side road parking will be an issue and is disrupting to the divers and residents.
- I would not like to see increasing traffic and increasing density for the area.

Submitter Number: 15
Interest: Landowner

Summary of Submission: Object

- We bought and reside in a villa listed as 'over 55's dwelling'.
- The property is in an ideal position, quiet surroundings, older residents in the rear dwelling, ear to local shops and transport.
- If the proposed Scheme Amendment is approved this would enable the removal of the 'over 55's Seniors Persons Dwelling'.
- Removal of this rule would put us in a difficult position with younger renters in the rear dwelling.
- It seems unfair given we had purchase the property under the over 55s rule for both dwellings.

Submitter Number: 16
Interest: Landowner

Summary of Submission: Object

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- The proposed rezoning will leave my block sandwiched between two R20 properties.
- Whilst the proposed rezoning will probably have only a small impact on me directly, why has my property been left out of the proposed rezoning to R20?
- As a corner block with two potential street frontages, sandwiched between properties which already have two dwellings on each block, I find this confusing.
- Suggest property is included in Scheme Amendment area.

Submitter Number: 17
Interest: Landowner

Summary of Submission: Object

- Dalkeith should be left as a Garden Suburb.
- I have observed the results of this type of subdivision infill in other suburbs and all it does is diminish the quality lifestyle for all residents.
- I understand the need for urban infill and think the density should be increased in busy areas like Stirling Highway and Broadway.
- If this amendment is approved, suggest appropriate setbacks are implements to maintain the privacy for existing houses backing onto Gerygone Lane.

Submitter Number: 18
Interest: Government Agency

Summary of Submission: No Comment

No objection to proposed scheme amendment.

Submitter Number: 19
Interest: Landowner

Summary of Submission: Support

Support proposed scheme amendment for the following reasons:

- There is a need to provide smaller lots for long term residents who wish to stay in Dalkeith
- It is a relatively small section of Dalkeith in a location between shopping centres on the main bus route.
- It gives the opportunity to set design controls in place to enable appropriate housing for retirees.

Suggested built form controls:

- All single level buildings
 - Northern setbacks to be maximized
 - If 2 storey allowed then 0% overshadowing by vegetation and buildings
 - No overlooking
 - Restricted site coverage
 - Battle-axe subdivision to be allowed to maximize the width facing north and for providing for those owners who:-
 - Want to be away from the main road
 - Want to keep their existing home on less land
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- Benefits could be achieved by paving the ROW behind the blocks on the North Side, annexing a part of the rear of those blocks if necessary and subdividing across the middle of the block without having the battle-axe or maybe just having a walkway to the road.
- Ownership could be restricted to those who have lived in Nedlands Council are (preferably Dalkeith) for a minimum number of years.

Submitter Number: 20
Interest: Landowner

Summary of Submission: Support

- This rezoning is in keeping with the principle of supporting higher residential densities in and around activity centres.
- A higher density to R40 may be even more appropriate.
- High demand in Dalkeith for smaller blocks;
- It allows ageing in place;
- Proximity to commercial and community facilities; and
- Being on a public transport route.

Second submission received from this address:

- The proposal is in keeping with having higher residential densities in proximity to commercial and community services and on a public transport route.
- Support even higher density housing.

Submitter Number: 21
Interest: Resident

Submitter Number: 22
Interest: Landowner

Summary of Submission: Support

Submissions received from both addresses were identical and therefore have been summarised together as below.

- Currently 98% of houses in Dalkeith are single houses on quarter acre blocks, with the remaining 1.4% being older style duplexes.
 - With an aging population and reduced household sizes, other options are required. The average household size in Dalkeith is only 3 people.
 - Increased density can be achieved in Dalkeith in a sensitive form with the subdivision for lots on Waratah Avenue – with care taken to ensure that new homes are sympathetic to the existing neighbourhood character and context.
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS



The above image shows two houses on adjacent 500m² strata lots on Leon Road, Dalkeith.

- Many of the single residence in Dalkeith have a greater footprint and greater impact on the existing streetscape than the development shown above. For example, refer below, image of a single residence on Waratah Avenue currently under construction.
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS



- Dalkeith was developed as a garden suburb or according to market material at the time “The suburb beautiful...based on the latest Canadian and English methods of picturesque designs”. The images below provide examples of the scale and style of some of the original architecture which characterised Dalkeith.
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS



- If there is concern amongst Dalkeith residential about the character of the suburb being lot – this concern should be direct at the demolition of older homes to make way for ‘mega-mansinos’ on quarter acre lots.
 - It is not the fault of subdivision because currently this is limited and is not the problem.
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

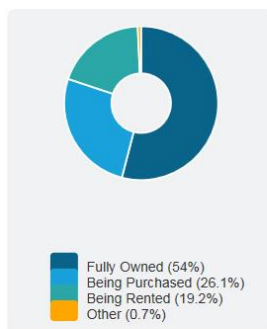
- This diagram shows the current zoning. There is only a small pocket of duplex developments (shown in red) adjacent to the Waratah Avenue commercial precinct (shown in blue). These smaller lots are zoned R20 and 25.



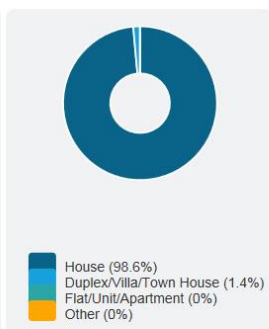
- What is required in Dalkeith is diversity – to cater for the aging population and changing household types.
 - ABS data predicts that single person households will probably rise around 65% in the foreseeable future. I don't think that these people will typically want a four bedroom home on a thousand square metre block.
 - 12.4% of households in Dalkeith are lone persons and 15% of the population is over 65 years old. In contrast, housing options in Dalkeith other than single residences on quarter acre blocks make up on 1.4% of Dalkeith properties.
 - It is evident from the data that greater diversity in housing choices are needed in Dalkeith now.
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

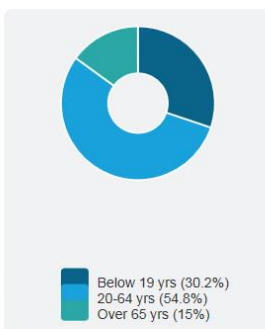
Property Ownership Types



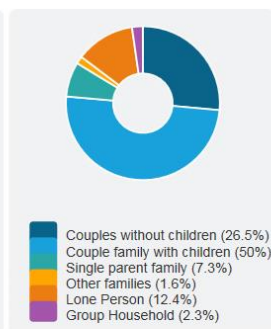
Dalkeith Property Types



Dalkeith by Age



Dalkeith Households



2011 CENSUS SUMMARY

	DALKEITH	PERTH
Population - Usually Resident	4,258	1,645,573
Median Age of Residents (Years)	41	35
Average Household Size (persons)	3.00	2.55
Total Households	1,347	604,425
Number of Occupied Dwellings *	1,534	595,499
Number of Unoccupied Dwellings	186	57,529
Median Weekly Household Income	\$2,795	\$1,481
Median Monthly Mortgage Repayment	\$2,925	\$2,008
Median Weekly Rent	\$700	\$327

Submitter Number: 23
Interest: Landowner

Summary of Submission: Support

- The proposal complies with the State Planning Strategy and principle to facilitate population growth by increasing residential density in and around Activity Centres.
- It also provides opportunities for Dalkeith residents to retire and downsize in Dalkeith.

