



City of Nedlands

# Planning and Development Reports


**Committee Consideration – 8 July 2014**

**Council Resolution – 22 July 2014**

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<b>PD23.14</b>	<b>No. 110a (Lot 14) Victoria Avenue, Dalkeith – Various Retrospective Additions to a Single House</b>
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<b>Committee</b>	08 July 2014
<b>Council</b>	22 July 2014
<b>Applicant</b>	R Smith
<b>Landowner</b>	Kim Dopel – Dopel Marsh Architects
<b>Officer</b>	Matt Stuart – Senior Statutory Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File Reference</b>	VI1/110A-02 : DA13/596
<b>Previous Item</b>	24 June 1986 – two-storey additions at the rear of the dwelling (approved)

## 1.0 Executive Summary

The proposal is for various retrospective additions to a single house in Dalkeith, with several variations to the planning requirements. It involves excavation, landfill several retaining walls, several over-height fences, three patios, a pergola and a portico.

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

Some aspects of the proposal do not satisfy the relevant planning requirements; however some aspects of the proposal are justified. As a result, the recommendation is to approve the acceptable variations, refuse the unacceptable variations, modify some of the structures through approval conditions, and continue with compliance action.

## 1.1 Recommendation to Committee

### Council:

1. Approves the application for various retrospective additions to a single house at No. 110a (Lot 14) Victoria Avenue, Dalkeith, in accordance with the application with amended plans received on 01 May 2014, subject to the following conditions:
  - a. The development shall at all times comply with the approved plans.
  - b. This planning approval pertains only to the following structures (as marked in red on the plans):

- i. Front (eastern) yard – excavation, retaining walls, over-height front fence and patio;
  - ii. Side (southern) yard – portico;
  - iii. Side (northern) yard – two patios and pergola;
  - iv. Side (northern) yard – over-height dividing fence (see Condition c); and
  - v. Rear (western) yard – retaining walls, landfill and over-height dividing fence (see Condition d).
- c. The fence described in Condition b(iv) above is approved on the basis that it is modified within 4.0m either side of the neighbour's bedroom window, by reducing the height to no greater than 1.8m (from the ground level on the higher side), in accordance with Scheme and policy provisions.
- d. The structures described in Condition b(v) above are approved on the basis that the heights are modified as follows:
  - i. Retaining walls and landfill (except on or about the northern boundary) – maximum 500mm; and
  - ii. Fences – minimum 1.65m, maximum 1.8m.
- e. All footings and structures to retaining walls, fences and parapet walls shall be constructed wholly inside the site boundaries of the Certificate of Title.
- f. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development.
- g. A further planning application and approval from the CEO is required for any fill or retaining walls on the lot, other than that shown on the approved plans.

**Advice Notes specific to this proposal:**

- a. All development on the nature-strip / verge shall comply with the Council's Nature-Strip / Verge Development Policy, where development other than lawn requires a landscaping plan submitted for approval before commencement, and development not complying with this policy shall be modified at the landowner's cost.
- b. 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.

2. Refuses the application for various retrospective additions to a single house at No. 110a (Lot 14) Victoria Avenue, Dalkeith, in accordance with the application and amended plans received on 01 May 2014, for the following reasons:
  - a. Subject to approved modification in Condition No. 1c and 1d, this planning refusal pertains only to the following structures (as marked in red on the plans):
    - i. Rear (western) yard, except on the northern boundary – over-height retaining walls, landfill and dividing fences (see Reasons b-d); and
    - ii. Side (northern) yard – over-height dividing fence, 4.0m either side of the neighbour’s bedroom window (see Reason e).
  - b. Further to Reason a(i), the retaining walls do not meet Town Planning Scheme No. 2 clauses 5.10.2 – 5.10.3 (CDA) and 6.4.2 (consideration of applications), or Residential Design Codes of WA 2013 elements 5.3.8 (retaining walls) and 5.4.1 (visual privacy), as:
    - i. It does not respond or respect the natural ground levels or features of the site;
    - ii. It is not minimal fill and the height is excessive;
    - iii. It directly overlooks sensitive areas of the neighbouring property to the west;
    - iv. Certification of structural integrity has not been provided; and
    - v. It detrimentally and unduly affects the amenity of the adjoining property to the west.
  - c. Further to Reason a(i), the landfill does not meet Town Planning Scheme No. 2 clauses 5.10.2 – 5.10.3 (CDA) and 6.4.2 (consideration of applications), or the Residential Design Codes of WA 2013 elements 5.3.7 (site works) and 5.4.1 (visual privacy), as:
    - i. It does not respond or respect the natural ground levels or features of the site;
    - ii. It is not minimal fill and the height is excessive;
    - iii. It directly overlooks sensitive areas of the neighbouring property to the west;
    - iv. Certification of structural integrity has not been supplied; and
    - v. It detrimentally and unduly affects the amenity of the adjoining property to the west.
  - d. Further to Reasons a(i) – (ii), the dividing fences do not meet Town Planning Scheme No. 2 clause 5.6.4 (dividing fences) 5.10.2 – 5.10.3 (CDA) and 6.4.2 (consideration of applications), Fill and Fencing Policy clause 3 (dividing fences), or Fencing Local Law clause 13 (structural report), as:



- i. A written agreement from the neighbours, and certification of structural integrity has not been supplied. Accordingly, the fence may have an adverse effect on the safety or convenience of the northern neighbour; and
  - ii. It detrimentally and unduly affects the amenity of the adjoining property to the north and west.
- e. Remedial works required to bring all unauthorised works into conformity with this planning refusal (retaining walls, landfill and over-height fences), shall be completed in accordance with the Directions Notice and Notice of Breach issued on 18 November 2013.
3. Instructs the Administration to continue with compliance action as required.

## 1.2 Strategic Plan

KFA: Natural and Built Environment

## 2.0 Background

<b>Property address</b>		No. 110a (Lot 14) Victoria Avenue, Dalkeith (the <b>site</b> )
<b>Lot area</b>		852m <sup>2</sup>
<b>Zoning / Reserve</b>	<b>MRS</b>	Urban
	<b>TPS2</b>	Residential at R12.5 density

The subject site has a history (**Attachment 3**) relating to planning applications, neighbour disputes, compliance issues, unauthorised works, formal notices, and an appeal to the State Administrative Tribunal (**SAT**).

Of particular note is a SAT appeal, which relates to the formal notices that were served upon the landowner, but does not relate to any planning decisions that the City or Council have made. As a result of mediation, a retrospective planning application was lodged, which is the subject of this report.

The site has frontage to Victoria Avenue to the east, adjacent to a dwelling to the west, and adjacent to access legs to the south and north, as seen in the location plans below.



Figure 1 – Location Plan

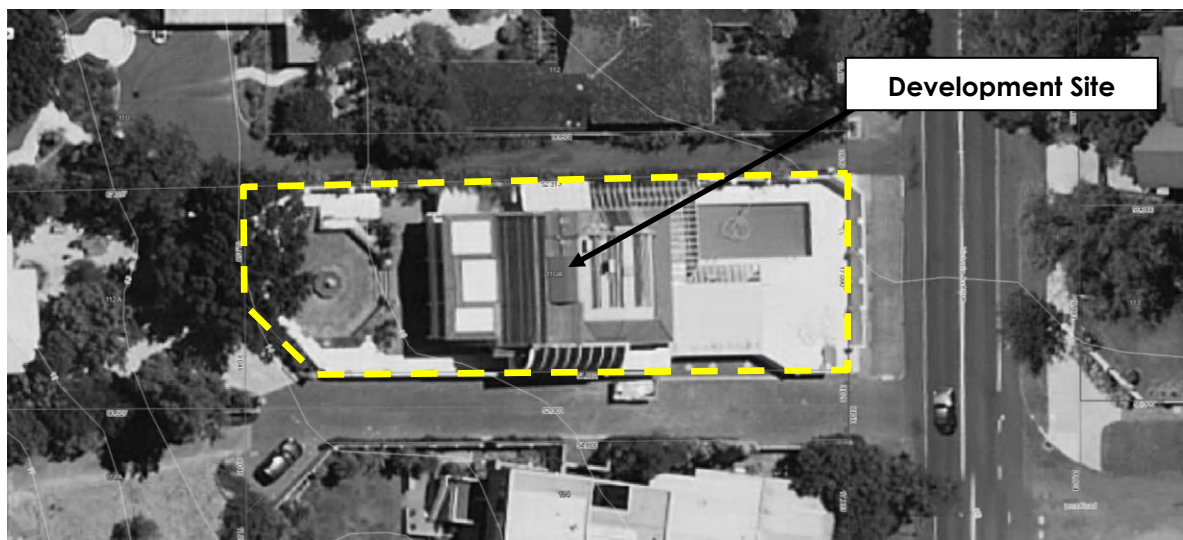


Figure 2 – Detailed Location Plan

The site currently features a single house and appurtenant structures, with the photographs in **Attachment 2** depicting the development, and its relationship with the surrounding built environment.

## 2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (**TPS2** or **Scheme**)
- Residential Design Codes of WA 2013 (**R-Codes**)
- City of Nedlands Fencing Local Law 2007 (**Fencing Local Law**)
- Council Policy – Fill and Fencing (**Fill and Fencing Policy**)
- Council Policy – Neighbour Consultation

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes  No   
 Required by City of Nedlands policy (Neighbour Consultation): Yes  No

### 3.2 How and when was the community consulted?

Community consultation period:	02 May – 23 May 2014
Three objections, with the results found in <b>Attachment 6</b> .	

### 4.0 Budget / Financial Implications

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

### 5.0 Risk Management

Not applicable.

### 6.0 Discussion

The proposal involves various unauthorised additions to a dwelling on the subject site, as depicted in the submitted plans (**Attachment 1**). In addition, the applicant's submission describes the proposal in more detail (**Attachment 5**). The proposal involves the following:

- a) Excavation in the front yard, and landfill in the rear.
- b) Retaining walls (existing masonry fences) along all boundaries.
- c) Modified masonry fences (additional courses) along all boundaries, including a solid front fence.
- d) A modified shape of the front fence in the south-eastern corner.
- e) A patio in the front yard.
- f) A portico in the side (southern) yard.
- g) Two patios and a pergola abutting the northern boundary.

Variations to the planning requirements are as follows:

- a) Retaining walls – on the boundaries in lieu of a 1.0 – 1.5m setback.
- b) Landfill – up to 1.0m in lieu of 0.5m.
- c) Visual privacy – raised viewing platforms along boundaries (south and west).
- d) Development within the Controlled Development Area (**CDA**) – retaining walls, landfill and dividing fences which are not as-of-right.
- e) Boundary walls (columns of the patios) – two walls proposed, but not as-of-right in R12.5 areas.
- f) Over-height fences – up to 3.1m in lieu of 1.8m.
- g) Front fence – solid in lieu of visually permeable.

In addition, community consultation has resulted in objections being received.



However, the neighbouring properties to the side (north) remain unaffected due to the suitable height of a screen fence (1.9m), and an abutting non-sensitive laneway.

- The landfill does not respect or respond to the natural features or ground levels as seen from adjoining properties, due to it being a significant amount of fill without any stepping / terracing (however it is not visible from the street).
- The height of the retaining wall and fence from the neighbouring property is up to 3.1m, which is substantial. It abuts a driveway, carport and landscaping (see **Figure 3** above). In the vicinity of the bedroom window, the height of the structure is considered inappropriate; but appropriate elsewhere.
- The retaining walls effectively use the space by having the same levels as the house.
- The retaining walls were constructed with masonry materials, however cracks and leaning has been detected, with a complaint being received. The applicant has so far refused to provide the required structural report. Accordingly, the fence may have an adverse effect on the safety or convenience of the western neighbour.
- Over-height fence agreements from affected neighbours have not been supplied.
- Given the above, the amenity of adjoining neighbours and the surrounding area are adversely affected.
- Objections from the neighbour regarding the landfill being supported due to the abovementioned points.

In this instance, it is considered that this section of the proposal does not comply with the design principles, or provisions within the Scheme and policy. Therefore, this aspect of the proposal is supported by the City, subject to restrictive conditions to modify the structures. Further action will also be undertaken separately, upon receipt of the structural report.

### **6.1.2 Side Yard (north) – pergola, patios, boundary walls and over-height dividing fence**

In relation to the pergola, as the R-Codes does not require a boundary setback, no variations have been identified.

In relation to the two patios, as they abut a shared driveway, half of the access leg can be used to calculate the boundary setback, resulting in no variations.

In relation to the retaining and landfill immediately adjacent to the dwelling, it was previously approved, and does not require assessment.

In relation to the boundary walls (patio columns) and over-height fence, and in response to the design principles, and Scheme and policy provisions (**Attachment 4**, sections d and f), the following is considered:

- To the north, the structures adjoin a non-sensitive driveway and carport, but also a sensitive bedroom window. To the northwest, the structures adjoin non-sensitive landscaping (see **Figure 3** above). The structures are not visible from the street due to distance.

- As the fences are over-height, there are no overlooking or privacy issues.
- Direct sun is available to major openings and outdoor living areas of the neighbouring properties, due to modest and considerable distances from the structures of this proposal.
- Adequate sun and ventilation will be available to the neighbouring property, due to the abutting driveway. As the structures are on the house's leeside (downwind) of the prevailing winds, ventilation will always be unfavourable for the two-storey house.
- A written agreement from the neighbours, and certification of structural integrity has not been supplied. Accordingly, the fence may have an adverse effect on the safety or convenience of the northern neighbour.
- Given the above, the amenity of adjoining neighbours and the surrounding area is not adversely affected, except where abutting the neighbour's bedroom window.
- Objections from the neighbour regarding the impacts of bulk (abutting the window) being supported due to the above points. Structural objections are being actioned by the City's Building department.

In this instance, it is considered that components of this section of the proposal do not comply with the design principles (the fence where abutting the neighbour's bedroom window), whereas other components comply (the patio and fences elsewhere). Therefore, this aspect of the proposal is supported by the City, subject to restrictive conditions to modify a portion of the fence.

### **6.1.3 Front yard (east) – patio, excavation, retaining wall, and solid and over-height front fence**

In relation to the easterly wing of the central patio, it is well set back from all boundaries, and does not involve any variations.

In relation to the excavation in the front yard, it is no greater than the allowable 500mm, and does not involve any variations.

In relation to the retaining wall, and over-height front fence, the following is considered in response to the design principles, Scheme and policy provisions (**Attachment 4**, sections a, d and g):

- Surveillance of the street is possible from the upper floor balcony, thereby minimising opportunities for concealment and entrapment.
- Car-parking, landscaping and utilities are accommodated for.
- The property does not front a distributor or arterial road, therefore traffic, noise and privacy impacts are not relevant.
- This aspect of the proposal complies with visual privacy and open space requirements.
- The built form of the fence is typical in Victoria Avenue, and therefore the fence will not adversely impact upon the character of the streetscape.
- No easements for essential service corridors have been identified.
- No objections have been received from neighbours.

In this instance, it is considered that this section of the proposal complies with the design principles and local law provisions, and therefore is supported by the City.

#### **6.1.4 Side yard (south) – portico**

As the portico on the south side abuts a private driveway, half of the laneway can be used for the setback calculation (2.0m), resulting in no variations being identified.

## **6.2 General Planning Considerations**

### **6.2.1 Consideration of applications – CDA**

The following is considered in response to the CDA provision in the Scheme (**Attachment 4**, section h):

- The nature and intensity of the proposal (hours of operation, illumination, emission and the effect the locality) is typical.
- The results of the tangible planning measures (setbacks, open space, landscaping, car-parking, height and plot ratio) are adequate, except the height of the retaining walls and landfill in the rear yard.
- The results of the subjective planning measures (form, layout, appearance and material) are adequate, except the height of the retaining walls and landfill in the rear yard.
- The results of the access-related planning measures (vehicular and, pedestrian access, traffic and vehicle flows) are typical.
- Loads on essential services are typical.
- The proposal is typical and will service the needs of the district's residential population and meet the intentions for the locality.
- The proposal does not involve vegetation.
- No other relevant issues have been identified.

Accordingly, this section of the proposal is not supported by the City unless suitably modified via the recommended conditions.

### **6.2.2 Preservation of amenity**

The following is considered in response to the amenity provision in the Scheme (**Attachment 4**, section i).

The aspects of this proposal that are not supported by the City will adversely affect the amenity of the surrounding area; and the external appearance of the development is unacceptable (for the aforementioned reasons). Traffic congestion and noise is typical for residential development.

Accordingly, this section of the proposal is not supported by the City unless suitably modified via recommended conditions.

### **6.2.3 Orderly and proper planning**



The following is considered in response to the orderly and proper planning provision in the Scheme (**Attachment 4**, section j).

The proposal does not comply with Scheme provisions, with discretionary variations which are not acceptable (for the aforementioned reasons).

Accordingly, it is considered that this section of the proposal does not represent orderly and proper planning, and is not supported by the City unless suitably modified via recommended conditions.

#### **6.2.4 Consideration of applications – landuse**

The following is considered in response to the landuse provision in the Scheme (**Attachment 4**, section k). The proposal does not involve changing the land use, being previously approved as a single house.

### **7.0 Conclusion**

The subject site has a long history, including a current SAT appeal on the serving of formal notices. As a result, a retrospective planning application was lodged, which is the subject of this report.

The proposal involves many unauthorised structures, with multiple planning variations. Noting the age of some of the original structures, and the lack of planning and building approvals, there are indications of structural issues, which the applicant is unwilling to address.