Submitter Number: 24
Interest: Landowner

Summary of Submission: Support

Raise the following concerns:

1. Visitor Parking.
 - There would not be sufficient space to accommodate visitors vehicles as well as residents car bays.
 - Waratah Avenue verges are not generous dimensions and each crossover is likely to accommodate only one car.
 - Other visitors will be obliged to use the public parking areas nearby. These spots are already in demand from patrons surrounding businesses.
 - This will result in increased congestion in Philip, Alexander and Leon Roads and Robert Street.
2. Exiting on to Waratah Avenue.
 - Drivers are likely to exit properties on Waratah Avenue are likely to experience lengthy waiting times before being able to enter a busy thoroughfare.

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- Drivers proceeding along Waratah Avenue in either direction may well need to stop and wait for vehicles to exit.
 - The wait could be even longer if a vehicle is reversing.
3. Parking for trades during any redevelopment.
- Concerns regarding the location of vehicles parking during the construction of new dwellings.
 - The number of dwelling on Waratah Avenue between Alexander Road and Robert Street has the potential to greatly increase traffic congestion in the area.
 - The proposal should not be supported unless residents can be assured that all issues associated with increased traffic congestions will be addressed.

Submitter Number: 25
Interest: Landowner

Summary of Submission: Object

- Nedlands is attractive because of its trees and gardens. LPS3 seeks to preserve these by focusing its additional housing into flats in areas well served by public transport.
- Duplex infill will result in a loss of gardens.
- This is implicit in the Council's objections to the proposed rezoning R10 to R20.
- There are further objections to changes on the south side of Waratah Avenue. Most importantly the family houses with gardens have, from there, safe access to Dalkeith Primary School without crossing any busy road.
- Also 2 or 3 storey buildings on the south side of Waratah Avenue would cast shadow over properties behind.

Submitter Number: 26
Interest: Landowner

Summary of Submission: Support

- The draft Local Planning Strategy shows that the subject area is located between a Local and Neighbourhood Activity Centre.
- State Planning Policy 4.2 clearly outlines that an increased residential density shall be provided adjacent to Local and Neighbourhood Centres to provide a more sustainable centre.
- An increase to R20 will increase residential density without compromising the character of Waratah Avenue nor Dalkeith.
- The strategies outlined will achieve increase residential density; facilitate greater diversity of dwelling types; and ensure existing residential character is protected.

Second submission was received from the same address:

- The City of Nedlands has failed to plan for housing diversity and ageing in place within Dalkeith.
- Proposed rezoning is in keeping with principles of supporting higher residential densities in and around activity centres consisting with 'Directions 2031 and Beyond' and 'State Planning Policy 4.2 – Activity Centres'.

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- Dalkeith residents have consistently requested higher densities in Dalkeith so we don't have to break connections and networks that are critical, and that have been forged over many years.

The following points are my reasons in support of initiating Scheme Amendment 206.

1. In failing to adopt Scheme Amendment 206, the City is highlighting its own failure.
 - Town Planning Scheme (TPS 2) is 30 years old; LPS 3 has been in draft format for several years. The Local Planning Strategy ignores the community's wishes and fails to address the Dalkeith community's needs and wishes. Our only option is to propose this Amendment under TPS 2.
 - Amendment 206 complies with Directions 2031, Liveable Neighbourhoods and other accepted planning principles.

The City's failure to properly plan is indefensible and ought not to be used as an excuse for stopping our amendment. In Section 5.0 of the 2015 Planning and Development Report (henceforth referred to as "P&D Report"), Administration warned Council about the risk of not initiating our amendment:

"If Council resolves not to initiate this proposed scheme amendment, the Minister for Planning may instruct that the amendment be initiated. Section 76 of the P&D Act states that where the Minister is satisfied on any representation that the local government has failed to adopt (initiate) a proposal which "ought to be adopted", the Minister may order the local government to do so."

Land owners should not be adversely impacted by the City's failings. This amendment ought to be made to TPS 2. There is no other scheme under which we can apply.

2. The Subject Area is in Waratah Avenue Neighbourhood Centre surrounds- this area is not appropriately zoned to meet the minimum density requirements as required by State Planning Policy.
 - State Planning Policy 4.2 recommends Residential R25 to R40 for Subject Area; it is currently only R10
 - Directions 2031 recommends that this Dalkeith precinct produces 10-399 additional dwellings. Only 31 have been created. Amendment 206 could add a further 20 dwellings.
 - Amendment 206 complies with Directions 2031, Liveable Neighbourhoods and other accepted planning principles
 - Section 6.2.1 of the P&D Report states that "Directions 2031 discourages a 'blanket' up-coding of large areas of inner suburbs as it will not enhance the character of neighbourhoods". The Subject Area is not large. It sits between retail centres on the main transport route in Dalkeith and is ideal for higher density.
 - 'Our Vision 2030: the community's plan by and for the people of the City of Nedlands' shows 88% support for increased density and diversity around civic, community and activity hubs.

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

Strategy		% of Support
1.	Link all cycle paths with smaller commercial car parks and initiate localised small bus services.	91.89
2.	Increased density and diversity around civic, community and activity hubs.	88.15
3.	Zone for diversity and varying density of housing and community (including age groups and facilities).	87.32
4.	Create higher density residential/commercial districts around mass transit nodes (yet to be created).	86.11
5.	Commercial land to have ability to be used for mixed use (e.g. living above shops).	84.72
6.	Speed up planning approval processes by local and state authorities.	80.56

Figure 1: 'Our Vision 2030' the community's plan by and for the people of the City of Nedlands' (p.11) shows 88% support for increased density and diversity around civic, community and activity hubs

'Our Vision 2030' also summarised key community Built Environment Vision ideas which illustrate that the City is not aligned with the community. They are:

- Greater choice of housing options for a diverse community;
- Some increase in housing density; and
- Each residential precinct to have its own identity.
- Council has had ample reason and opportunity to act on the documented community support and proposals to rezone the Subject Area to R20. It has failed to provide the Dalkeith community with suitable housing options.

Note: there has been continued support for Residential R20 zoning in the Subject Area. Even the lobby group People against Dalkeith Density (PADD) made a submission on behalf of hundreds of PADD members, proposing R20 for the Subject Area. It was the only residential area PADD supported for rezoning.