Some aspects of the proposal do not satisfy the relevant requirements, due to unacceptable impacts upon neighbouring properties; however some aspects are justified.

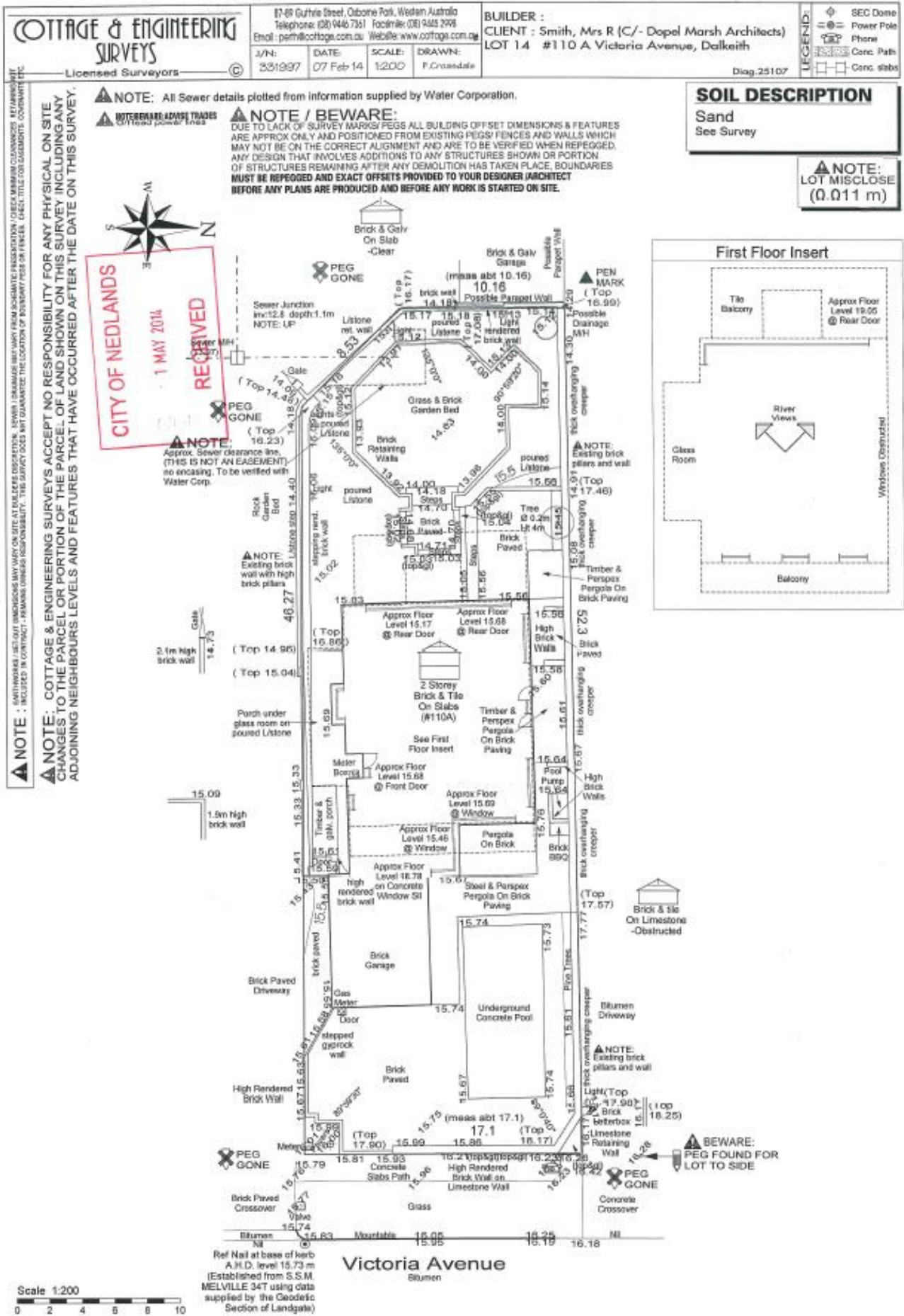
As a result, the recommendation is to approve the acceptable variations, refuse the unacceptable variations, modify some of the structures with approval conditions, and continue with compliance action.

### **8.0 Attachments**

1. Plans (survey, site and elevations)
2. Photographs of the site and surrounds
3. Background
4. Variation clauses
5. Applicant's submission
6. Neighbour consultation results



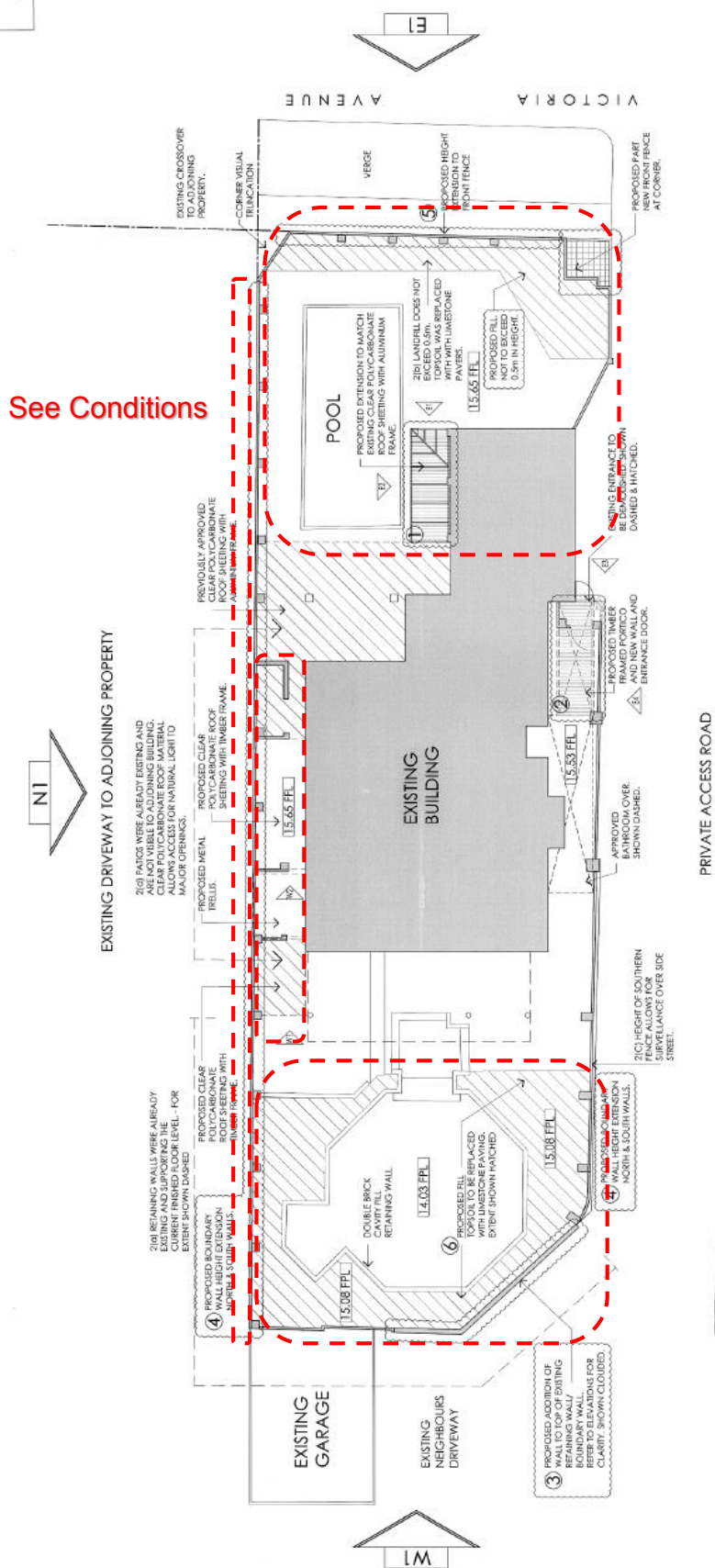
No. 110a Victoria Av, Dalkeith



PD23.14 - Attachment 1 - Plans (survey, site and elevations)

No. 110a Victoria Av, Dalkeith

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See Conditions

THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE CORRESPONDENCE FROM MATT STUART OF THE CITY OF NEDLANDS ON THE 18th NOVEMBER, 2013 (REFERENCE: V1/110A\_M13/32948)

- NOTES
1. PROPOSED EXTENSION TO ALREADY APPROVED PATIO (REFER TO E1 AND E2 ON DWG NUMBER DA 2.0 AND NEW WALL AND ENTRY DOOR.
  2. PROPOSED ADDITION OF WALL TO TOP OF EXISTING RETAINING WALL. REFER TO ELEVATIONS FOR CLARITY. NORTHERN AND SOUTHERN BOUNDARY.
  3. PROPOSED HEIGHT EXTENSION TO TOP OF FRONT BOUNDARY FENCE AND ALTERATION TO CORNER. PROPOSED FILL TO GARDEN BED AT REAR AND REPLACED WITH LIQUID LIMESTONE.
  4. PROPOSED EXTENSION TO MATCH EXISTING CLEAR POLYCARBONATE ROOF SHEETING WITH ALUMINUM FRAME.
  5. PROPOSED FILL TO EXCEED GROUND LEVEL WITH LIQUID LIMESTONE PAVING. PROPOSED FILL NOT TO EXCEED 0.5m IN HEIGHT.
  6. PROPOSED ADDITION OF WALL TO TOP OF EXISTING BOUNDARY WALL. REFER TO ELEVATIONS FOR CLARITY. SHOWN CLOUDED.

AMENDED - 17-04-2014

JOB NO. 14.10  
DATE: JAN 2014  
DA 01  
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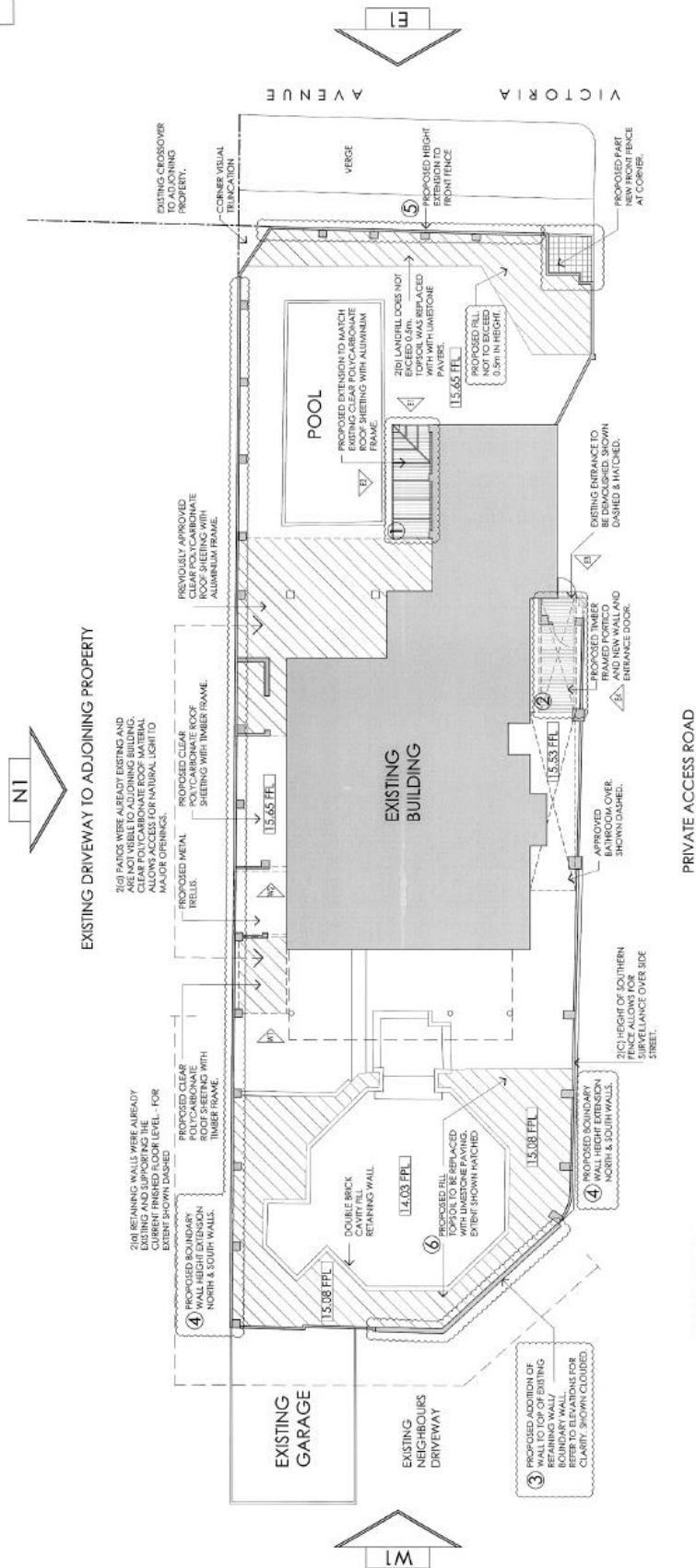
ALTERATIONS & ADDITIONS  
SMITH RESIDENCE  
110A VICTORIA AVE, DALKEITH WA

SITE & GROUND FLOOR PLAN  
Scale 1:100  
0 5 10m

DOEPEL  
MARSH  
architects

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  5. PROPOSED FILL TO EXCEED 0.5m IN HEIGHT WITH LIQUIDSTONE PAVING.
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AMENDED - 17-04-2014

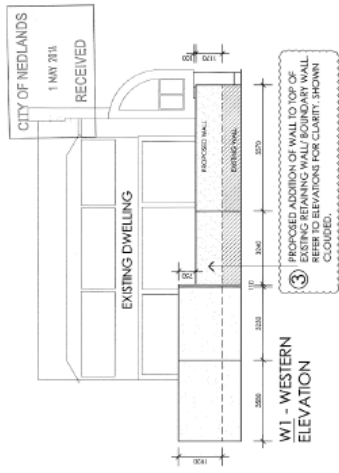
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110A VICTORIA AVE, DALKEITH WA

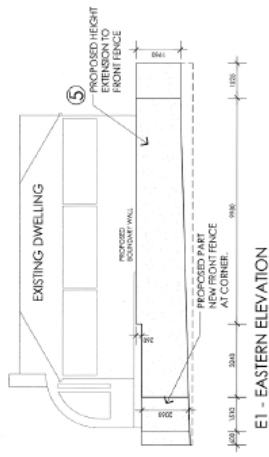
SITE & GROUND FLOOR PLAN



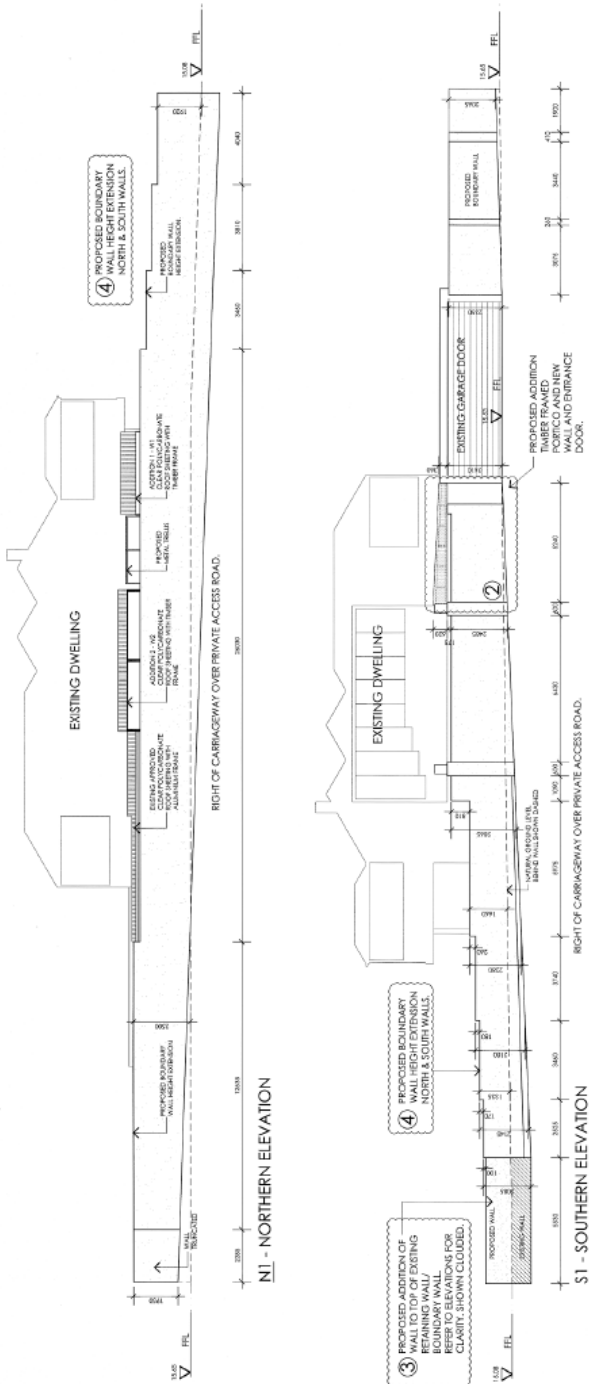
DOEPEL  
MARSH  
architects



W1 - WESTERN ELEVATION

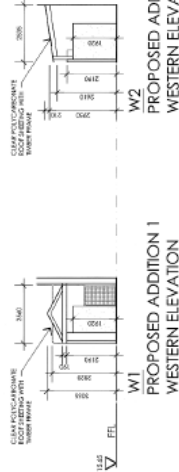


E1 - EASTERN ELEVATION

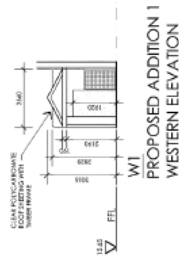


N1 - NORTHERN ELEVATION

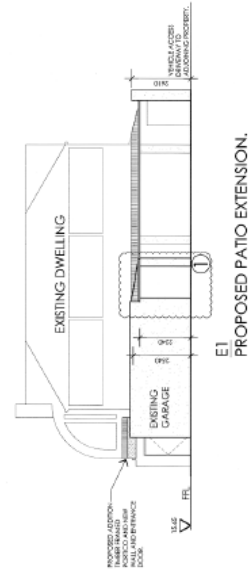
S1 - SOUTHERN ELEVATION



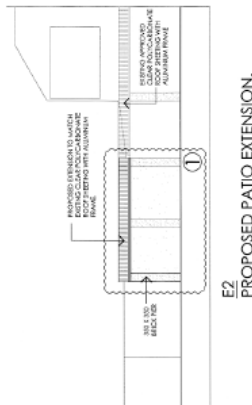
W2 - WESTERN ELEVATION



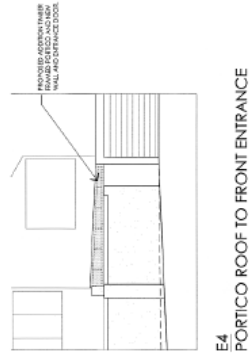
W1 - WESTERN ELEVATION



E1 - PROPOSED PATIO EXTENSION.



E2 - PROPOSED PATIO EXTENSION.



E4 - PORTICO ROOF TO FRONT ENTRANCE



E3 - PORTICO ROOF TO FRONT ENTRANCE

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PROPOSED ADDITION OF WALL TO TOP OF EXISTING RETAINING WALL BOUNDARY WALL REFER TO ELEVATIONS FOR CLARITY. SHOWN CLOUDED.

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PROPOSED ADDITION OF WALL HEIGHT EXTENSION NORTH & SOUTH WALLS.

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PROPOSED ADDITION 2 WESTERN ELEVATION

PROPOSED ADDITION 1 WESTERN ELEVATION

PROPOSED PATIO EXTENSION

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- NOTES: 1. PROPOSED EXTENSION TO ALREADY APPROVED PATIO (REFER TO E1 AND E2 ON DWG NUMBER DA 2.0. 2. PROPOSED NEW TIMBER PORTICO AND NEW WALL AND ENTRY DOOR. 3. PROPOSED ADDITION OF WALL TO TOP OF EXISTING RETAINING WALL. REFER TO ELEVATIONS FOR CLARITY. 4. PROPOSED HEIGHT EXTENSION TO TOP OF FENCE ON NORTHERN AND SOUTHERN BOUNDARY. 5. PROPOSED HEIGHT EXTENSION TO TOP OF FRONT BOUNDARY FENCE AND ALTERATION TO CORNER.

THIS DRAWING IS TO BE READ IN CONJUNCTION WITH THE CORRESPONDENCE FROM MATT STUART OF THE CITY OF NEDLANDS ON THE 18th NOVEMBER, 2013 (REFERENCE: V/11/110A\_M13/32948)

ALTERATIONS & ADDITIONS SMITH RESIDENCE 110A VICTORIA AVE, DALKEITH WA. Includes architect logo (DOEPEL MARSH architects), scale bar (1:100), and job details (JOB NO. 14.10, DATE: JAN 2014, DA 02).



No. 110a Victoria Av, Dalkeith



Site (Southeast) – Before Unauthorised Works



Site (Southeast) – Modified Corner and Additional Height of the Front Fence

No. 110a Victoria Av, Dalkeith



Site (South) – Modified Portico



Site (Southern Boundary) – Modified Heights to Side Fence



No. 110a Victoria Av, Dalkeith



Site (Rear Yard, Southwest) – Retaining Walls, Landfill and Over-Height Fences



Site (Rear Yard, West) – Retaining Walls, Landfill and Over-Height Fences



No. 110a Victoria Av, Dalkeith



Site (Rear Yard, Northwest) – Retaining Walls, Landfill and Over-Height Fences



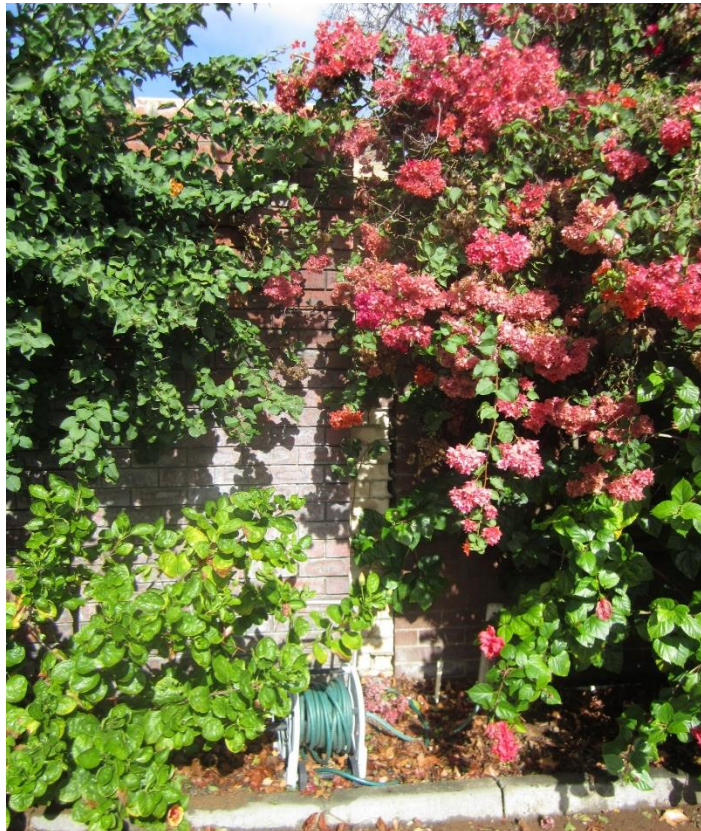
Site (Rear Boundary, Southeast) – Excellent Surveillance (Human Perspective)



No. 110a Victoria Av, Dalkeith



Site (Western Boundary) – Modified Height to Rear Fence



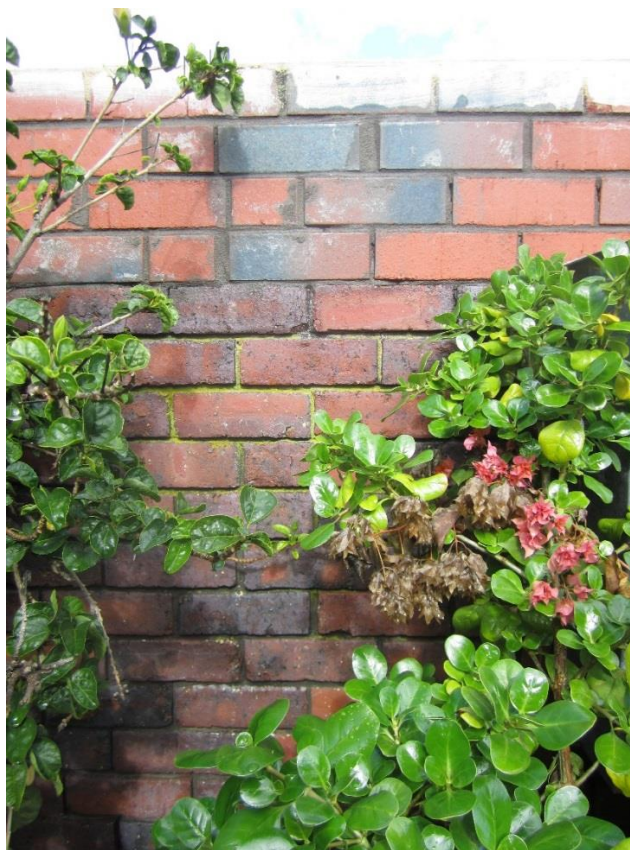
Site (Northern Boundary) – Efflorescence Leaching From Landfill



No. 110a Victoria Av, Dalkeith



Neighbour (North) – Leaning Section of Side Fence



Site (Northern Boundary) – Modified Height to Side Fence  
(fresher mortar in top five courses)



No. 110a Victoria Av, Dalkeith



Neighbour (North) – Bedroom Window



Site (Side Yard, Northeast) – Patios and Pergola

No. 110a Victoria Av, Dalkeith



Site (Front Yard) – Additional Wing to Patio

<b>Background</b>	
<b>Date</b>	<b>Event</b>
Pre-2013	<p><u>Various Approvals</u></p> <p>The City has issued several planning and building approvals for various structures on the site, including the dwelling (albeit heavily modified since).</p>
June-2013	<p><u>Neighbour Complaints</u></p> <p>The City received written complaints, regarding a gate and light spill from neighbouring properties allegedly affecting the site. An investigation revealed that no further action was required of the neighbours or the City.</p> <p>Of particular note is the gate, which was erected in the private laneway to the south. However it has been firmly established from the Certificates of Title, that the gate is located on the private property of its owner, and not common property. Furthermore, the City is not a party to the easement (a right of carriageway).</p> <p>As a result of the initial complaints, the City received counter-complaints, which identified several unauthorised structures on the site, which required the landowner to resolve.</p>
Nov.-2013	<p><u>Directions Notice &amp; Notice of Breach</u></p> <p>After lengthy discussions, the landowner was unable to demonstrate the various structures had planning approval, and was unwilling to lodge retrospective applications or physically alter the structures.</p> <p>As a consequence, a Directions Notice (under the Planning and Development Act) and a Notice of Breach (under the Local Government Act) were issued to the landowner.</p>
Nov.-2013	<p><u>SAT Appeal</u></p> <p>The landowner lodged an application to the SAT to appeal the notices, which resulted in many mediation sessions.</p>
Dec.-2013	<p><u>Retrospective Planning Application</u></p> <p>As a result of the mediation sessions, the planning application that is the subject of this report was lodged, however further investigation requested of the applicant revealed additional unlawful works.</p>

No. 110a Victoria Av, Dalkeith

May-2013	<u>Sufficient Plans</u> The City received sufficient plans required to process the application.



<b>Variation Clauses</b>
<b>a. Retaining walls</b>
<p>R-Codes design principle P8 requires the following:</p> <p><i>“Retaining walls that result in land which can be <u>effectively used</u> for the benefit of residents and <u>do not detrimentally affect adjoining properties</u> and are designed, engineered and landscaped having due regard to clauses 5.3.7 (<u>site works</u>, see below) and 5.4.1 (<u>visual privacy</u>).”</i></p> <p>Further to this, the design principles for site works and visual privacy are found below.</p>
<b>b. Landfill</b>
<p>R-Codes design principles P7.1 – 7.2 (site works) requires the following (emphasis added):</p> <p><i>“Development that considers and <u>responds to the natural features</u> of the site and requires <u>minimal excavation/fill</u>.</i></p> <p><i>Where excavation/fill is necessary, all finished levels <u>respecting the natural ground level</u> at the boundary of the site and the adjoining properties and as viewed from the street.”</i></p> <p>Furthermore, the Fill and Fencing Policy requires the following (emphasis added):</p> <p><i>“All fill abutting a lot boundary <u>shall be retained by the use of masonry retaining walls</u> or by other methods approved by the Manager of Building Services.”</i></p>
<b>c. Visual privacy</b>
<p>R-Codes design principles P1.1 –1.2 require the following (emphasis added):</p> <p><i>“Minimal direct <u>overlooking of active habitable spaces and outdoor living areas</u> of adjacent dwellings achieved through:</i></p> <ul style="list-style-type: none"><li>• <i><u>building layout and location</u>;</i></li><li>• <i>design of <u>major openings</u>;</i></li><li>• <i><u>landscape screening</u> of outdoor active habitable spaces; and/or</i></li><li>• <i>location of <u>screening</u> devices.</i></li></ul> <p><i>Maximum visual privacy to side and rear boundaries through measures such as:</i></p> <ul style="list-style-type: none"><li>• <i>offsetting the location of ground and first floor windows so that <u>viewing is oblique rather than direct</u>;</i></li></ul>

- building to the boundary where appropriate;
- setting back the first floor from the side boundary;
- providing higher or opaque and fixed windows; and/or
- screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).”

#### **d. Over-height dividing fences**

Scheme clause 5.6.4 requires the following (emphasis added):

*“...Council may refuse to grant approval of a screen wall or fence higher than 1.8m above natural ground level if in the opinion of the Council such additional height would adversely affect the amenity of the occupants of the adjoining lot.”*

In addition, the Fencing Local Law (clauses 13, 15) requires the following (emphasis added):

##### *“Engineer’s Certificate*

*...an authorised person may, in respect of any application, first require that the applicant provide to the City, at the cost of the applicant, a certificate from a practicing structural engineer to certify that the proposed fence when constructed in accordance with the approved plans and specifications will be capable of bearing any reasonable loads which might be imposed on the fence.”*

##### *“General Discretion of the Local Government*

(1) *...the City may approve the erection or repair of any fence which does not comply with the requirements of this local law.*

(2) *...the City may consider... whether the erection or retention of the fence would have an adverse effect on the safety or convenience of any person.”*

Furthermore, the Fill and Fencing Policy (Dividing Fences clause 3) requires the following (emphasis added):

*“Any dividing fencing which does not meet the above requirements (a maximum height of 1.8m from either side) will only be considered if:*

*a) ...written agreement...from the owners of the adjoining lot; and*

*b) the development will not have a likely impact upon neighbouring amenity.”*

#### **e. Development within the CDA**

Scheme clauses 5.10.2 – 5.10.3 require the following (emphasis added):

*“...(a) the Council shall consider the effect of the development on the amenity of the surrounding area, the visual effect of the development as perceived from the*



Swan River and the effect on the amenity of the parks and recreation reserves in that area...;

- (b) ...the applicant shall furnish such further information, as deemed necessary...;
- (c) ...the amenity of the area may be detrimentally affected by the proposal.

Within a Controlled Development Area the following provisions shall apply:-

- (a) *the Council shall not permit the ground level of any portion of any lot to be raised by an amount greater than 0.5m above natural ground level whether by means of a retaining wall or not, unless it is satisfied that such changes in level will not unduly affect the amenity of the area including amenity of neighbouring properties.*
- (b) *...rear setback applicable to boundaries of lots so delineated shall be 7.5m. Where the 7.5m setback is a front boundary the provisions of clause 5.3.3 (a) shall apply and the setback shall be 9.0m unless varied by Council."*

#### **f. Boundary walls**

R-Codes design principle P3.2 requires the following (emphasis added):

*"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 (wall setbacks, see below);*
- *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."*

Further to this, design principle P3.1 (wall setbacks) requires the following (emphasis added):

*"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."*

**g. Front fences**

Fencing Local Law clause 2 requires the following (emphasis added):

*“Any fencing which does not meet these requirements shall:*

- a) meet the performance criteria of Clause 6.2.5 (Street walls and fences, see below) of the RCodes;*
- b) be assessed in terms of the developments likely impact upon streetscape; and*
- c) be advertised in accordance with Council’s Neighbour Consultation – Policy 6.4.”*

Further to this, R-Codes design principle P4 (previously known as the performance criteria) requires the following (emphasis added):

*“Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) (Street surveillance, see below) and enhance streetscape (as per clause 5.1.2) (street setback, see below), with appropriate consideration to the need:*

- for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and*
- for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial.”*

Further to this, R-Codes design principle P3 (street surveillance) requires the following (emphasis added):

*“Buildings designed to provide for surveillance (actual or perceived) between individual dwellings and the street and between common areas and the street, which minimise opportunities for concealment and entrapment.”*

Further to this, R-Codes design principle P3 (street setback) requires the following (emphasis added):

*“Buildings set back from street boundaries an appropriate distance to ensure they:*

- contribute to, and are consistent with, an established streetscape;*
- provide adequate privacy and open space for dwellings;*
- accommodate site planning requirements such as parking, landscape and utilities; and*
- allow safety clearances for easements for essential service corridors.*

*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.*”

#### **h. CDA considerations**

Scheme clause 6.4.2 (consideration of applications) states the following (emphasis added):

*“In respect of an application for planning approval made under Clause 6.3 (includes sites within the CDA) the applicant shall satisfy....*

- (a) the nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;*
- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;*
- (c) the form, layout, appearance and material of any building is in keeping with the existing character of the locality;*
- (d) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger;*
- (e) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;*
- (f) that any traffic generated must be capable of being accommodated within existing streets;*
- (g) that the development or use will not place excessive loads on existing or projected essential services;*
- (h) the proposed development or use is necessary to service the needs of the district's residential population and is otherwise generally in keeping with the Council's Town Planning intentions for the locality;*
- (i) the desirability or preserving (or replacing) existing trees and other vegetation contributing to the amenity or significant of the locality; and*
- (j) any other matter considered relevant by Council.”*

#### **i. Preservation of amenity**

Scheme clause 5.5.1 (Preservation of Amenity) states (emphasis added):

*“Without limiting the generality of Clause 6.5 the 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.”*

**j. Orderly and proper planning**

Scheme clause 6.5.1 (Determination by Council) states (emphasis added):

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

**k. Landuse considerations**

Scheme clause 6.4.1 (consideration of applications) states (emphasis added):

*“Without limiting the generality of Clause 6.5 the 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.”*



14.10  
31.01.2014

City of Nedlands +  
Rita Smith  
110A Victoria Avenue  
DALKEITH WA 6009

## 1. CORRESPONDENCE

### 1.1. 09.08.2013 – City of Nedlands (L Flanagan)

1. **Complaint**
  - a. Construction of Walls
  - b. Fill
  - c. Retaining walls
2. **Remedial action required to resolve the matter.**
3. **Options**
  - a. Demonstrate the additions have relevant Council Approval
  - b. Remove unauthorised walls, fill and retaining
  - c. Lodge a retrospective DA and submit an application for a Retrospective Building Approval Certificate
4. **Action required by 5pm 05.09.2013**

1.2. 03.09.13 – **City of Nedlands to R Smith**  
Confirming that they have not received reply to letter dated 09.08.2013, which is required to be submitted by 05.09.2013.