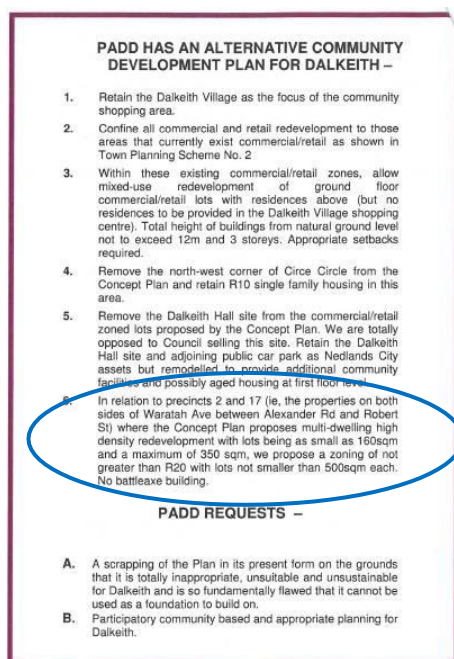


Figure 2: People Against Dalkeith Density proposed R20 zoning in the Subject Area

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

3. The built form outcome would not be significantly different from the character of the area, and would enhance the area.
- Waratah Avenue has no specific character and is run down, as shown in the following images. It has single-storey units, single-storey dwellings, mansions, new apartments, four- storey apartments being developed, retail centres and aged persons' accommodation. It includes survey strata lots, a church and has shops at both ends on the North side. It currently has no specific character.
 - The Residential Design Codes of WA caters for quality built outcomes. Residential R20 is considered low density.



Figure 3: R20 and R10 dwellings on South side of Waratah Avenue, in the Subject Area



SCHEDULE 1 – SUMMARY OF SUBMISSIONS



Figure 4: The Subject Area includes survey strata lots, a church and has shops at both ends on the North side



Figure 5: The South side of the Subject Area, already has both battle-axe and side-by-side lots

- Waratah Avenue, including the Subject Area, already has both battle-axe and side-by-side lots on the South side, as shown below.
- Redevelopment would enhance the Subject Area, as it did in Alexander Road's R20 precinct (adjacent to the Subject Area). It has rear lane access on one side and street access on the other side, similar to the Subject Area. The character and amenity are not adversely affected. The rear lane did not need to be widened. Please see the following images of Alexander Road R20 development.

SCHEDULE 1 – SUMMARY OF SUBMISSIONS



Figure 6: R20 dwellings on West side of Alexander Road precinct, adjacent to Waratah Ave Subject Area. The homes have rear access via Shrike Lane



Figure 1: Renovated R20 dwelling, part of Alexander Road precinct.



Figure 7: R20 development, East side of Alexander Rd Dalkeith. Street access.



Figure 8: High quality R20 dwellings built in Alexander Road, adjacent to the Subject Area. Access is via the street.

Submitter Number: 27
Interest: Landowner

Summary of Submission: Objection

Increasing the density coding of lots in Waratah Avenue:

- Has previously been considered by the Council in 2008 and 2015 and rejected both times;
 - Is contrary to the Council's policy of satisfying the Government's population targets in selected areas well-serve by public transport (Stirling Highway, Hampden Road and Broadway). While retaining the status quo in existing residential areas; Waratah Avenue has only one bus route No. 24, with a half-hour daily service;
 - Will adversely affect many new family homes recently built in the area affected;
 - Will displace families with children, affecting school enrolments;
 - Is unnecessary to increase housing choice because some housing of the type proposed is already available in Dalkeith and much more exists in nearby Claremont;
 - Does not facilitate 'ageing in place', with research demonstrating capitalisation of assets to be more common reason for the elderly relocating than not being able to find smaller accommodation;
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- Does not have natural boundaries and will encourage more land to be rezoned, destabilising an homogenous large-lot residential area;
- Will change the physical environment of the area directly affected, from a spacious, green, leafy character to one where hard surfaces predominate;
- Will fragment land ownership and make redevelopment more difficult in the future;
- Will divert resources away from LPS3, which should have priority;
- Is contrary to instructions from the Minister for Planning, that Council is to make no further amendments to TPS2;
- Is contrary to a Council resolution to make no further amendments to TPS2;
- Is unfair on other landowner who have been denied rezoning in TPS2 and told to wait until LPS3;

Supporting Attachments:

- 'Urban Consolidation Myths and Realities';
- Extract City of Melville 'Community Planning Scheme No. 5 Report'

Submitter Number: 28
Interest: Landowner

Summary of Submission: Objection

1. Traffic Congestion
 - The proposed scheme amendment has the potential to increase housing from a single residence up to two or three residence.
 - Section 9.2.2 of the Local Planning Strategy indicates that over 60% of households have two or more vehicles. This potentially would mean an increase from two motor vehicles per household up to four or size plus motor vehicles for the same land space.
 - The applicants report suggests that increase density housing will reduce the reliance of motor vehicles and encourage use of public transport and/or walking. However, this is not considered to be true in all cases.
 - Increasing housing density in Dalkeith from low to low-medium/medium density housing in the Activity Precinct is unlikely to have a measurable impact on the use of public transport/walking by the residents of Dalkeith in their day-to-day activities; but increase likely to increase motor vehicle use, especially along Waratah Avenue.
 - Waratah Avenue being a major arterial road servicing the suburb of Dalkeith, the likelihood of increased active vehicular traffic from the proposed increased housing density, as well as increased car parking requirements for the owners/occupiers of the increased housing density as well as their visitors.
 - Only those lots North of Waratah Avenue in the study area have access to additional laneway, which may in part mitigate some of the car parking issues for the owner/occupier, but perhaps not for visitors or the wider local community.
 - In recognition of the need for traffic considerations of higher density living, SPP4.2 looks at some important considerations in section 5.3.3, some of these include:
"The siting and planning of activity centres and management of traffic should:
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

- Take account of the current and planned road capacity serving the locality;
 - Ensure that vehicular access to arterial roads do not compromise their safe operation or desired transport function;
 - Ensure the loading/unloading facilities and associated vehicle manoeuvring areas are design so as to optimise public safety convenience;
 - Balance regional traffic requirements for travel to, through (where appropriate and around a centre with local traffic access needs; and
- The planning of activity centres should also:
- Take account of the need for access and parking priority accorded to different users and modes including public transport, freight/delivery, people with disability, bicycles, pedestrian and private cars, and balance competing user needs such as workers and visitors”.

2. Noise Pollution

- The proposal has the potential to increase noise pollution from both noise transfer between outdoor environments between neighbours, as well as from the increased traffic flow along Waratah Avenue.

3. Loss of character of the suburb of Dalkeith

- Dalkeith stands out as a prominent suburb of Perth for its street appeal. This appears to be echoed by many of those buying into this unique suburb, as well as by those who are visiting the residents of this suburb.
- There are several other nearby surrounding suburbs in the area that do offer more affordable entry level housing should buyers seek to reside in the Western Suburbs. An example of this is Claremont, which is our nearest ‘District Centre’ and more suited to higher density housing due to its larger Activity Centre, Public Spaces and Public Transport network.
- The rezoning proposal does not guarantee that ‘ageing in place’ will occur, as ‘ageing in place’ and ‘downsizing’ are not one and the same, and indeed it has been shown that ‘many seniors who own their own home want to remain in their existing accommodation for as long as possible’, and for those who do move, the choice of accommodation will depend on a variety of factors including their want of a ‘sea’ or ‘tree’ change, health and level of care required, family and friend, support services and finances.
- Section 8 of the Central Metropolitan Perth Sub-Regional Strategy document lists in Dalkeith as a ‘minor growth area’ with an expected yield of between 10-399 dwellings. Is it then worth the potential loss of character of this unique and irreplaceable suburb, a draw card for buyers and visitors alike, especially when there currently existing and under-field diversity of housing options on Waratah Avenue directly adjacent to and opposite Dalkeith Village, and where alternative regions for urban consolidation may be more suitable at this time.