1.3. 10.10.2013 – **City of Nedlands to R Smith**  
Meeting with Jonathon and Council Officers, Flanagan and Stuart and acknowledgement information provided by him and agreed to defer further action until he supplied approvals granted for pre-existing fill and retaining at the rear.

City of Nedlands requires information by 5pm 25.10.2013 at 5:00pm.

1.4. 23.10.13 – **David Garnsworthy to City of Nedlands**



14.10  
31.01.2014

City of Nedlands +  
Rita Smith  
110A Victoria Avenue  
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1.4. 23.10.13 – **David Garnsworthy to City of Nedlands**



**1.5. 30.10.13 – City of Nedlands to David Garnsworthy**

Re: Unauthorised walls, fill and retaining:

- P + D Act 2005
- LG Act 1995 in relation to the site
- DA required for rear eastern fence and northern fence

**1.6. 18.11.13 City of Nedlands to R Smith**

1.
  - a. Direction of Notice
  - b. Notice of Breach – Illegal Development:
    - Retaining wall
    - land fill
    - over height fences
    - 4 patios
  - c. 28 days → Notice of Breach  
60 days → Directions Notice
2. **Direction to Alter/ Pull Down/ Remove Development or Apply for Review to SAT**
3. **Schedule**
  - a. Retaining walls in the rear yard, along northern, western and eastern boundaries.
  - b. Land fill in the rear yard along the northern, western and eastern boundaries.
  - c. Over height dividing fences along the northern, western and southern boundaries, and over height front fences in the front setback area.
  - d. Two patios on the northern portion.
4. **Particulars of Contravention**

**1.7. 25.11.13 – R Smith to SAT**

**1.8. 04.12.13 – R Smith to SAT confirming legal representation; David Garnsworthy**

**1.9. 12.12.13 – City of Nedlands to R Smith**  
Confirming noncompliance and confirming they have authority to issue a Retrospective Approval.

**1.10. 12.12.13 – SAT orders mediation 11.02.2014 at 10am.**



## 2. RESPONSE TO CITY OF NEDLANDS NOTICE OF BREACH

2.1. a) Use of Land for Development without Planning Approval being obtained.  
Noted.

b) Retaining walls contrary to R-Codes clause 5.3.8 – P8, C8.1

c) The retaining walls mentioned on the property were all constructed prior to R Smith purchasing the property. Refer to Sales Brochure.

2.2. There is no overlooking situation as the property is a common driveway and turning circle.

The Owner of 112A should remove the illegal fence and gates to inside their own property.

Refer to drawing plan.

2.3. The land legally within the property boundary of 112A adjacent to the western boundary of 110A is used as a vehicle driveway and garaging for vehicles, the garage being on the common boundary at the north western portion.

2.4. Notwithstanding that all retaining walls were constructed before R Smith owned the property, and the R-Codes State:

### 2.4.1 Cl. 5.3.8 – P8

#### **Design Principles**

Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to classes 5.3.7 and 5.4.1.

### 2.4.2 Cl. 5.4.1, P1.1

#### **Visual Privacy**

Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through; "landscape screening of outdoor active habitable space."

The adjoining property (112A) to the west, does not suffer loss of amenity as the area immediately adjacent is driveway and garaging.

Therefore the Design Principle at 5.4.1 holds as there is no overlooking to the active habitable spaces of the property to the west.

Also once the fence and gates are removed and relocated within the boundaries of 112A the situation is further resolved.

Cl. 5.3.7 – C7.3 states that within one metre of a lot boundary fill should be not more than 0.50m in height.





Notwithstanding the above (fill higher than 500mm) in this instance will have no adverse effect on the rear property, as the space is used for vehicle access manoeuvring and vehicle garaging and for the reasons given can be approved under the Design Principles.

**2.4.3 C8.2**

Allows retaining walls to be built up to lot boundaries for areas assigned to landscaping subject to Cl. 5.3.7 and 5.4.1

As demonstrated above the provisions of Cl. 5.3.7 and 5.4.1 have been met as there is no adverse loss of amenity as the area within the cone of vision (7.50m) is used as driveways and vehicle garage and also land included in the property which is in fact common property.

For the reasons set out above Particulars of 3b) retaining walls, can be justified under the R-Codes and can be approved.

**3. 3c) Land Fill contrary to R-Codes Cl. 5.3.7 – C7.1 – 7.3 and P7.1 – 7.2**

**3.1. 3c)1. Cl. 5.3.7**

Notwithstanding the requirements of this clause it has been demonstrated that no adverse loss of amenity has occurred.

Firstly a portion of the land adjoining is common property included within the appearance of No 112A and secondly the area adjacent to the boundary is not active habitable space, but driveway and garaging thus for the reasons mentioned above can be supported and approved.

Further the finished level inside the boundary wall above the area of fill and paving is to be used for landscaping, by way of landscaped planting in pots.

This is in accordance with Cl. 5.3.8 – C8.2 "to allow for an area assigned to landscaping" subject to 5.3.7 and 5.4.1 which have been complied with.

**3.2. 3d) Impact upon residual privacy is contrary to R-Codes Cl. 5.4.1 – C1.1 – 1.2 and P1.1 – 1.2**

There is no loss of visual privacy as the space adjoining the boundary of No 112A is driveway and garaging and not the active habitable outdoor living area, and also a portion is in fact Common Property driveway and turning area.

Therefore this particular has been justified and can be approved.

**3.3 3e) Front Fences**

The front fence was constructed prior to the purchase of the property by R Smith.

Properties in Victoria Ave (in the immediate vicinity) have many front fences higher than 1.20m, refer to photographs. Have all of these property owners been requested to either remove or obtain a Development Approval for their fences? If not why has R Smith been singled out by Council?

In fact the front fence to the adjoining property to the north, is higher than 1.20m, does that have a Development Approval and if not has Council requested it be removed or approved? That fence is also higher than 1.80m.

The fact is that this fence was constructed by others and until recently the City has accepted it.

R Smith demands that the City be consistent and approve the front fence situated at 110A or issue Compliance Notices to every property Owner in the City, where a front fence is higher than 1.20m.

**3.4 3f) Front fence contrary to R-Code Cl. 5.2.4 – C4 and P4**

**Visual Permeability**

**Streetscape**

Notwithstanding the R-Codes, the front fence was constructed by previous Owners of the property prior to the introduction of the R-Codes, therefore any requirement of the R-Code is not valid to something already constructed.

The front fence can be seen as a non-conforming building as set out in the Town Planning Scheme No 2 at Part IV – Non Conforming Use Cl. 4.1 and as such does not require approval (refer to Cl. 4.1.)

Also should the City not approve or accept the front fence "as is" will the Council request every other property Owner in the City to comply with the R-Code requirements, including the adjoining Owner to the North.

Further, there is a swimming pool located in the front of the 110A property within the front set back line which the Council must have approved. On that approval the front fence was shown which complied with the Swimming Pool Fences requirements.

The City would also have carried out a swimming pool fence inspection confirming that the front and side fences complied with the requirements.

At no time prior to the current circumstances has the matter been raised either as a pool fence generally or fence in particular.

For the reasons set out above the front fence does not have to comply with the R-Codes and can remain "as is".

**3.5 3g) Front fence not visually permeable**

For the reasons referred to in 3f) the fence "as is" does not have to comply with the R-Codes or any front fence policy as it was constructed before the R-Codes were published.

**3.6 3h) Patios**

Contrary to R-Codes Cl. 5.1.3 – C3.2 and P3.1 – Setbacks.

**3.7 Cl. 5.1.3 Lot Boundary Set back P3.1**

The adjoining property to the north has a vehicle driveway along the common boundary for the full length of the northern boundary of 110A Victoria Ave, therefore the patios can be supported and approved because under the Design Principles no adverse loss of amenity occurs because;

- The building bulk of 110A is lessened because of the driveway along the adjoining property.
- The boundary faces north to 110A and therefore no shadow is cast from any building on 110A over the adjoining northern property, therefore not affecting open space, direct sunlight or ventilation therefore Cl. 5.1.3 – P3.1 is not valid for refusing to approve the previously constructed patios.

Setbacks also minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

However in this instance the patios (not constructed by R Smith) increase the privacy to the adjoining property as they cut out any view into the adjoining property, further the adjoining property has a driveway for the full length of the 110A boundary eliminating any overlooking or privacy issues to active outdoor areas.

Further P3.2 of the Design Principles allow buildings (other than street boundaries) to be built up to boundaries where the space can be more effectively used for enhanced privacy and does not compromise the Design Principle 5.1.3 P3.1, which for the reasons given above can be supported.

The patios do not have any adverse impact on any amenity of the adjoining property as it has a driveway along the common boundary.

Further; Council has approved buildings with nil setbacks as evident at the rear of 110A where the garage to the adjoining property is built to the boundary.

Therefore the patios can be approved because they do not impact on the amenity of the adjoining property.



**3.8 3i) Retaining Walls and Fences**

All retaining walls and fences were constructed by others prior to the CDA and therefore must be treated as a non-conforming building under the TPS No 2.

The R-Codes definition states a "Building" is defined as:

"Any structure whether fixed or moveable, temporary or permanent, placed or erected on land, and the term includes dwellings and structures appurtenant to dwellings such as carports, garages, verandas, patios, out buildings and retaining walls."

Therefore in this instance the retaining walls are non-conforming as at LPS No2 Cl. 4.1

For the reasons set out above it is clear to see that no loss of amenity can be demonstrated to either adjoining property and therefore item 3i) is not valid.

- 3.9 3j) For the same reasons explained above 3j) is not valid as the development existing at 110A Victoria Ave does not adversely affect the impact of the occupants to either of the two adjoining lots, as both of these properties have driveways and garages to the common boundary respectively.**

**4. City of Nedlands Required Action**

**4.1(a) Pull down and remove two patios**

Response: The two patios can be approved under the Design Principles of the R-Codes for the reasons given above and therefore can remain "as is".

**4.2(b) Pull down and remove the retaining walls**

Response: For the reasons given above the retaining walls can be approved under the Design Principles of the R-Codes and therefore can remain "as is".

**4.3(C) Fences**

For the reasons given above all boundary fencing can remain as they are "Non-Conforming Building" under the LPS No 2 Cl. 4.1.

In the alternative all fences were constructed prior to the R-Codes and therefore the R-Codes do not apply.

**5. Conclusion**

The matters raised by the City of Nedlands can be supported under the Design Principles of the R-Codes or were constructed prior to the introduction of the R-Codes which would have no effect.

Further; the City of Nedlands has been aware for many years of what has been constructed.

Also there are hundreds of other properties in the City of Nedlands that have front and boundary fences similar to those situated at 110A Victoria Avenue, and remain with the approval of Council, 110A is no different and they should remain unchanged.

It has been demonstrated via the R-Codes that no loss of amenity has occurred to either adjoining property.

On that basis the City of Nedlands should approve retrospectively all the matters listed by them in their Notice of Breach.

DOEPEL MARSH ARCHITECTS

A handwritten signature in black ink, appearing to read 'Kim Doepel', written in a cursive style.

KIM DOEPEL  
B.ARCH, FRAIA

## Summary of Comments Received

### Issue: Western retaining wall and fence

- Privacy has been taken away, and trees have been illegally and maliciously interfered with. Request the fence be built-up to 1.65m above 110A's levels, using the same limestone materials. Otherwise, the backfill should be considerably reduced.

### Issue: Northern retaining wall and fence

- Support the fence, if the Council is satisfied that it is structurally sound and safe.
- 110a has substantially increased the height, without any consultation or consent.
- A structural engineer has inspected the structure on behalf of a neighbour, and is most concerned that the fence is unsafe. The footing may not be sufficient for its height and weight, no engineering consideration for the length, pillar size, soil weight, and the load from the attached patios
- The patios are structurally dependent upon the retaining wall and fence, adding to the problem.
- Efflorescence seeping through wall, indicating excess water, which may cause mould, movement and extra pressure against the fence.
- The fill is pushing the wall into neighbouring property, an area used for car-parking, occasional parties, and a play area for visiting children.
- Grave concerns regarding the engineering and stability of a max. 3.1m wall, causing probable damage to life and property.
- In breach of the Planning, Building and Dividing Fences legislation.
- In breach of the CDA provisions of the Scheme, and is a visual eye sore in its excessive bulk.
- The retaining being on the boundary results in a higher upper level of the dividing fence, causing bulk issues by being visually offensive/intrusive.
- Visual privacy issues resulting in the garden bed being paved.

### Issue: Northern patios

- Not set back as required.
- No gutters or drainage, resulting in water run-off into the neighbouring property.
- They extend into the neighbour's property (airspace).



- The visual impact is heightened due to the retaining wall and over-height fence.

**Issue: Rear balcony**

- Concerned about overlooking into neighbouring properties, including a master bedroom window. No screening.
- Unsure if it has any approvals
- Surveillance camera mounted on balcony overlooks neighbouring properties.

**Issue: Eastern fence**

Support the fence, if the Council is satisfied that it is structurally sound and safe.

**Issue: Southern fence**


- Support the fence, if the Council is satisfied that it is structurally sound and safe.
- It has two major cracks from top to bottom, and no liability is accepted.

**Issue: Magnitude**

The extent of the unauthorised works and complete disregard for the City and the planning system, which is why the penalties in the Act are substantial. Accordingly, prosecution should be continued to completion.

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

<b>PD24.14</b>	<b>No. 136 (Lot 8) Victoria Avenue, Dalkeith - Retrospective &amp; Prospective Additions (Various) to Single House</b>
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<b>Committee</b>	08 July 2014
<b>Council</b>	22 July 2014
<b>Applicant</b>	Rowe Group
<b>Landowner</b>	A Singh & B Kaur
<b>Officer</b>	Matt Stuart – Senior Statutory Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File Reference</b>	VI1/136-02 : DA13/352
<b>Previous Item</b>	Nil

## 1.0 Executive Summary

The subject site has a long history of planning applications, general compliance issues, unauthorised development, prosecution, and appeals to the SAT.

The proposal is for various retrospective and prospective additions to a single house in Dalkeith, with several variations to the planning requirements. The proposal involves some landscaping works at the front of the site, but the main aspect is the construction of the building (three of the four storeys) 1.5m closer to the rear boundary than that approved.

Neighbours have objected to some aspects of the proposal, with the main issue being the building 1.5m closer to the rear boundary, which results in the resultant loss of views and amenity. However, the neighbouring development is of a grand scale, with wide and open spaces to the river below (~8.0m lower). Given the broader context, the resultant impact is considered acceptable.

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

The proposal satisfies all of the relevant deemed-to-comply or design principles, and other planning requirements. As a result, the application is recommended for approval with conditions.

## **1.1 Recommendation to Committee**

**Council approves an application for retrospective & prospective additions (various) to a single house at No. 136 (Lot 8) Victoria Avenue, Dalkeith, in accordance with the application and amended plans received on 10 December 2014, with the following conditions:**

- a. The development shall at all times comply with the approved plans.**
- b. This planning approval only pertains to the following structures:**
  - i. The amended position of the building on the lot of the three upmost floor levels;**
  - ii. The air-conditioning housing on the north-western side;**
  - iii. The retaining walls and landscaping in the front (north-eastern) portion of the lot; and**
  - iv. Modifications to the roof above the rear balcony on the upper floor level.**
- c. This planning approval does not approve modifications to the internal size of the Boat Store on the Undercroft floor level, whereby the design in the 2007 planning approval still has affect.**
- d. A further planning application and approval from the City is required for any fill or retaining walls on the lot, other than that shown on the approved plans.**
- e. All existing and proposed visual privacy screens and/or obscure glass panels to Major Openings and/or Active Habitable Spaces (including the upper-floor front balcony) shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the Residential Design Codes 2013 (R-Codes). The structure(s) shall be installed and remain in place permanently, unless otherwise approved by the City.**
- f. The parapet walls shall be finished to a professional standard, to the satisfaction of the City.**
- g. Following a referral to the SRT, the following conditions are included:**
  - i. No fill, building materials, rubbish or any other deleterious matter shall be deposited on the foreshore Parks and Recreation reserve or allowed to enter the river as a result of the development;**
  - ii. Stormwater drainage shall be contained on site or connected to the local government stormwater drainage system; and**
  - iii. An open view fence with a height of 1.8 metres is to be retained along the boundary of the Parks and Recreation reserve and any gap or gateway that allows access through this fence to the boat store from the foreshore reserve shall be reduced in width to no more than 1.6m (see Advice Notes).**

**Advice Notes specific to this proposal:**

**All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block.**

- a. **The landowner is advised that all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.**
- b. **Following a referral to the SRT , the following Advice Notes are provided:**
  - i. **The applicant is advised that no vehicle access is permitted on the Parks and Recreation reserve;**
  - ii. **The applicant is advised that it is an offence under the *Swan River Trust Regulations 2007* to launch a vessel directly from a trailer into any waters in the Swan River except at a permitted launching place. Because vehicles and trailers cannot be used to access the boat store, a 1.6 metre wide gate to the public reserve will be sufficient for the hand launching of small water craft;**
  - iii. **The Swan River Trust recommends garden planting with local native species to reduce water usage and fertiliser requirements; and**
  - iv. **The applicant is advised that it is an offence under the *Swan River Trust Regulations 2007* to destroy, pull up, cut back, or damage vegetation that is on land in the Swan River Trust Management area – Penalty \$5,000.**
- c. **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.**

**1.2 Strategic Plan**

KFA: Natural and Built Environment

**2.0 Background**

<b>Property address</b>		No. 136 (Lot 8) Victoria Avenue, Dalkeith
<b>Lot area</b>		1,896m <sup>2</sup>
<b>Zoning / Reserve</b>	<b>MRS</b>	Urban
	<b>TPS2</b>	Residential at R12.5

The subject site has a long history of planning applications, general compliance issues, unauthorised development, prosecution, and appeals to the SAT

(Attachment 3). Of particular note is the prosecution, however the issues in that matter are not related to this proposal.

The site has a frontage to Victoria Avenue to the northeast, located adjacent to residential properties to the northwest and southeast, and abuts the Swan River reserve to the southwest, as seen in the location plans below.



Figure 1 – Location Plan

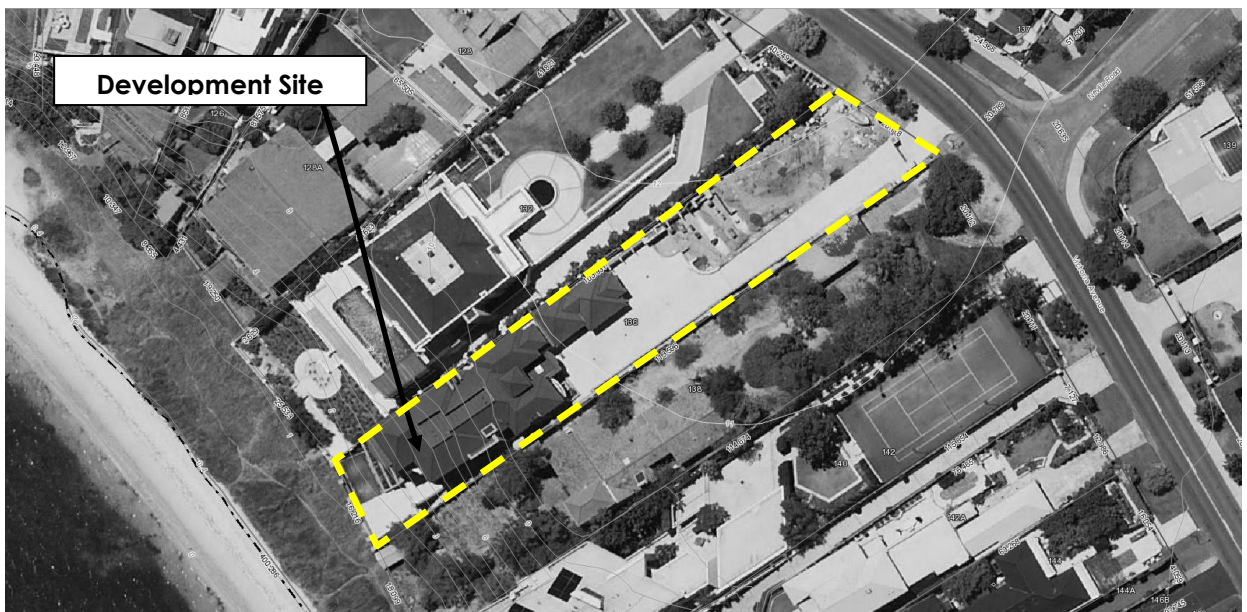


Figure 2 – Detailed Location Plan

The site currently features a four-storey single house, and the photographs in Attachment 2 depict the development onsite, and its relationship with the surrounding built and natural environments. Of particular note is the steep contours running down to the river, which is common to the neighbour properties.

## 2.1 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (TPS2 or Scheme)

- Residential Design Codes of WA 2013 (**R-Codes**)
- Council Policy – Fill & Fencing
- Council Policy – Neighbour Consultation

### 3.0 Consultation Process

#### 3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes  No

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

#### 3.2 How and when was the community consulted?

Community consultation period:	07 – 28 February 2014
Three (3) objections, with the results found in <b>Attachment 7</b> .	

### 4.0 Budget / Financial Implications

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

### 5.0 Risk Management

Not applicable.

### 6.0 Discussion

#### 6.1 Specific Planning Considerations

The proposal involves the retrospective approval of the three uppermost floors on the subject site, constructed 1.4m-1.5m closer to the rear boundary than the planning and building approvals. In addition, retrospective approval is sought for a roof extension over the upper balcony. Furthermore, significant retaining walls and landscaping are proposed at the front of the property.

As confirmed by a licenced surveyor, the submitted plans show the as-constructed location of the building and other proposed works (**Attachment 1**); whilst the applicant's submission describes the proposal in more detail (**Attachment 6**).

Variations to the planning requirements are:

- i. Retaining walls, landfill, development within the CDA, boundary walls, wall setbacks to both side boundaries.
- ii. Visual privacy to a side boundary.



The relevant considerations for variations to specific planning controls are found in **Attachment 4**, due to their lengthy nature and for ease of reading.

### 6.1.1 Side boundary (northwest) – retaining walls, landfill, boundary walls and wall setbacks

On the north-western side, there are a number of variations to the planning requirements:

- Retaining walls – nil setback in lieu of 1.5m.
- Landfill – up to 2.2m in lieu of 0.5m.
- Controlled Development Area – retaining walls and landfill over 0.5m not as-of-right.
- Boundary walls – two proposed, but not as-of-right in R12.5 areas.
- Wall setback – ground floor Study set back 0.9m in lieu of 1.5m.
- Wall setback – ground floor bulk set back 1.6m in lieu of 5.0m.
- Wall setback – upper floor air-con enclosure set back 1.1m in lieu of 1.4m.
- Wall setback – upper floor WIR-Balcony set back 1.6m in lieu of 3.5m.
- Wall setback – upper floor bulk set back 2.4m in lieu of 6.0m.

In relation to the wall setbacks, legal advice has been gained relating to the neighbour's two-storey screen (as seen in **Attachment 2**), which was installed due to bulk impacts, after the structures in this proposal were built unlawfully.

The advice is that bulk impacts from the building that was previously approved should again be approved, having regard to consistent decision-making. In contrast, the proposal should not gain an advantage of the screen due to its unlawful circumstances, so the unapproved bulk impacts should be assessed without regard to the screen.

Accordingly, the rearmost 1.5m of the building, without regard to the screen, is assessed in response to the design principles (**Attachment 4**, sections a-f) as follows:

- - The structures are not visible from local parks, but can be seen from the Swan River and its recreational foreshore reserve.
  - The building has considerable height and bulk, however in the context of the buildings in the area (e.g. the property to the northwest is 4.0m taller) the impact is not particularly unusual.
  - Furthermore, the Swan River Trust (**SRT**) have not raised any objections to this aspect of the proposal (see section 6.1.4).
- - Regarding retaining walls, a series of walls were constructed, due to the building being constructed closer to the river.
  - That said, the stepping down of the walls is extensive, whilst abutting non-sensitive areas of the neighbour's property. The impacted areas are set aside for the setback purposed, and are such that the steep contours preclude their frequent use (**Attachment 2**).
- - Regarding land fill and further to the above point, the fill is not visible from the street.

- Regarding boundary walls, the above points apply to the Pool Equipment room (which was not previously approved). The other boundary wall is to the garage, which was previously assessed and approved in a slightly different location.
  - The garage wall adjoins a major opening (and a garage) on the neighbouring property, however the window is set back a considerable 5.3m.
  - The wall is also only 1.65m above the neighbouring natural ground level, albeit major excavation has since occurred, resulting in the wall being only 400mm higher than the existing over-height dividing fence.
- Regarding wall setbacks, there are several variations (five) on two floors.
  - As the ground floor Study variation adjoins the abovementioned large 5.3m setback on the neighbouring property, the impact is acceptable, and the neighbour has no objections.
  - The other variations adjoin a lower pool area, and beyond that, three floors of the dwelling (Figure 3 below). The neighbour's dwelling is a considerable distance from the setback variations (20–28m); and its upper floor level is 4.0m higher than that in the proposal.
  - The neighbour's pool area is closer, but as with the rest of the development, it is of a grand scale with wide and open spaces to the river below (~8.0m lower). Given this broader context, the impact is considered acceptable.

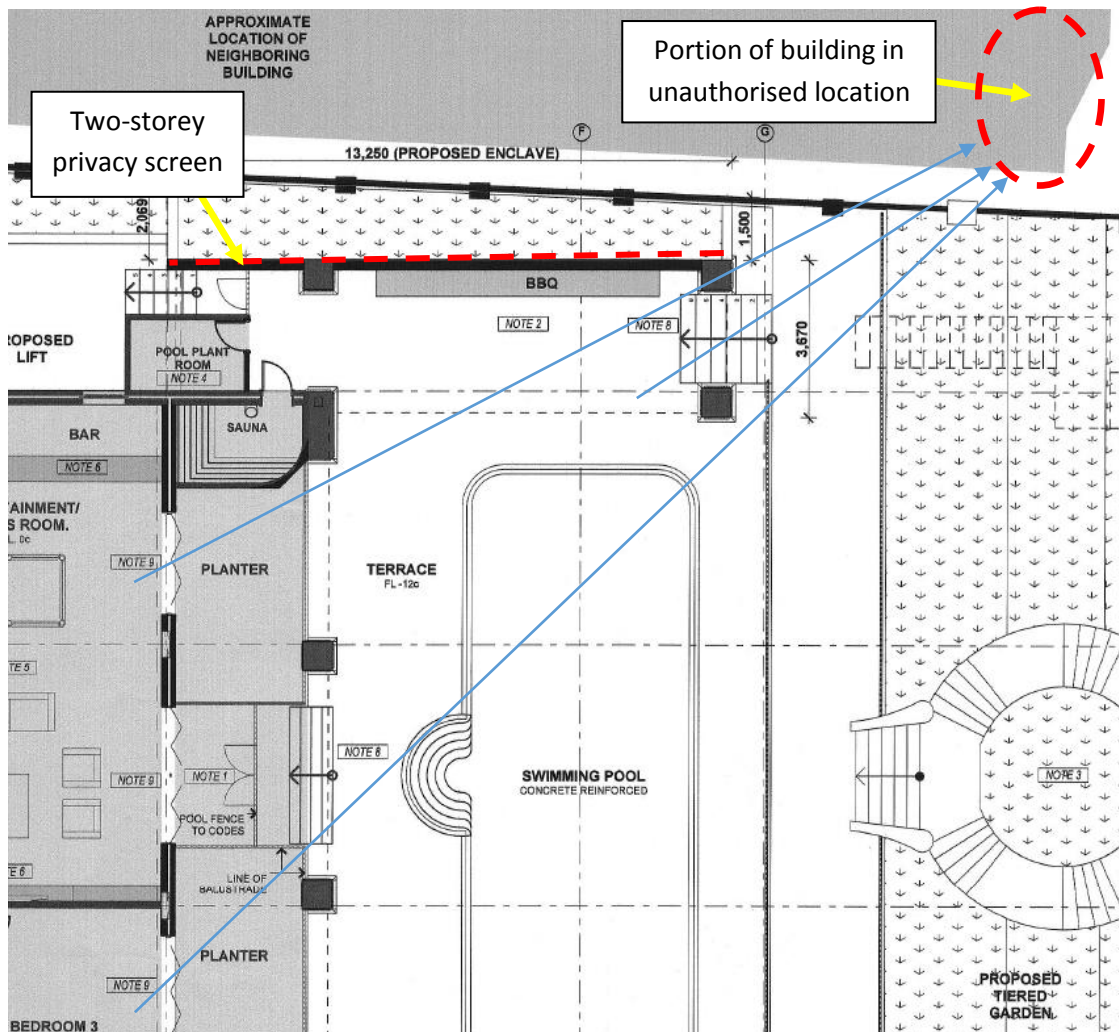


Figure 3 – Neighbour (Northwest) – Lower Pool Level and Ground Floor

- Furthermore, the upper floor air-conditioner enclosure variation abuts the aforementioned two-storey screen in the area where walls setback variations were previously approved, so the impact is acceptable.
- Excluding the rearmost 1.5m of the building, the majority of the upper floor bulk variation cannot be seen from the neighbouring property due to the two-storey screen; and the variation discussed above is at a lesser distance, so the impact is irrelevant.
- - Adequate sun and ventilation will be available to the site and neighbouring property, due to a significant separation of the buildings (~4.8m+) and the orientation of the lot.
- - Given the above, the amenity of adjoining neighbours and the surrounding area is not reasonably adversely affected.
- - Objections from the neighbour are not supported due to the above points.

In this instance, it is considered that this aspect of the proposal complies with the design principles, and therefore is supported by the City.

### 6.1.2 Side boundary (southeast) – landfill and wall setbacks

On the south-eastern side, there are a number of variations to the planning requirements:

- Landfill – maximum 1.1m in lieu of 0.5m.
- Controlled Development Area – landfill over 0.5m not as-of-right.
- Wall setback – lower floor *uncovered* Outdoor Living Area set back 1.4m in lieu of 3.0m.
- Wall setback – lower floor *undercover* Outdoor Living Area set back 1.4m in lieu of 3.0m.
- Wall setback – ground floor bulk set back 1.6m in lieu of 3.2m.

The following is considered in response to the design principles (**Attachment 4**, sections b, d, f):

- - The structures are not visible from local parks, but can be seen from the Swan River and its recreational foreshore reserve. The building has considerable height and bulk, however in the context of the buildings in the area (e.g. the property to the northwest is 4.0m taller), the impact is not particularly unusual. Furthermore, the Swan River Trust (**SRT**) have not raised any objections to this aspect of the proposal (see section 6.1.4).
- - Regarding landfill, the southern elevation of the proposal features fill and excavation, with the majority being the latter. Where land fill is proposed, it is only a modest portion of the site works. It is not visible from the street, and abuts the neighbour's non-sensitive open space with steep contours running down to the river (**Attachment 2**).
- - Regarding wall setbacks, the dwelling for this proposal is positioned on the rear third of the site, whereas the neighbouring property features a dwelling that is central to the block. Accordingly, the impact of the proposed building

bulk upon the neighbour's abutting non-sensitive open space will be acceptable.

- - Adequate sun and ventilation will be available to the site and neighbouring property, due to the abutting non-sensitive open space.
- - Given the above, the amenity of adjoining neighbours and the surrounding area are not adversely affected.
- - Objections from the neighbour are not supported due to the above, noting that planning approval for the neighbours dwelling has yet to be gained.

In this instance, it is considered that this aspect of the proposal complies with the design principles, and therefore is supported by the City.

### **6.1.3 Visual privacy setback (northeast)**

On the upper floor, the front balcony was previously approved, however the location is 1.4-1.5m closer to the river. Accordingly, a new assessment is required.

The northern side of the balcony has an inaccessible portion for architectural reasons, which does not require further consideration.

Beyond that is an accessible balcony, which on plan will have a restricted 'cone of vision' due to an opaque glass screen. The resultant overlooking will be on an extensive front yard and driveways. However, a photograph of the site depicts a gap between the screen and the column (**Attachment 2**). As the neighbouring property has several Major Openings in this area, the screen will not comply with the design principle (**Attachment 4**, section c) and therefore requires modification.

Subject to a suitable condition to increase the size of the screen, it is considered that this aspect of the proposal will comply with the design principle, and therefore is supported by the City.

### **6.1.4 Rear Setback**

The rear setbacks of the building complies with the Scheme's 7.5m requirement, and the SRT's 10.0m requirement with concession granted (by the Trust) for minor retaining walls to garden beds on the lowest floor. It is considered that this aspect of the proposal complies with the setback requirements, and therefore is supported by the City.

### **6.1.5 Boat store – objection from the Swan River Trust**

The SRT was consulted as the property abuts the Swan River reserve. The SRT has communicated to the applicant several times regarding restricting the size of the boat store and gate, because all craft must be physically carried to the water over sensitive land and vegetation (**Attachment 5**).

The SRT's position is that a 1.8m wide gate on the boundary is required, or the size of the boat store must physically restrict the size of boats that will fit. In late-2013, the City inspected the boat store and sighted a dividing wall, however the latest set of

plans do not show any barrier. The applicant suggested that it be a drafting error and a condition be imposed to resolve this issue.

Subject to a suitable condition to restrict the internal size of the Boat Store, it is considered that this aspect of the proposal will comply with the SRT requirements, and therefore is supported by the City.