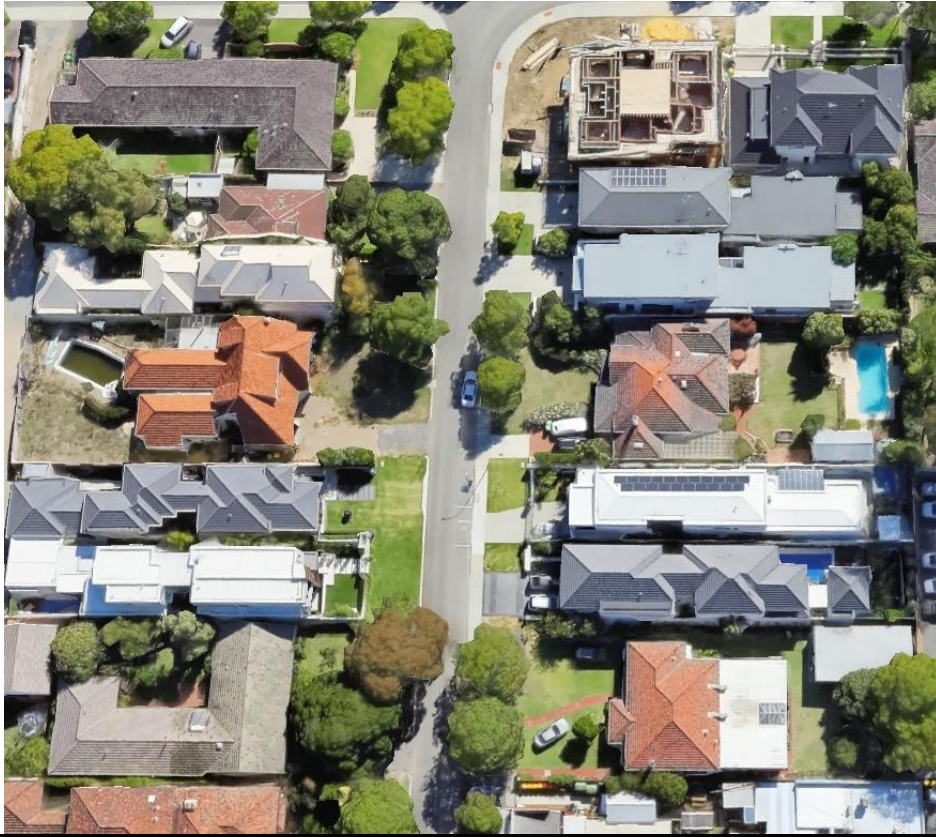
Submitter Number: 29
Interest: Business owner

Summary of Submission: Objection

- Question validity of scheme amendment due to change in Minister for Planning;
-

SCHEDULE 1 – SUMMARY OF SUBMISSIONS

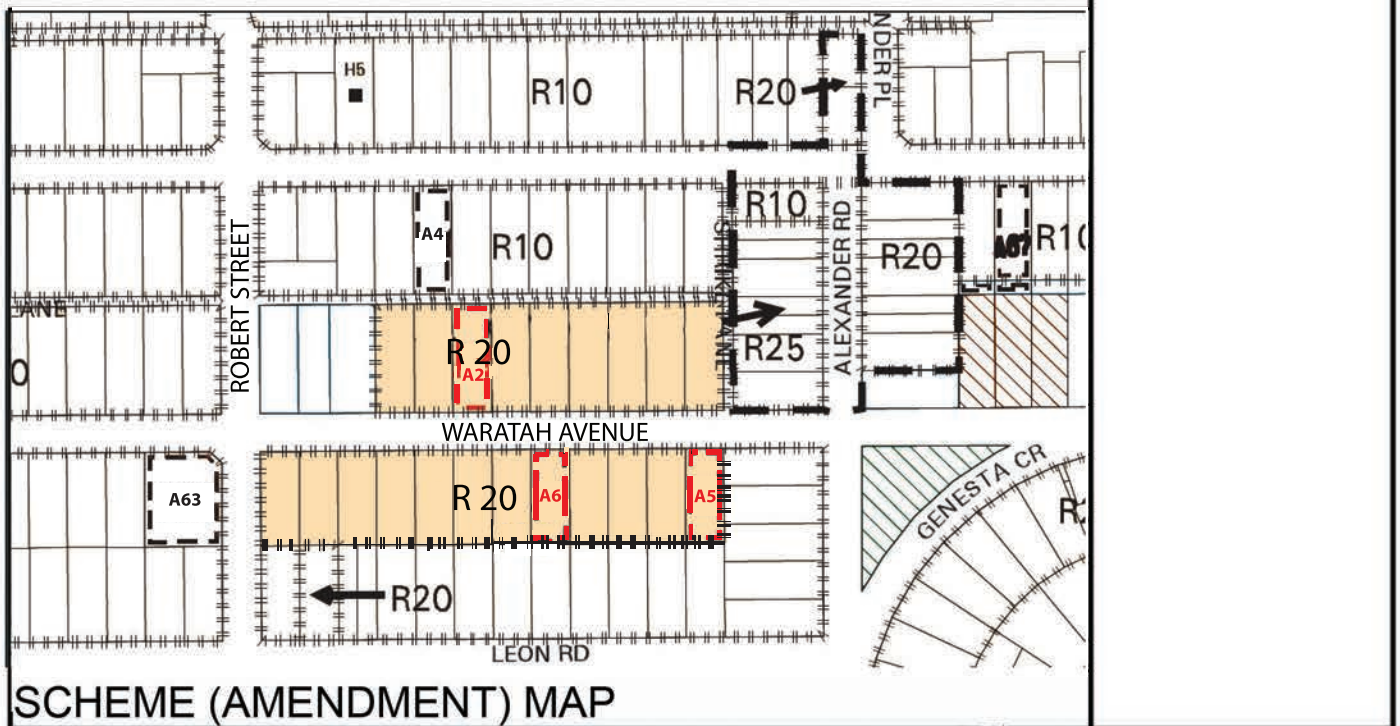
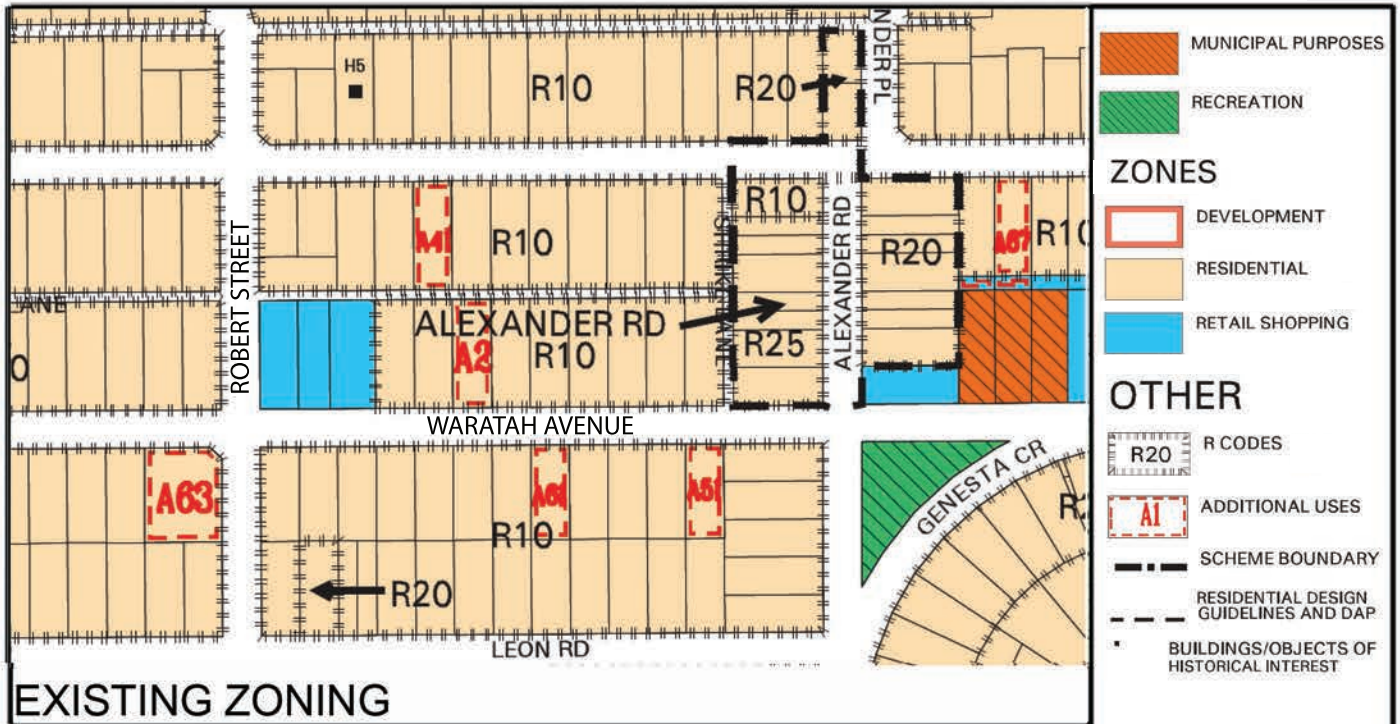
- The Scheme Amendment has been proposed by a single party for a whole neighbourhood;
- Question if there is outside political pressure to rezone this area;
- The below aerial photo of Alexander Road shows a recently constructed development on a subdivided lot. This development is so large they overlook the properties to the rear. It is considered that this style of development deteriorates the character of the area “like mould growing over bread”.
- The proposal does not benefit existing landowners.



CITY OF NEDLANDS TOWN PLANNING SCHEME No.2

Planning & Development Act 2005 and Town Planning Regulations 1967 (as amended)

Amendment No. 206



-  MUNICIPAL PURPOSES
 -  RECREATION
- ZONES**
-  DEVELOPMENT
 -  RESIDENTIAL
 -  RETAIL SHOPPING
- OTHER**
-  R20 R CODES
 -  AI ADDITIONAL USES
 -  SCHEME BOUNDARY
 -  RESIDENTIAL DESIGN GUIDELINES AND DAP
 -  BUILDINGS/OBJECTS OF HISTORICAL INTEREST

PD38.17	National Trust of Australia (WA) – Lease of a Portion of City Reserve 17391, Esplanade, Dalkeith
Committee	08 August 2017
Council	22 August 2017
Applicant	Rowe Group
Director	Peter Mickleson – Director Planning & Development
Reference	PLAN-038571
Attachments	1. Draft Deed of Lease

1.0 Executive Summary

The National Trust of Australia (WA) “National Trust” have re-developed Gallop House as a Composer-in-Residence facility. The National Trust have a management order for the reserve where Gallop House is located. The National Trust have requested an extension to the grounds surrounding the house, in the form of a lease of a portion of City Reserve 17391. This item outlines the terms of that proposed arrangement to lease.

2.0 Recommendation to Committee

Council:

1. **Agrees to lease the noted portion of Reserve 17391 to the National Trust of Australia (WA) for an initial term of 10 years with a further term of 5 years, subject to the Minister for Lands consent.**
2. **Requires that the Deed of Lease be amended at Clause 10.7 - Maintenance Fund as follows:**
 - a) **The Lessee is required to provide for sufficient funds to maintain the Premises in accordance with this Lease.**
 - b) **If the Lessor in its absolute discretion determines that the Lessee is not providing sufficient funds to adequately maintain the Premises in accordance with that required by this Lease then the Lessor may make any reasonable requirement of the Lessee regarding establishing a separate Maintenance Fund to ensure the premises are maintained in accordance with the provisions of this Lease.**
3. **Endorses the terms of Lease in the attached draft Deed of Lease with amendment to reflect (2) above and delegates to the Mayor and Chief Executive Officer the authority to execute the Deed of Lease, applying the City’s common seal.**

3.0 Discussion/Overview

The National Trust of Australia (WA) “National Trust”, is vested with management and control of Reserve 27111, “R27111”. R27111 is the reserve where Gallop House is located. Gallop House is a ‘heritage place’ which was built in the 1820’s by James Gallop. The National Trust as management body for this reserve and building has recently redeveloped the premises to become a facility for the Feilman Foundation Composer-in-Residence Program.

As part of this redevelopment project the National Trust identified a requirement to extend the grounds of the House for landscaping purposes. The National Trust approached the City with request for support to use a portion of the City’s reserve 17391 “R17391”, which is located directly adjacent to the Gallop House reserve. It was noted that the landscaping works would add to the amenity and enhance heritage of the property. The City supported this development and agreed to the National Trust landscaping a portion of R17391.

In January 2016, the Department of Parks and Wildlife approved plans for landscaping works on R17391. In February 2016, the City and the National Trust signed a Memorandum of Understanding regarding management of the associated area of City R17391 (MOU). A requirement of the MOU was for a Deed of Lease associated with the portion of R17391 landscaped by the National Trust to follow City standard terms of lease for a community group. The City and the National Trust have now agreed terms of the Lease arrangement and these are recorded in Attachment 1 – Draft Deed of Lease, “Lease”.

Any arrangement to lease a portion of R17391 must first receive consent from the Minister for Lands. Following Council’s endorsement of the terms of Lease the City will apply to the Department of Lands for Ministerial consent.

The land requested by the National Trust is outlined in Annexure 1 to the Lease and translates roughly to the following annotated aerial image shown on the following page.



Area outlined in red above is the National Trust’s R27111 and area in green is the portion of City R13791 proposed as the lease premises.

The terms of the Lease include the standard peppercorn rate of rental applied to community and sports groups. Associated with this rate of rental is the requirement on a lessee to maintain the lease premises in good, safe order repair and condition. This includes any capital development. There is no obligation on the City as lessor to repair or maintain the premises. The premises subject of the Lease is land only. There are no buildings. The City’s Administration and the National Trust agree on terms of Lease except for one which is outlined below.