## 6.2 General Planning Considerations

### 6.2.1 Consideration of applications – CDA

The following is considered in response to the CDA provision in the Scheme (**Attachment 4**, section g):

- The nature and intensity of the proposal (hours of operation, illumination, emission and the effect the locality) is typical.
- The results of the tangible planning measures (setbacks, open space, landscaping, car-parking, height and plot ratio) are adequate (see section 6.1.1).
- The results of the subjective planning measures (form, layout, appearance and material) are adequate (see section 6.1.1).
- The results of the access-related planning measures (vehicular and pedestrian access, traffic and vehicle flows) are typical.
- Loads on essential services will be typical.
- The proposal is typical, and will service the needs of the district's residential population and meet the intentions for the locality.
- The proposal does not involve vegetation.
- No other relevant issues have been identified.

Accordingly, this section of the proposal is supported by the City, subject to the recommended conditions.

### 6.2.2 Preservation of amenity

The following is considered in response to the amenity provision in the Scheme (**Attachment 4**, section h).

The northern neighbour's consultant has submitted a possible design change, to truncate the rear of the building to provide for more favourable views, impact of bulk and general amenity.

The submission cites State Administrative Tribunal (**SAT**) case law *Robert Baccala and the City of Fremantle [2005] WASAT 55 (Baccala)*, which demonstrates that Councils can consider views with 'amenity' clauses, such as TPS2 cl. 5.5.1 (and cl. 6.4.1, 6.5.1). However it should be noted that the SAT also considered the City of Fremantle's Town Planning Scheme No. 3 comprehensive clauses specifically pertaining to views (in part) (emphasis added):



*"16. In determining any application the Council shall have regard to ...the preservation of the amenities of the locality ...and may refuse its consent, or may grant its consent subject to such conditions, if any, it may deem fit."*

*"21. Unless the context requires otherwise, the following terms have the meanings indicated: ...*

*"amenities" means the sum of all the expectations of the residents concerning the quality of their environment including its pleasantness, character, beauty, harmony in the exterior of buildings, privacy, preservation of views and security, and also means a facility providing use, convenience or enjoyment;"*

As the City of Nedlands Scheme does not contain a clause specifically pertaining to the consideration of views, and that the *Baccala* example resulted in an overturning of the Fremantle Council's decision, it is considered that this case law has limited statutory relevance.

In response to the City of Nedlands Scheme clause (as underlined above), it is considered that the proposed development does not adversely affect the amenity of the surrounding area (as discussed elsewhere). The external appearance of the development is contemporary and typical for this immediate locality. Traffic congestion and noise is also typical for a residential zone. Accordingly, this aspect of the proposal is supported by the City, subject to the recommended conditions.

### **6.2.3 Orderly and proper planning**

The following is considered in response to the orderly and proper planning provision in the Scheme (**Attachment 4**, section i). The proposal complies with Scheme provisions, with some discretionary variations which are justified (see above).

Accordingly, the proposal represents orderly and proper planning, and is supported by the City, subject to the recommended conditions.

### **6.2.4 Consideration of applications – landuse**

The following is considered in response to the landuse provision in the Scheme (**Attachment 4**, section j). The proposal for a single house in a residential zone, which is a 'P' permitted use, will have a typical effect on the area. Accordingly, the land use for this proposal is supported by the City, subject to the recommended conditions.

## **7.0 Conclusion**

The subject site has a long history of planning applications, general compliance issues, unauthorised development, prosecution, and appeals to the SAT.

The proposal is for various retrospective and prospective additions to a single house in Dalkeith, with several variations to the planning requirements. The proposal involves some landscaping works at the front of the site, but the main aspect is the construction of the building (three of the four storeys) 1.5m closer to the rear boundary than that approved.

Neighbours have objected to some aspects of the proposal, with the main issue being the building 1.5m closer to the rear boundary, which results in the resultant loss of views and amenity. However, the neighbouring development is of a grand scale, with wide and open spaces to the river below (~8.0m lower). Given the broader context, the resultant impact is considered acceptable.

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

The proposal satisfies all of the relevant deemed-to-comply or design principles, and other planning requirements. As a result, the application is recommended for approval with conditions.

## **8.0 Attachments**

7. Plans (survey, site, floors and elevations)
8. Photographs of the site and surrounds
9. Background
10. Variation clauses
11. Swan River Trust advice
12. Applicant's submission  
Neighbour consultation results





# No. 136 Victoria Av, Dalkeith

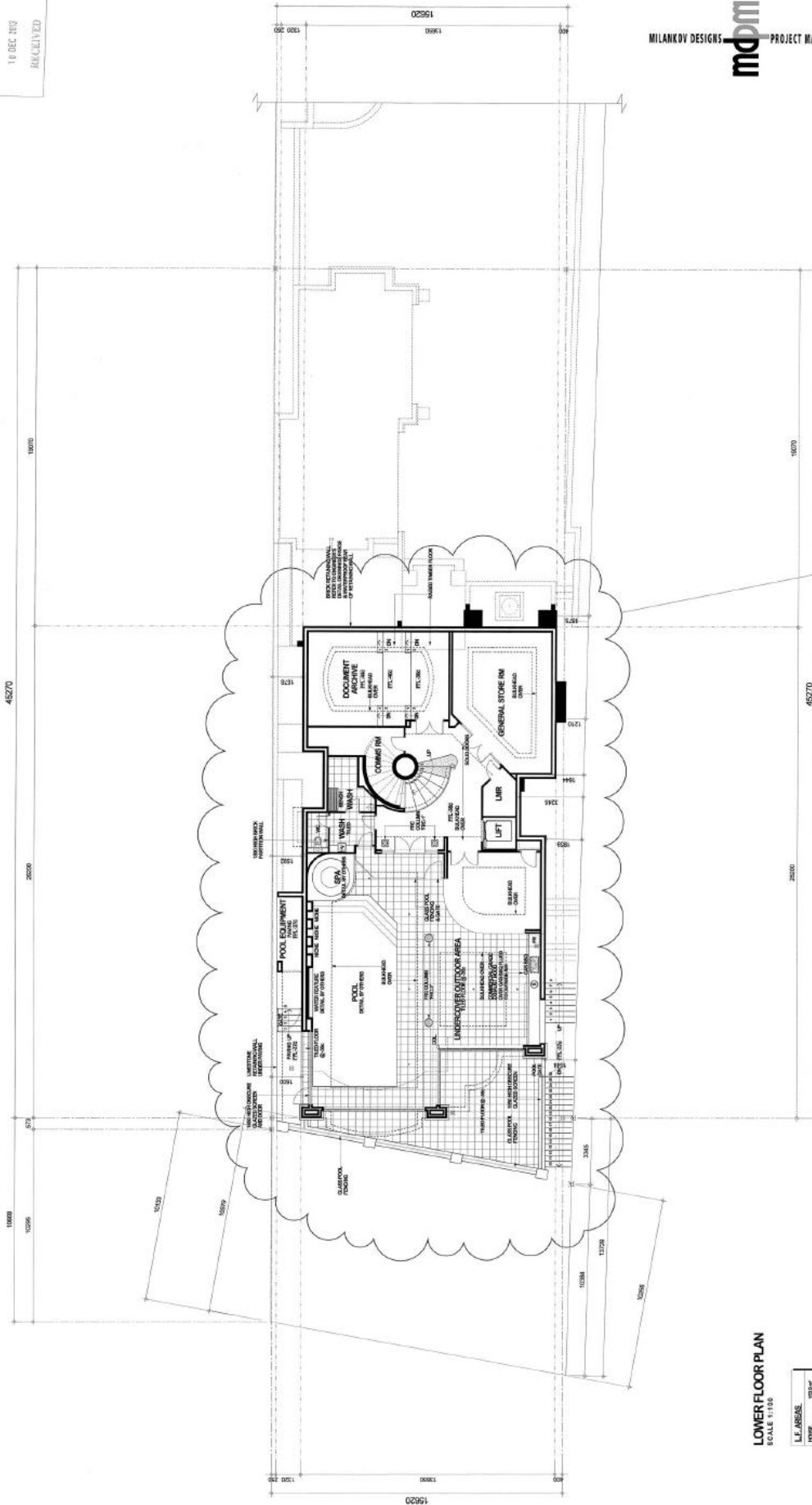


PD24.14 - Attachment 1 - Plans (survey, site, floor and elevations)





CITY OF NEDLANDS  
10 DEC 2013  
RECEIVED



MILANKOV DESIGNS **mdm** PROJECT MANAGEMENT

APPROVED 26 AUGUST 2013 (CITY OF NEDLANDS REFERENCE DA2013/297)

APPROVED 26 AUGUST 2013 (CITY OF NEDLANDS REFERENCE DA2013/297)	
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LOWER FLOOR PLAN  
SCALE 1:125

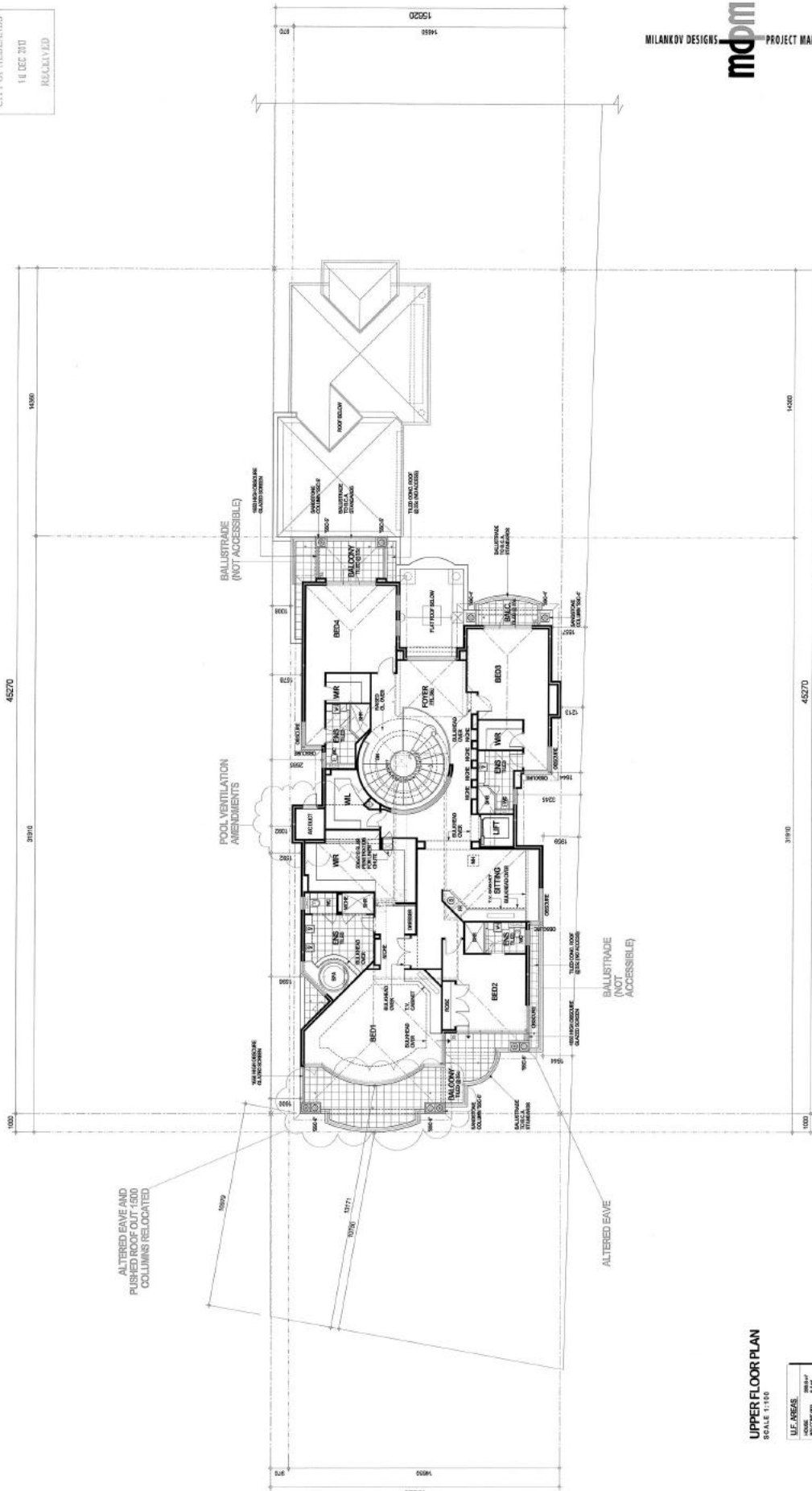
L.E. JENSEN ARCHITECT 100 VICTORIA AVENUE DALKEITH, WA 6112	TOTAL 364.8 M <sup>2</sup>
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No. 136 Victoria Av, Dalkeith

CITY OF NEDLANDS  
14 DEC 2010  
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MILANKOV DESIGNS **mdm** PROJECT MANAGEMENT



PROJECT INFORMATION	
PROJECT NO.	136 VICTORIA AV
CLIENT	MR & MRS J. SMITH
DATE	14 DEC 2010
SCALE	AS SHOWN
DATE	14 DEC 2010
DESIGNER	MILANKOV DESIGNS
PROJECT NO.	136 VICTORIA AV
CLIENT	MR & MRS J. SMITH
DATE	14 DEC 2010
SCALE	AS SHOWN
DATE	14 DEC 2010
DESIGNER	MILANKOV DESIGNS

**UPPER FLOOR PLAN**  
SCALE 1:100

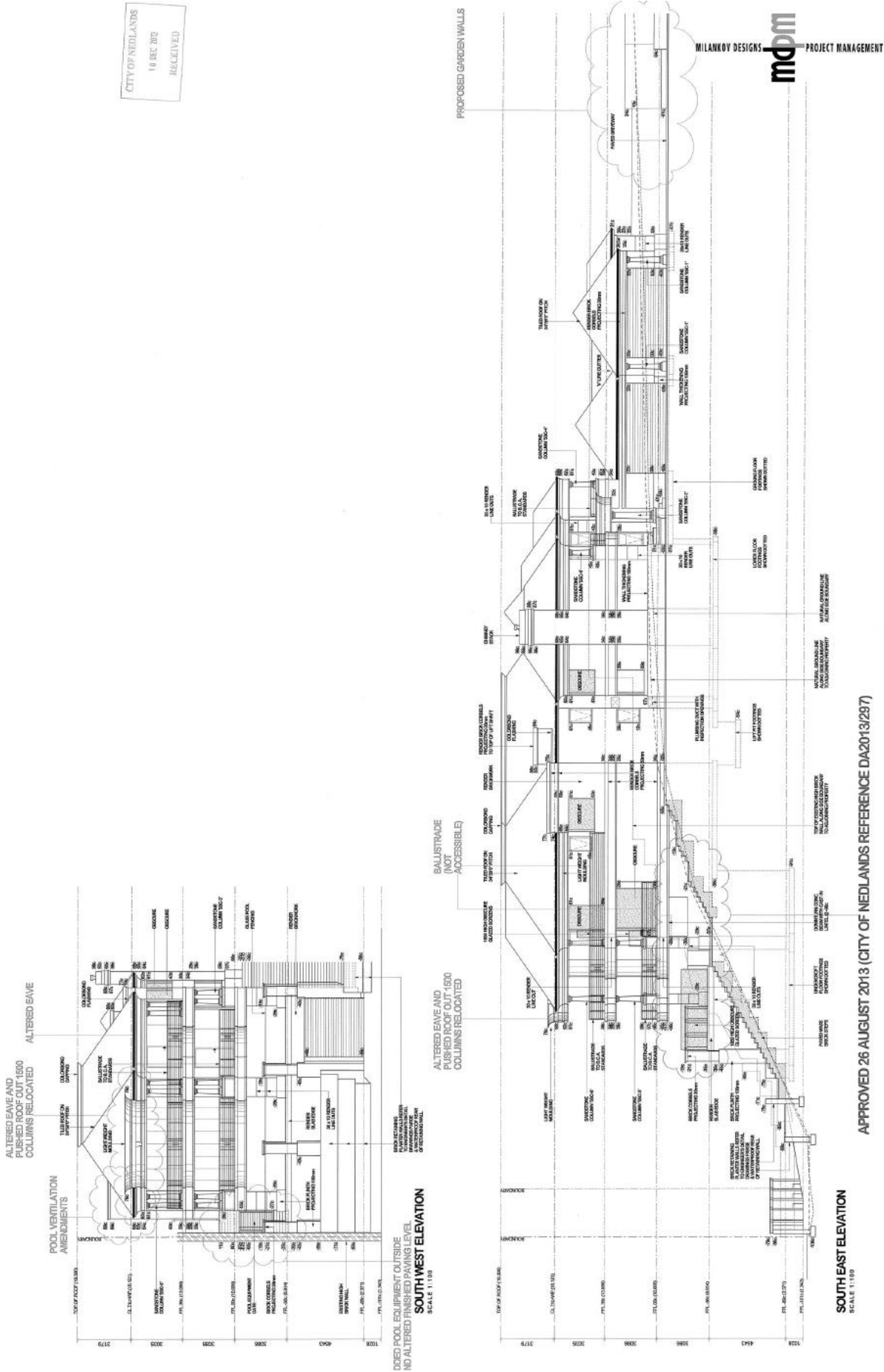
U.F. AREAS	TOTAL
AREA	1000
PERIMETER	1000
DATE	14 DEC 2010







CITY OF NEDLANDS  
10 DEC 2013  
RECEIVED



APPROVED 26 AUGUST 2013 (CITY OF NEDLANDS REFERENCE DA2013/297)