Maintenance Fund

The City’s standard terms of lease include a requirement of lessee to keep a separate and specific fund for maintenance and make an annual contribution in a prescribed minimum amount. Clause 10.7 outlines requirements for the Maintenance Fund. The intention of this requirement is to ensure provision by lessee to adequately maintain the premises. In the proposed Lease to NTWA the City makes requirement for the National Trust to contribute a minimum of \$2500 per year to this fund. This amount is considered an amount sufficient to provide for the cost of weed control, being a minimum requirement for the premises. The National Trust have requested removal of the provision relating to the Maintenance Fund. The National Trust have advised:

The Trust agrees to maintain the property. National Trust are not able to establish a separate maintenance fund for the Gallop House garden. Also as mentioned, the Trust has a maintenance budget for Gallop House and receives an additional annual maintenance grant for Gallop House as well. Hence, we would like to delete clause 10.7 and item 8 of the Schedule.

To progress this request for amendment to the City's standard terms of the lease, Council must consider and advise. An alternative wording for this provision is included below. This alternative wording is taken from the Deed of Lease with Nedlands Rugby Union Football Club at Charles Court Reserve. This point was specifically considered and approved in Council's decision of 10 December 2013.

“10.8 Maintenance fund (Alternative Wording)

(1) The Lessee is required to provide for sufficient funds to maintain the Premises in accordance with this Lease.

(2) If the Lessor in its absolute discretion determines that the Lessee is not providing sufficient funds to adequately maintain the Premises in accordance with that required by this Lease then the Lessor may make any reasonable requirement of the Lessee regarding establishing a separate Maintenance Fund to ensure the premises are maintained in accordance with the provisions of this Lease”.

The above wording removes requirement for fund to be kept in separate bank account and requires that the lessee provides for sufficient funds to maintain the premises in accordance with the terms of the Lease. There is no specific amount recorded. The Alternative Wording further provides that where it is found the lessee is not achieving its obligation to adequately finance maintenance of the Premises, the City may make reasonable requirements of the Lessee regarding establishing a separate Maintenance Fund.

The City agreed to this variation for Nedlands Rugby Club on the basis that the Club had fundraised approximately 80% of total costs and managed the complete redevelopment of their lease premises with a bill totalling an estimated \$1 million.

The Rugby Club had also advised that as part of their redevelopment they maintained a record of building expenditure which could suffice as a “check” on expenditure as well as the basic requirement for the Club to maintain the premises pursuant to the Lease. Council must advise its requirement for form of Maintenance Fund by the National Trust.

4.0 Key Relevant Previous Council Decisions

As noted above, on 10 December 2013 in item PD59.13 Council resolved to endorse terms of Lease by Nedlands Rugby Union Football Club Inc. Terms included provision for Maintenance Fund in the format noted above, where a separate fund was not necessarily required. Only where it is found to become necessary to establish this separate fund the terms provided City as lessor with ability to require it.

5.0 Consultation

The City and the National Trust have been in discussion over terms of Lease and have reached agreement for the most part. The only outstanding point requiring Council's specific direction relates to the City's standard requirement for lessees to keep a separate Maintenance Fund.

6.0 Budget/Financial Implications

There are no further budget or financial implications to consider with this item. Fees associated with executing the Deed of Lease and future costs associated with the maintenance of the land will be borne by the lessee.

7.0 Conclusion

The proposed Lease will formalise the City's ongoing support for the National Trust in agreeing a tenancy of grounds at Esplanade / Birdwood Parade which will allow the National Trust to keep up landscaping works to enhance the heritage aspect of Gallop House and its amenity. The Lease is consistent with City's standard terms of lease by community and sporting groups and ensures the necessary record of each parties' roles and responsibilities in the National Trust's management of a portion of a City reserve.

Draft – 25 May 2017

Lease of a portion of Reserve 17391 for Gallop House Gardens

City of Nedlands

National Trust of Australia (WA)



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:NEDL-40990

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Details

Parties

City of Nedlands

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

National Trust of Australia (WA) (ABN 83 697 381 616)

of The Old Observatory, 4 Havelock Street, West Perth, Western Australia, 6005
(Lessor)

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);

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;

Further Term means the further term specified in **Item 3** of the Schedule;

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 24** 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-leasing;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Schedule means the Schedule to this Lease;

Sub-leasing 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-leasing 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 24** 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-leasing 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 a Lessee's Agent; 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*. A copy of the Minister for Lands' approval is annexed hereto as **Annexure 2**.

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 5** 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 9** 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 Details and receipts

In respect of the insurance required by **clause 7.1** the Lessee must -

- (a) on demand supply to the Lessor details of the insurance and give to the Lessor copies of the certificates of currency in relation to the insurance;
- (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.

7.3 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** 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).

7.4 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.

7.5 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 **clause 7.1**.

7.6 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 **clause 7.1**;
- (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 **clause 7.1**;
- (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.

7.7 Lessee's equipment and possessions

The Lessee acknowledges it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

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 areaexcept 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 State of Premises

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

10.7 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 8** 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 6** 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, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon 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) comply with all relevant state and commonwealth law and all relevant codes, including without limitation the Building Code of Australia, and all relevant standards published by Standards Australia;
- (d) 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
- (e) 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 2015* 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 19**,

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), **24** (Assignment, Subletting and Charging) and **36** (Goods and Services Tax) 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. Option to renew

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and -

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in -
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on terms and conditions similar to this Lease other than this **clause 18** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Sublessor may consider appropriate.

19. 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.

20. 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.

21. Yield up the premises

21.1 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.

21.2 Clause 21.1 to survive termination

The Lessee's obligation under **clause 21.1** will survive termination.

22. Removal of property from Premises

22.1 Remove property prior to termination

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

22.2 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.

23. Hire of Premises

23.1 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.

23.2 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.

24. Assignment, sub-letting and charging

24.1 No assignment or sub-letting without consent

Subject to **clause 23**, 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.

24.2 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.

24.3 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 24.2(c)**.

24.4 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.

24.5 Property Law Act 1969

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

24.6 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.

24.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

25. 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.

26. 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.

27. 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.

28. Notice

28.1 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.

28.2 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 28.1(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 28.1(b)**, on the second business day following the date of posting of the Notice.

28.3 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 2015*, 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.

29. 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.

30. Disputes

30.1 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 2012* and the Lessor and the Lessee may each be represented by a legal practitioner.

30.2 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. Waiver

35.1 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.

35.2 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.

36. Goods and services tax

36.1 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.

36.2 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 36.2(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.

36.3 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 36.2(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.

37. 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.

38. Caveat

38.1 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.

38.2 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.

39. Indemnity and ratification

39.1 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 38**.

39.2 Indemnity

The Lessee indemnifies the Lessor against -

- (a) any loss arising directly from any act done under **clause 38**; 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 38**.

40. 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.

41. 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.
- (2) The Lessee acknowledges that the Premises are located in close proximity to residential premises.
 - (3) 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.
 - (4) 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.

42. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 7** 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. If there is any inconsistency between the provisions of **Item 7** of the Schedule and the remaining provisions of this Lease, the provisions of **Item 7** of the Schedule will prevail to the extent of that inconsistency.

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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 depicted on the plan annexed hereto as **Annexure 1** as “Proposed Leasing Area”, including all 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

10 years commencing on [insert date] and expiring on [insert date].