**SOUTH EAST ELEVATION**  
SCALE 1:100

**SOUTH WEST ELEVATION**  
SCALE 1:100

NO	REVISION	DATE	BY	CHKD
1	ISSUED FOR PERMIT	10/11/2013	ML	ML
2	ISSUED FOR PERMIT	11/07/2013	ML	ML
3	ISSUED FOR PERMIT	11/08/2013	ML	ML
4	ISSUED FOR PERMIT	11/08/2013	ML	ML
5	ISSUED FOR PERMIT	11/11/2013	ML	ML

NO	REVISION	DATE	BY	CHKD
1	ISSUED FOR PERMIT	10/11/2013	ML	ML
2	ISSUED FOR PERMIT	11/07/2013	ML	ML
3	ISSUED FOR PERMIT	11/08/2013	ML	ML
4	ISSUED FOR PERMIT	11/08/2013	ML	ML
5	ISSUED FOR PERMIT	11/11/2013	ML	ML

NO	REVISION	DATE	BY	CHKD
1	ISSUED FOR PERMIT	10/11/2013	ML	ML
2	ISSUED FOR PERMIT	11/07/2013	ML	ML
3	ISSUED FOR PERMIT	11/08/2013	ML	ML
4	ISSUED FOR PERMIT	11/08/2013	ML	ML
5	ISSUED FOR PERMIT	11/11/2013	ML	ML

No. 136 Victoria Av, Dalkeith



Site (left) – Affected Neighbour (right)



Site – South-Western Elevation with River Gate & Boat Store on Lowest Level

No. 136 Victoria Av, Dalkeith



Site – Unauthorised Roof Extension over Upper-Rear Balcony



Site – Visual Privacy Screen to Upper-Front Balcony



No. 136 Victoria Av, Dalkeith



North-Western Neighbour – Two-Storey Screen at the Rear



North-Western Neighbour – Steeply Sloping Open Space (as seen from two different levels)

No. 136 Victoria Av, Dalkeith



South-Eastern Neighbour – Steeply Sloping Open Space



South-Eastern Neighbour – Rear Elevation (Southwest)

<b>Background</b>
<b>Late-2006 – Approval of House</b>
The City received an application for a four-storey single house and pool on the site. As the proposal complied with the relevant planning requirements, the application was approved under delegated authority.
<b>Mid-2009 – Construction Compliance Issue</b>
The Swan River Trust (SRT) lodged an objection regarding building materials stored on the river reserve, which was later resolved.
<b>Late-2009 – Construction Compliance Issue</b>
Sand drift issues were reported and resolved.
<b>Early-2013 – Visual Privacy, Number of Storeys and Retaining Wall Issues</b>
The City received a complaint regarding overlooking from the dwelling, at which time the City confirmed the visual privacy issues, and discovered various departures from the planning and building approvals. Notably, one of the levels significantly differed and was in breach of a mandatory Scheme provision. The applicant was also issued with a stop work notice for significant retaining walls that were being constructed at the front of the property without planning or building approvals.
<b>Mid-2013 – Prosecution for Number of Storeys</b>
The City commenced prosecution in the Magistrates Court regarding the mandatory Scheme provision, which was later decided in the City's favour.
<b>Mid-2013 – Planning Refusal</b>
The City received a planning application for the identified retrospective and prospective works, which was refused under delegation due to mandatory Scheme provisions.
<b>Mid-2013 – SAT Appeal and Retrospective Planning Application</b>
The landowner lodged an application for SAT review, which was resolved at the mediation phase. A retrospective planning application was lodged which proposed to modify the building to bring it into conformity with the mandatory Scheme provision. This



was later approved under delegated authority; and subsequently the City sighted and agreed that the required changes had been made.

**Mid-2013 – Positioning of the Building and Retrospective Planning Application**

The City received a complaint regarding the building being constructed in the wrong spot, which was later confirmed by a surveyor. As a result, a retrospective planning application was lodged, which is the subject of this report.

## Variation Clauses

### a. Retaining walls

R-Codes design principle P8 requires the following:

*“Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 (site works, see below) and 5.4.1 (visual privacy).”*

Further to this, the design principles for site works and visual privacy are found below.

### b. Landfill

R-Codes design principles P7.1 – 7.2 (site works) requires the following (emphasis added):

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

*Where excavation/fill is necessary, all finished levels respecting the natural ground level at the boundary of the site and the adjoining properties and as viewed from the street.”*

Furthermore, the Fill and Fencing Policy requires the following (emphasis added):

*“All fill abutting a lot boundary shall be retained by the use of masonry retaining walls or by other methods approved by the Manager of Building Services.”*

### c. Visual privacy

R-Codes design principles P1.1 –1.2 require the following (emphasis added):

*“Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:*

- *building layout and location;*
- *design of major openings;*
- *landscape screening of outdoor active habitable spaces; and/or*
- *location of screening devices.*

*Maximum visual privacy to side and rear boundaries through measures such as:*

- *offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;*

- building to the boundary where appropriate;
- setting back the first floor from the side boundary;
- providing higher or opaque and fixed windows; and/or
- screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).”

#### **d. Development within the CDA**

Scheme clauses 5.10.2 – 5.10.3 require the following (emphasis added):

- “(a) the Council shall consider the effect of the development on the amenity of the surrounding area, the visual effect of the development as perceived from the Swan River and the effect on the amenity of the parks and recreation reserves in that area...;
- (b) ...the applicant shall furnish such further information, as deemed necessary...;
- (c) ...the amenity of the area may be detrimentally affected by the proposal.

*Within a Controlled Development Area the following provisions shall apply:-*

- (a) *the Council shall not permit the ground level of any portion of any lot to be raised by an amount greater than 0.5m above natural ground level whether by means of a retaining wall or not, unless it is satisfied that such changes in level will not unduly affect the amenity of the area including amenity of neighbouring properties.*
- (b) *...rear setback applicable to boundaries of lots so delineated shall be 7.5m. Where the 7.5m setback is a front boundary the provisions of clause 5.3.3 (a) shall apply and the setback shall be 9.0m unless varied by Council.”*

#### **e. Boundary walls**

R-Codes design principle P3.2 requires the following (emphasis added):

- “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 (wall setbacks, see below);*
  - *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.”*

**f. Wall setbacks**

Design principle P3.1 (wall setbacks) requires the following (emphasis added):

*“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.”*

**g. CDA considerations**

Scheme clause 6.4.2 (consideration of applications) states the following (emphasis added):

*“In respect of an application for planning approval made under Clause 6.3 (includes sites within the CDA) the applicant shall satisfy....*

- (a) the nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;*
- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;*
- (c) the form, layout, appearance and material of any building is in keeping with the existing character of the locality;*
- (d) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger;*
- (e) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;*
- (f) that any traffic generated must be capable of being accommodated within existing streets;*
- (g) that the development or use will not place excessive loads on existing or projected essential services;*
- (h) the proposed development or use is necessary to service the needs of the district's residential population and is otherwise generally in keeping with the Council's Town Planning intentions for the locality;*
- (i) the desirability or preserving (or replacing) existing trees and other vegetation contributing to the amenity or significant of the locality; and*
- (j) any other matter considered relevant by Council.”*

**h. Preservation of amenity**

Scheme clause 5.5.1 (Preservation of Amenity) states (emphasis added):

*“Without limiting the generality of Clause 6.5 the Council may refuse to approve any development if in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned.”*

**i. Orderly and proper planning**

Scheme clause 6.5.1 (Determination by Council) states (emphasis added):

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

**j. Landuse considerations**

Scheme clause 6.4.1 (consideration of applications) states (emphasis added):

*“Without limiting the generality of Clause 6.5 the 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.”*

No. 136 Victoria Av, Dalkeith



Your Ref DA2013/297 V11/136-02  
Our Ref SRT 3507  
Enquiries Dr Sue Osborne, 9278 0910

Matt Stuart  
Senior Statutory Planning Officer  
City of Nedlands  
PO Box 9  
NEDLANDS WA 6909



11 March 2014

Dear Mr Stuart

**REVISED RETROSPECTIVE ALTERATIONS TO RESIDENCE, RETAINING WALLS AND LANDSCAPING, LOT 8, 136 VICTORIA AVENUE, DALKEITH**

Thank you for forwarding the latest revised plans for the existing development at Lot 8, 136 Victoria Avenue, Dalkeith.

In relation to the boat store, the Trust draws your attention to the following:

- The original plans approved in 2007 showed a small boat store with an adjoining pool equipment storage area;
- Revised plans dated 11 July 2013 showed an enlarged boat store that included the area of what had initially been the pool equipment storage area;
- In response to the enlarged boat store, the City, on advice from the Trust required that the gateway to the foreshore reserve be restricted to a maximum width of 1.8m so that large boats could not be hauled or winched across the foreshore into the enlarged boat store;
- The applicant queried the requirement to restrict the width of the gateway but was "agreeable to a condition being placed on any approval issued by the City of Nedlands, requiring that the storage area and internal partition dividing the storage area and boat store are to remain in place. That is to say, the boat store is to remain at the same internal size as approved by the City of Nedlands in 2007";
- In response to this advice, the Trust, in its correspondence to the City dated 12 September 2013, stated, "provided the design of the boat storage area is returned to that originally approved, then the requirement for a gateway with reduced width no longer applies"

The Trust notes that the plans received by the Trust on 10 February 2014, do not show the boat storage area as it was depicted on the original plans approved in 2007. It is instead, an enlarged boat store that in the Trust's view requires a restricted gateway. It is also noted that the gateway in the rear boundary fence adjoining the foreshore reserve is wider than 1.8m.

The Trust questions why the most recent plans do not take account of previous advice and conditions, and takes this opportunity to reaffirm that it does not support the boatshed and



No. 136 Victoria Av, Dalkeith

boundary gateway designs outlined in the most recent plans received by the Trust on 10 February 2014.

If you have any queries regarding this matter, please contact Sue Osborne, Environmental Officer, on 9278 0910. In all correspondence please quote the above reference number.

Yours sincerely

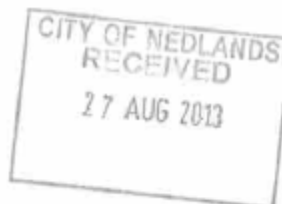


Rod Hughes  
General Manager

No. 136 Victoria Av, Dalkeith



Your Ref DA2013/297 DA2013/222 V11/136 M13/16745  
Our Ref SRT 5307  
Enquiries Dr Sue Osborne, 9276 0910



Mr Greg Trevaskis  
Chief Executive Officer  
City of Nedlands  
PO Box 6  
NEDLANDS WA 6909

26 August 2013

Attention: Laura Sabltzer

Dear Mr Trevaskis

**REVISED RETROSPECTIVE ADDITIONS AND VARIATIONS AT LOT 8 (No. 136)  
VICTORIA AVENUE, DALKEITH**

Thank you for providing the Swan River Trust (the Trust) with the opportunity to comment on the above mentioned development application. It is understood that the application has been referred to the Trust under Clause 30A(2)b(i) of the *Metropolitan Region Scheme*, as the subject site abuts the Swan development control area.

Trust Officers have assessed the application and you are advised that the Trust has no objections to the proposal, as described in the application and plans received by the Trust dated 13 August 2013, subject to the following conditions:

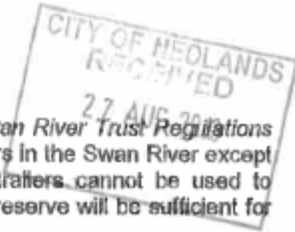
1. No fill, building materials, rubbish or any other deleterious matter shall be deposited on the foreshore Parks and Recreation reserve or allowed to enter the river as a result of the development.
2. Stormwater drainage shall be contained on site or connected to the local government stormwater drainage system.
3. An open view fence with a height of 1.8 metres is to be retained along the boundary of the Parks and Recreation Reserve and any gap or gateway that allows access through this fence to the boat store from the foreshore reserve shall be reduced in width to no more than 1.6 metres. (see *Advice Note 1*).

**ADVICE TO APPLICANT**

1. The applicant is advised that no vehicle access is permitted on the Parks and Recreation reserve.

Level 1 Fortescue Centre | 20 Terrace Road | East Perth | Western Australia 6004  
PO Box 6829 | East Perth | Western Australia 6802  
Telephone (08) 9276 0900 | Facsimile (08) 9326 7140  
info@swanrivertrust.wa.gov.au | www.swanrivertrust.wa.gov.au

No. 136 Victoria Av, Dalkeith



2. The applicant is advised that it is an offence under the *Swan River Trust Regulations 2007* to launch a vessel directly from a trailer into any waters in the Swan River except at a permitted launching place. Because vehicles and trailers cannot be used to access the boat store, a 1.6 metre wide gate to the public reserve will be sufficient for the hand launching of small water craft.
3. The Swan River Trust recommends garden planting with local native species to reduce water usage and fertiliser requirements.
4. The applicant is advised that it is an offence under the *Swan River Trust Regulations 2007* to destroy, pull up, cut back or damage vegetation that is on land in the Swan River Management area – Penalty \$5,000.

In relation to draft Condition 3 above, if either the applicant or the City of Nedlands finds it unacceptable to narrow the gateway, then the Trust advises that retrospective approval for increasing the size of the boat store should be refused. The Trust is of the view that the substantial increase in size of the boat store (30% increase compared with the original approved design), will lead to the storage of large boats that cannot be carried by hand, and their launching across the foreshore reserve contrary to provisions in the *Swan River Trust Regulations 2007*.

Should there be any queries regarding this matter, please contact Sue Osborne, Environmental Officer, on 9278 0910. In all correspondence please quote the above reference number.

Yours sincerely

Rod Hughes  
General Manager

No. 136 Victoria Av, Dalkeith

Job Ref: 7845  
8 April 2014

Chef Executive Officer  
City of Nedlands  
PO Box 9  
NEDLANDS WA 6909

**Attention: Mr Matt Stuart - Senior Planning Officer**

Dear Sir

**Application for Retrospective and Prospective Planning Approval  
Lot 8 (No. 136) Victoria Avenue, Dalkeith (Without Prejudice)**

We refer to your letter of 19 February 2014 and to your email correspondence of 26 March 2014 in relation to the above Application. Your letter and email correspondence identify a number of issues that require attention by way of amended plans or additional justification before the Application can be presented to Council for determination. The Applicant wishes to address these issues by way of additional justification and has instructed our Office to provide the following.

For ease of reference, we have addressed the issues contained in your letter and email by grouping the issues as follows:

- General Issues;
- Setback of Retaining Walls;
- Fill/Site Works;
- Boundary Setbacks; and
- Visual Privacy.

Comments in response to matters raised by adjoining landowners, as outlined in your email correspondence of 25 March 2014, are addressed at the conclusion of this letter.

**General Issues**

The following is provided in response to Items 1a), 1b) and 1c) of your letter.

**E-MAILED**

8.4.2014

CITY OF NEDLANDS

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In relation to Item 1a) we confirm that all retaining is shown on the submitted plans. For ease of reference, a plan highlighting the location of all retaining on the site is enclosed at Attachment One.

With respect to Item 1b), we note that the Lower Floor of the development was approved by the City of Nedlands on 26 August 2014 under a separate Application for Planning Approval (Reference DA2013/297). Condition (3)iii of this Approval required the "removal of the glazed doors and adjacent glazed panels to the 'general store room' and replacement with solid (not glazed) material, including a solid (not glazed) single door with a width not exceeding 750mm". The works required by this Condition were completed and the City confirmed, by letter dated 10 December 2013, that the Condition was satisfied.

The development proposal plans the subject of this Application [DA13/352] were prepared prior to receiving the City's confirmation in respect of Condition (3)iii above, and accordingly have not been updated to reflect the works undertaken. Rather than submitting a further set of amended plans to show the door to the 'general store room' as a single solid door, the Applicant requests a suitable Condition be placed on any approval granted by the City confirming that the double doors are not approved and that a single door, pursuant to Condition (3)iii of DA 2013/297 is to remain in effect.

In relation to Item 1c) we can confirm that obscure screens have been fitted to the Upper Floor balcony along both the northern and southern elevations, and that the southern portion of the balcony located alongside Bed 2 is inaccessible.

#### **Setback of Retaining Wall (Northern Boundary)**

The following is provided in response to Item 2a) of your letter.

Your letter states that the retaining wall positioned on the northern boundary of the site ought to be setback a distance of 1.5m in accordance with the DC provisions under clause 5.3.8 of the Residential Design Codes (RD Codes). Our assessment concludes that the setback requirement is 1.0m given the retaining walls are not continuous and each measure less than 9.0m in length. Notwithstanding the difference, we note that a nil setback is provided and therefore request that this aspect of the Application be assessed against the applicable Design Principle (DP).

The DP under clause 5.3.8 of the RD Codes reads as follows:

*P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clause 5.3.7 and 5.4.1.*

The retaining wall is considered to satisfy this DP for the following reasons:

With the exception of the garage wall which is located on the boundary, the dwelling is setback between 1.0m and 1.6m from the northern lot boundary. Retaining the site at the boundary enables access between the dwelling and the lot boundary which is necessary for servicing plant and equipment and for accessing the drying area from the laundry. Retaining the site at the boundary therefore creates an area that can be effectively used by the occupants.

The existing dwelling was approved by the City in 2007 with a retaining wall that was setback 280mm from the northern lot boundary (refer DA06/523). The effect of a retaining wall with a nil setback in lieu of a setback of 280mm is indistinguishable given the retaining wall is located behind the dividing fence and is not visible from either the street or the river.