Item 3 Further Term

5 years commencing on [insert date] and expiring on [insert date]

Item 4 Commencement Date

[City to instruct]

Item 5 Rent

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

Item 6 Permitted purpose

Gardens for Gallop House.

Item 7 Additional terms and covenants

1. The Lessee covenants and agrees to maintain any landscaping, irrigation, improvements, paving and retaining walls located on the Premises in good and tenable repair and in a neat and tidy condition, and generally in accordance with the approval and plans annexed hereto as **Annexure 3 (Approval)**.
2. The Lessee covenants and agrees to undertake ongoing monitoring and maintenance of the landscaping and irrigation works, undertaken pursuant to the Approval, to ensure appropriate erosion management measures and successful revegetation of the Premises.
3. The Lessee covenants and agrees to take reasonable measures to manage fire risk from adjacent bushland areas.

4. The Lessee acknowledges and agrees that any further works (including without limitation landscaping or irrigation works) must not be commenced, unless the Lessee has the prior written consent of the Lessee and any necessary statutory approvals.

Item 8 Maintenance fund

[insert sum] 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 9 Public liability insurance

Ten million dollars (\$10,000,000.00).

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Signing page

EXECUTED

2017

THE COMMON SEAL of the **City of Nedlands** was affixed by authority of a resolution of the Council in the presence of -

Mayor

Chief Executive Officer

THE COMMON SEAL of the **National Trust of Australia (WA)** was affixed in the presence of

Office Holder Sign

Office Holder Sign

Name:

Name:

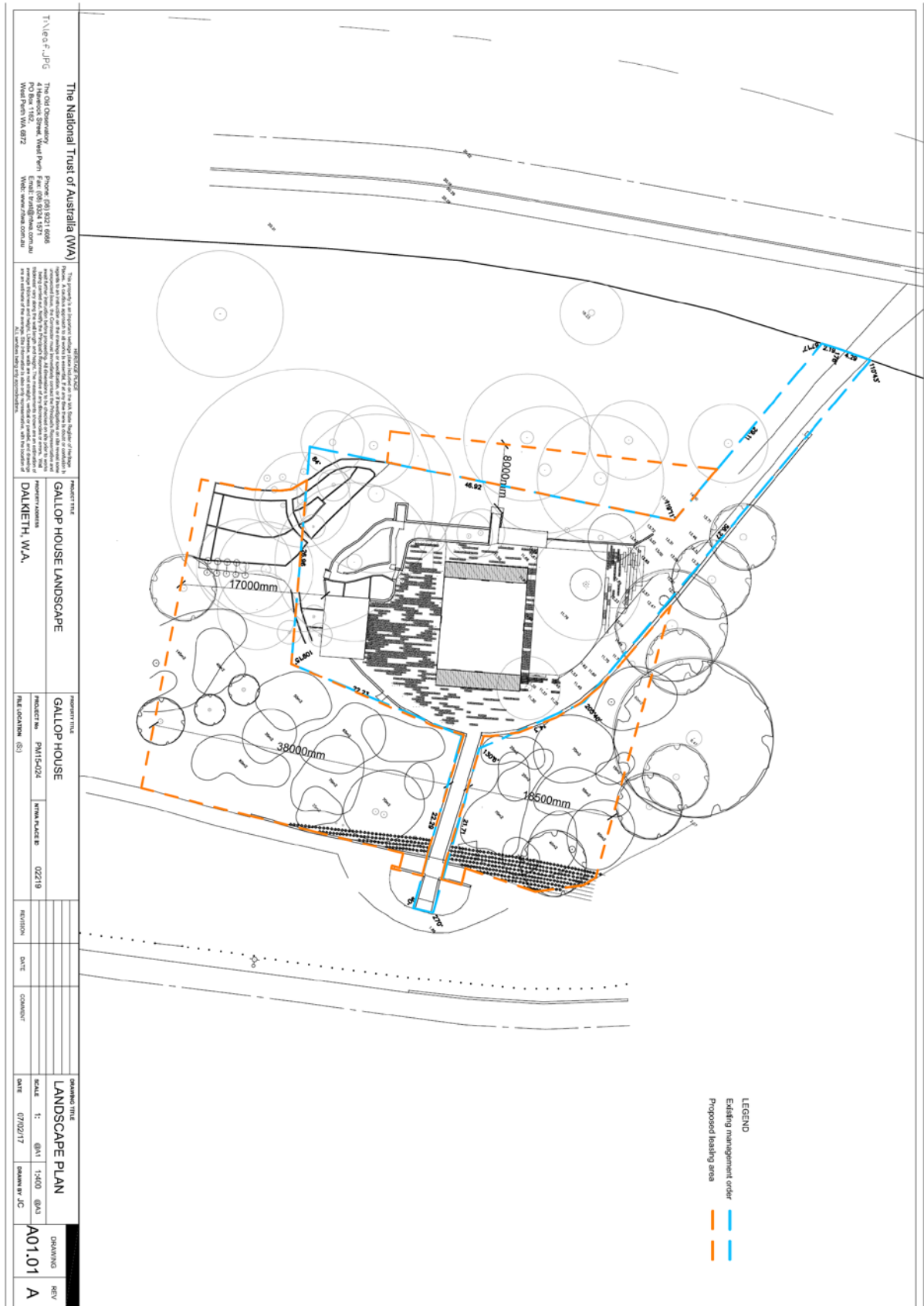
Address:

Address:

Office Held:

Office Held:

Annexure 1 – Sketch of Premises



Annexure 2 – Minister for Lands' approval

DRAFT

Annexure 3 – Approval and Plans



Government of **Western Australia**
Department of Parks and Wildlife
Rivers and Estuaries Division

Our ref: 2015/004926
Enquiries: Aaron Schonberg
Phone: 92780949
Email: aaron.schonberg@dpaw.wa.gov.au

Vicky Shannon
Environment Conservation Coordinator
City of Nedlands
71 Stirling Hwy
Nedlands WA 6009



Dear Vicky

PERMIT P11665 – Landscaping works – Lot 254 the Esplanade, Dalkeith (Reserve 17391) – Gallop House

Thank you for your permit application for the above mentioned proposal. The Department of Parks and Wildlife (Parks and Wildlife), principally under the Rivers and Estuaries Division, is the current agency responsible for the administration of the *Swan and Canning Rivers Management Act 2006* and the *Swan and Canning Rivers Management Regulations 2007*.

Your proposal has been assessed based on the information provided on 30 November 2015 and a decision made to approve the application subject to conditions and advice. Please find enclosed your approved permit and conditions.

Please note it is an offence under Regulation 31(3) of the *Swan and Canning Rivers Management Regulations 2007* for the holder of a permit to contravene a condition. Fines of up to \$5,000 may apply.

Under the *Swan and Canning Rivers Management Regulations 2007* a permit may be revoked or suspended if there has been a breach of condition, or if there is immediate and serious risk to the ecological or community benefits or amenity of the Riverpark or the Development Control Area.

If you have any queries regarding this matter, please contact the Department of Parks and Wildlife, Rivers and Estuaries Division, on 9219 9000 or rivers.planning@dpaw.wa.gov.au and quote the above reference number.

Yours sincerely

Jennifer Stritzke
A/Manager, Statutory Assessments

14 January 2016

Rivers and Estuaries Division
Locked Bag 104, Bentley Delivery Centre, Western Australia 6983
Phone: (08) 9219 9000 Email: rivers.planning@dpaw.wa.gov.au
www.dpaw.wa.gov.au

11/01/16



Department of
Parks and Wildlife



SWAN CANNING
RIVERPARK

Rivers and Estuaries Division

Ph: 9219 9000

Email: rivers.planning@dpaw.wa.gov.au

FILE NO: 2015/004926

PERMIT NO: P11665

Pursuant to Part 4 (Regulation 29) of the *Swan and Canning Rivers Management Regulations 2007*, this is to certify that a permit is issued to the person(s) or organisation described hereunder as permit holder and that person(s) or organisation is permitted to carry out the authorised works, acts or activities for the duration specified, subject to the conditions listed below.

Permit holder:

Authorised works, acts or activities:

Location of works, acts or activities:

Approval date: Expiry date:

CONDITIONS

1. The applicant shall conduct the proposed works in accordance with the application submitted on 30 November 2015.
2. The applicant shall take appropriate preventative measures during the erosion control works to ensure that no soil, runoff or any other deleterious matter is allowed to enter the river.

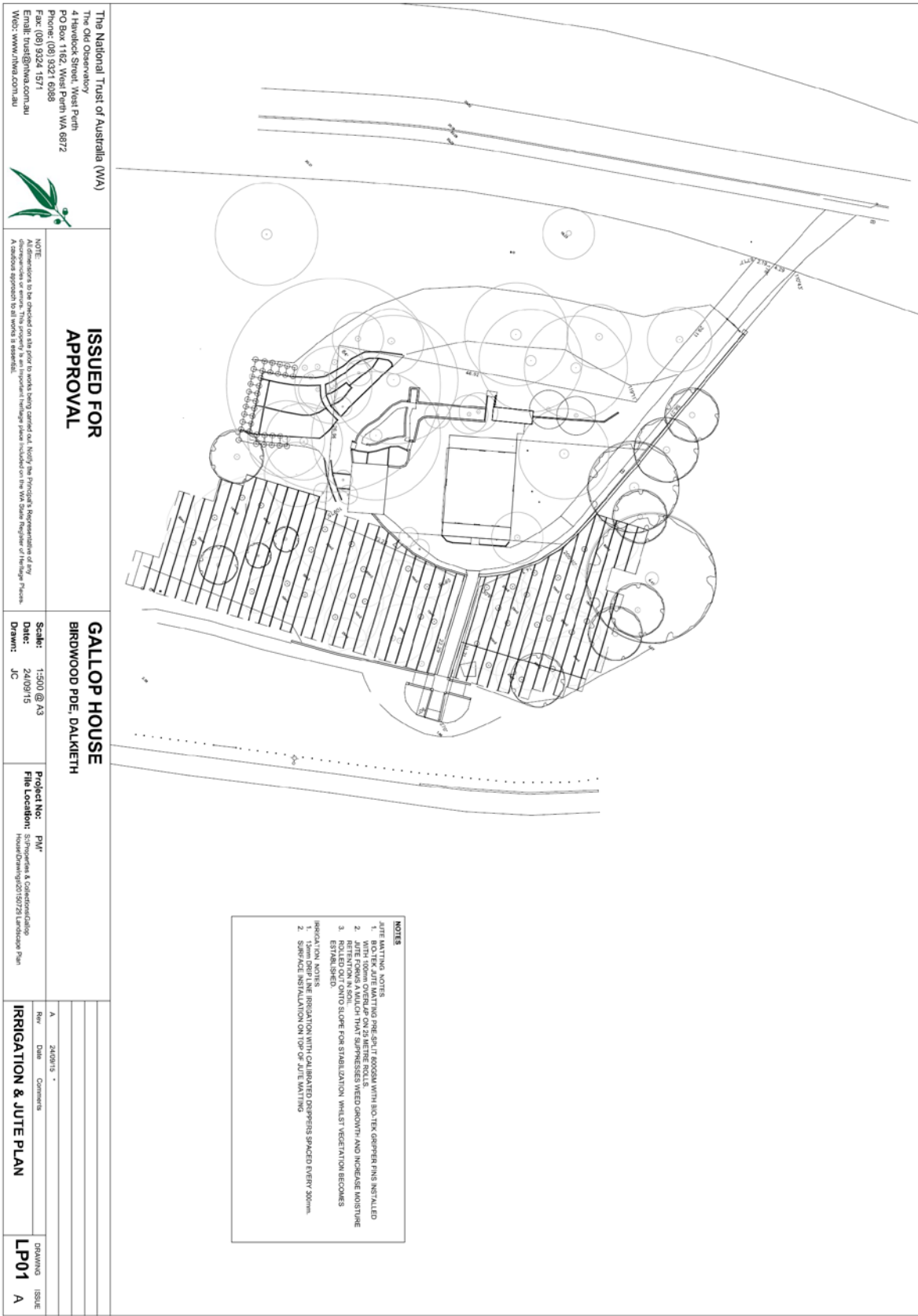
ADVICE TO APPLICANT

1. On-going monitoring and maintenance is recommended post-construction to ensure that the erosion management measures and revegetation are successful for the site; along with protecting neighbouring bushland.

PERMIT APPROVED

Signed:  Date: 28/1/16

Jennifer Stritzke
A/Manager Statutory Assessments
As delegate of CEO
Under Section 38 of the SCRM Act 2006



NOTES

JUTE MATTING NOTES

1. JUTE MATTING TO BE INSTALLED OVER THE ENTIRE AREA WITH SOFTEN GRASSER PINN INSTALLED WITH ROOM OVERLAP ON 25 METRE SOALS
2. JUTE FORMS A MESH THAT SUPPRESSES WEED GROWTH AND INCREASE MOISTURE
3. ROLLED OUT ONTO SLOPE FOR STABILISATION. WHATS VEGETATION BECOMES ESTABLISHED

IRRIGATION NOTES

1. 15mm DRIP LINE IRRIGATION WITH CALIBRATED DROPPERS SPACED EVERY 300mm
2. SURFACE INSTALLATION ON TOP OF JUTE MATTING

The National Trust of Australia (WA)
 The Old Observatory
 4 Herold Street, West Perth
 PO Box 122, West Perth WA 6072
 Perth WA 6001
 Phone (08) 9224 1571
 Email: trust@ntna.com.au
 Web: www.ntna.com.au

ISSUED FOR APPROVAL

NOTE:
 All dimensions to be checked on site prior to works being carried out. Notify the Project's Representatives of any discrepancies or errors. This property is an Important Heritage Place included on the WA State Register of Heritage Places. A detailed approach to all types is provided.

GALLOP HOUSE
BIRDWOOD PDE, DALKEITH

Scale: 1:500 @ A3
 Date: 24/09/15
 Drawn: JC

Project No: PNR
 File Location: S:\Projects & Collaborations\GDP House\Drawings\20150728 Landscape Plan

Rev	Date	Comments
A	24/09/15	

IRRIGATION & JUTE PLAN

DRAWING ISSUE
LP01 A