The adjoining property at No. 132 Victoria Avenue contains a two-storey elevated outdoor living area which appears to be constructed between 1.0m and 1.5m from the northern boundary of the subject site and is screened along its southern elevation (refer Photograph 1 and Photograph 2). This structure ensures there is no potential for overlooking between the subject site and No. 132 Victoria Avenue. As a result, the reduced setback of the retaining wall at this location does not detrimentally affect visual privacy pursuant to clause 5.4.1 of the RD Codes.



**Photograph 1:** *Two-storey elevated outdoor living area constructed on No. 132 Victoria Avenue and adjoining the retained area along the northern boundary of the subject site. View from the paved area adjoining the laundry, looking north-east.*





**Photograph 2:** *Two-storey outdoor living area on adjoining No. 132 Victoria Avenue. Photograph shows the relationship between the retained area along the northern boundary of the subject site and the adjoining property, looking west.*

The retaining wall has been designed and engineered having due regard to clause 5.3.7 of the RD Codes. The site slopes significantly from east to west, falling approximately 11.0m from the Victoria Avenue frontage of the site to the Swan River foreshore at the rear. The dwelling is located on the steepest part of the site which is located in the rear third. The use of retaining on a site with a slope of this magnitude is unavoidable. A significant part of the dwelling is located below natural ground level, with the site having been excavated to ensure the dwelling complies with the building height requirements of TPS2.

For these reasons, it is our view that a reduced retaining wall setback of 280mm satisfies the DP at clause 5.3.8 of the RD Codes and is therefore acceptable and can be supported.

#### **Fill/ Site Works**

The following is provided in response to Items 2b) and 2c) of your letter.

Your letter states that the site has been filled in excess of 0.5m above natural ground level along the northern and southern boundary. Clause 5.10.3 of TPS2 relates to ground levels within a Controlled Development Area and reads as follows:

*"The Council shall not permit the ground level of any portion of any lot to be raised by an amount greater than 0.5m above natural ground level whether by means of a retaining wall or not, unless it is satisfied that such changes in level will not unduly affect the amenity of the area including amenity of neighbouring properties"*

As previously mentioned, the subject site slopes significantly from east to west, falling approximately 11.0m from the Victoria Avenue frontage of the site to the Swan River foreshore at the rear. The dwelling is located on the steepest part of the site which is located in the rear third. Site works comprising both fill and retaining are unavoidable on a site with a slope of this magnitude.

The extent of fill and retaining on the site has increased marginally as a result of the dwelling being located closer to the rear boundary (Swan River foreshore). Notwithstanding, the dwelling still complies with the building height provisions of TPS2. The impact of the increased fill on the general amenity of the area and the amenity of the neighbouring properties has been considered. The additional fill is limited to the rear part of the site and in this regard is not visible from Victoria Avenue.

The difference between the extent of fill approved in 2007 and the extent of fill constructed on site is between 0.5m and 1.0m. When viewed from the rear boundary in the context of the overall development, the extent of additional fill is minor and indistinguishable. That is to say, the additional fill is not so substantial as to change the appearance of the dwelling from the river foreshore and therefore affect its amenity.

Along the northern property boundary, the additional fill is located to the east of the laundry (Ground Floor) and adjoining the pool (Lower Ground Floor). The adjoining landowner at No. 132 Victoria Avenue has constructed a two-storey elevated outdoor living area along the boundary at this location [refer Photographs 1 and 2]. The outdoor living area is setback between approximately 1.0m and 1.5m from the northern boundary of the subject site and is screened along its southern elevation. The additional fill is not visible from the adjoining property as a consequence of the two-storey outdoor living area and in this regard does not unduly affect the amenity of the adjoining landowner.

Along the southern boundary, the additional fill is located in the vicinity of the Uncovered Outdoor Living Area. This area is screened along the full length of its southern boundary to a height of 1.65m [refer Photograph 3]. This area is setback from the southern property boundary a distance of 1.64m which is consistent with the setback approved by the City in 2007.

The landowner to the south of the subject site has submitted an Application for Planning Approval to the City of Nedlands and this Application is currently being assessed by the City's Planning Department. The area immediately south of the Uncovered Outdoor Living Area, shown in Photograph 3, is proposed to be retained and landscaped. The combination of screening, setbacks and landscaping ensure that the additional fill at this location does not unduly affect the amenity of the neighbouring property.



**Photograph 3:** 1.65m high obscure screen located along the southern boundary of the Uncovered Outdoor Living Area.

Having regard to the above, it is our view that the additional fill and retaining on the subject site does not unduly affect the amenity of the area or the amenity of neighbouring properties. Notwithstanding, the Applicant is agreeable to contributing towards the cost of extending the height of the dividing fence.

#### **Parapet Walls**

The following is provided in response to Item 2d) of your letter.

The development contains two (2) parapet walls along the northern boundary of the subject site. One of these walls is associated with the garage and was approved as part of the 2007 Development Application. The wall remains of the same length and height as was approved in 2007. The garage does not adjoin any major openings or outdoor living areas on No. 132 Victoria Avenue and in this regard does not adversely impact the amenity of the neighbouring property by way of overlooking or by way of building bulk. Furthermore, being located on the southern side of the boundary, the wall does not generate any overshadowing onto No. 132 Victoria Avenue. For these reasons, the garage parapet wall is acceptable.

The second parapet wall is located near the pool on the Lower Ground Level. The 'pool equipment room parapet wall' has been constructed as a result of the pool equipment at this location being enclosed to reduce any potential noise disturbance to the adjoining property at No. 132 Victoria Avenue. The adjoining property owner has since raised ground levels immediately adjoining the pool equipment room wall and constructed a two-storey elevated outdoor living area (refer Photograph 4).



**Photograph 4:** *Parapet wall created by the enclosure of pool equipment. The parapet is located below and behind the dividing fence between the subject site and No. 132 Victoria Avenue and is not visible from the adjoining property. Photograph also shows the extent of retaining on No. 132.*

The impact of this parapet wall on the adjoining property is negligible because it is located behind and below a dividing fence and is screened from view by a two-storey screened outdoor living area. For these reasons, the wall is considered to be acceptable.





**Boundary Setbacks - Northern Boundary**

The following is provided in response to Item 2e) of your letter and the 'setbacks table' contained in your email correspondence of 26 March 2014. We have only addressed those boundary setbacks listed in your table as not satisfying the Deemed-to-Comply (DC) provisions of RD Codes. For ease of reference, each of the boundary setbacks are addressed in the order and description they appear in your email correspondence of 26 March 2014.

Lower Floor - Bulk @ Pool

The lower level "bulk of wall" measures 17.2m (rounded to 18m) in length and varies in height from between 0m and 6.5m above Natural Ground Level (NGL). Pursuant to Table 2a of the RD Codes, the DC provisions of the RD Codes require a setback of between 1.5m and 2.2m. A setback of between 1.592m and 1.6m is provided.

The portion of this wall located less than 3.5m above NGL complies with the DC of the RD Codes however the portion of wall located 3.5m and greater above NGL does not satisfy the DC of the RD Codes and therefore requires assessment against the DP.

The non-compliant wall portion measures approximately 4.3m in length and is setback 1.6m from the property boundary. A setback of 2.2m is required at this location. The portion of non-compliant wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because the wall at this location cannot be treated in two (2) segments pursuant to figure 4c of the RD Codes.
- Only a portion of the wall is non-compliant. That portion measures 4.3m in length and is located at the western end of the wall.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.
- The portion of wall is open which is non-compliant with the DC provisions of the RD Codes is open rather than solid which assists in reducing any potential impact of bulk.
- The setback of the wall from the western property boundary is 2.5m greater than required under the provisions of the City of Nedlands Town Planning Scheme No. 2.
- The wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 (refer Photograph 2).

- The open portion of wall at this location has been fitted with a 1.65m high obscure screen to restrict any overlooking of the outdoor habitable space on adjoining No. 132 Victoria Avenue from the outdoor habitable space on the subject site (refer Photograph 5).
- Notwithstanding the above, the Applicant is agreeable to the dividing fence between the two (2) properties being increased in height.



**Photograph 5:** *The 'open' portion of wall has been fitted with a 1.65m high obscure screen to restrict any overlooking of the outdoor habitable space on adjoining No. 132 Victoria Avenue from the outdoor habitable space on the subject site.*

#### Ground Floor - Study-Guest

The ground floor "Study to Guest" wall measures 11.1m (rounded to 12.0m) in length and has a wall height of less than 3.5m above NGL. The wall requires a setback of 1.5m but is provided with a setback that ranges from 1.0m to 1.578m. The non-compliant portion of wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.



## No. 136 Victoria Av, Dalkeith



- The wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 (refer Photograph 2).
- The non-compliant portion of the wall is confined to the Study. This portion of the wall measures 5.5m in length and ranges in height from 1.8m to 2.4m above NGL (refer Photograph 6). A large portion of the wall is located below NGL.
- The wall is located behind a dividing fence and in this regard does not overlook any part of the adjoining property at No. 132 Victoria Avenue.
- Portion of the non-compliant wall is located below the top of the dividing fence and is therefore not capable of being viewed from the ground level of the adjoining property.
- This wall is overlooked by windows positioned on the upper floors of the dwelling on adjoining dwelling No. 132 Victoria Avenue.



**Photograph 6:** *A non-compliant portion of wall is partially located below NGL and is located behind and below the height of the dividing fence between the subject site and No. 132 Victoria Avenue.*

Ground Floor - Study-Guest [figure 4d]

The City's assessment identifies that the setback of the ground floor "Study to Guest" wall was non-compliant with the DC provisions of the RD Codes when measured in accordance with figure 4d of the RD Codes. Figure 4d does not apply to this portion of wall because it is located on ground level. On this basis, no further assessment of this wall has been undertaken.

Ground Floor - Bulk @ Laundry-Balcony

The ground floor "bulk of wall" measures approximately 45.0m in length and ranges in height from below NGL [at the eastern end] to 8.6m above NGL [at the western end]. The City's assessment determines the wall height as being 10.0m however this is not agreed by the Applicant on account that the height of the western most portion of the wall comprising the balcony ought to be calculated in accordance with C3.1(iii) of the RD Codes.

The setback required for this wall ranges from 1.5m to 4.6m. A setback of between 1.0m and 1.6m is provided and in this regard the wall does not satisfy the DC provisions of the RD Codes. The non-compliant wall portion has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site and cannot be treated in two (2) segments pursuant to figure 4c of the RD Codes.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.
- The setback of the wall from the western property boundary is 2.5m greater than required under the provisions of the City of Nedlands Town Planning Scheme No. 2.
- The majority of wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 [refer Photograph 2].
- The open portion of wall at this location has been fitted with a 1.65m high obscure screen to restrict any overlooking of the outdoor habitable space on adjoining No. 132 Victoria Avenue from the outdoor habitable space on the subject site [refer Photograph 7].
- Portion of the wall where the setback variation is greatest [ie. the western portion] comprises a balcony rather than a solid wall structure. This reduces the bulk of the building and therefore ensures any potential impact is minimised.



**Photograph 7:** *All openings along the ground floor, where located more than 0.5m above NGL, are screened. This 1.65m high obscure screen is fitted to the ground floor balcony.*

#### Upper Floor - A/C Duct

An additional wall measuring 2.1m in length has been constructed along portion of the northern boundary of the dwelling to enclose and screen from view, air conditioning infrastructure (refer Photograph 8).

The height of the wall ranges between 6.3m and 6.9m and is required to be setback a distance of 1.2m from the property boundary. The wall is setback a distance of 1.092m and therefore does not satisfy the DC provisions of the RD Codes. The wall has been assessed against the applicable DP and is considered to satisfy the DP for the following reasons:

- The wall is relatively narrow, measuring only 2.1m in width.
- The variation is minor, representing only 108mm.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.
- The wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 [refer Photograph 2].

- The wall was constructed in order to screen the air conditioning infrastructure from view of adjoining No. 132 Victoria Drive and to remove any potential for noise disturbance.
- The wall does not contain any major openings and in this regard does not overlook any part of the adjoining property at No. 132 Victoria Avenue.



**Photograph 8:** *An additional "wall" was created by enclosing the air conditioning infrastructure located along the northern side of the dwelling. Enclosing the infrastructure has screened it from view and removed any potential for noise disturbance to the adjoining property.*



Upper Floor - WIR-Balcony

The upper floor "Walk-in-Robe to Balcony" wall measures 15.0m in length and ranges in height from 6.9m (at the eastern end) to 11.6m (to the western end). The City's assessment determines the wall height as measuring 12.5m in height however this is not agreed on account that the height of the western most portion of the wall comprising the balcony ought to be calculated in accordance with C3.1(ii) of the RD Codes.

The setback required for this wall ranges from 2.1m to 3.2m. A setback of 1.6m is provided and in this regard the wall does not satisfy the DC provisions of the RD Codes. The wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site and cannot be treated in two (2) segments pursuant to figure 4c of the RD Codes.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.
- The setback of the wall from the western property boundary is 2.5m greater than required under the provisions of the City of Nedlands Town Planning Scheme No. 2.
- The majority of the wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 (refer Photograph 2).
- The open portion of wall at this location has been fitted with a 1.65m high obscure screen to restrict any overlooking of the outdoor habitable space on adjoining No. 132 Victoria Avenue from the outdoor habitable space on the subject site (refer Photograph 9).
- Portion of the wall where the setback variation is greatest (ie. the western portion) comprises a balcony rather than a solid wall structure. This reduces the bulk of the building and therefore ensures any potential impact is minimised.

Upper Floor - U/E-OLA

The City's assessment identifies the upper floor unenclosed outdoor living area as a separate wall. This is not agreed given this portion of wall is included in the length of wall described above as "Walk-in-Robe to Balcony". On this basis, no assessment of this wall has been undertaken.



**Photograph 9:** *The northern elevation of the Upper Floor balcony has been fitted with a 1.65m high obscure screen to restrict views within the cone of vision at No. 132 Victoria Avenue.*

#### Upper Floor-WIL-Balcony

The upper floor "Walk-in-Linen to Balcony (east)" wall measures 14.4m (rounded to 15.0m) in length and ranges in height from 4.7m (at the eastern end) to 6.4m (to the western end). The City's assessment determines the wall height as measuring 6.5m in height however this is not agreed (for the eastern part of the wall) given this part of the comprised a balcony and ought to be calculated in accordance with C3.1(ii) of the RD Codes.

The setback required for this wall ranges from 1.7m to 2.0mm. A setback of between 1.578m and 2.685m is provided and in this regard portion of the wall does not satisfy the DC provisions of the RD Codes. This portion of the wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered the satisfy the PD for the following reasons:

- The wall is generally setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site and cannot be treated in two (2) segments pursuant to figure 4c of the RD Codes.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.





- The wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 [refer Photograph 2].
- Portion of the wall comprises a balcony rather than a solid wall structure. This reduces the bulk of the building and therefore ensures any potential impact is minimised.
- Part of the wall (WIL) is setback a greater distance than required under the DC provisions of the RD Codes.

#### Upper Floor - Bulk

The upper floor "bulk of wall" measures approximately 31.0m in length and ranges in height from 4.7m [at the eastern end] to 11.6m [at the western end] above NGL. The City's assessment determines the wall height as being 12.5m however this is not agreed on account that the height of the western most portion of the wall comprising the balcony ought to be calculated in accordance with C3.1(ii) of the RD Codes.

The setback required for this wall ranges from 2.3m to 5.5m. A setback of 2.4m is provided and in this regard the wall does not satisfy the DC provisions of the RD Codes. The wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site and cannot be treated in two (2) segments pursuant to figure 4c of the RD Codes.
- The reduced setback does not generate any overshadowing of the adjoining property at No. 132 Victoria Avenue.
- The majority of wall is screened from view of the adjoining dwelling at No. 132 Victoria Avenue by a two-storey outdoor living area which is constructed along the southern boundary of No. 132 [refer Photograph 2].
- The balcony has been fitted with a 1.65m high obscure screen to restrict any overlooking of the outdoor habitable space on adjoining No. 132 Victoria Avenue from the outdoor habitable space on the subject site [refer Photograph 9].
- Portion of the wall where the setback variation is greatest [ie. the western portion] comprises a balcony rather than a solid wall structure. This reduces the bulk of the building and therefore ensures any potential impact is minimised.

#### **Boundary Setbacks - Southern Boundary**

The following is provided in response to Item 2f) of your letter.

##### Lower Floor - U/C-OLA (Fig 4d)

The lower level "uncovered outdoor living area" wall measures less than 9.0m in length and ranges in height from 1.8m to 4.3m above NGL. The setback required for a wall with these dimensions ranges from 1.5m to 2.0m. A setback of 1.644m is provided which means that part of the wall does not satisfy the DC provisions of the RD Codes and requires assessment against the DP.

The non-compliant wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site.
- The wall at this location has been fitted with a 1.65m high obscure screen to restrict any overlooking of adjoining No. 138 Victoria Avenue [refer Photograph 3].
- The wall at this location is unroofed and in this regard does not overshadow the adjoining property at No. 138 Victoria Avenue or generate any building bulk.
- Being without a roof, the impact of the wall on the adjoining property in terms of building bulk is limited.
- The setback of the wall from the western property boundary is 2.5m greater than required under the provisions of the City of Nedlands Town Planning Scheme No. 2.
- Notwithstanding the above, the Applicant is agreeable to the dividing fence between the two [2] properties being increased in height if the owner of No. 138 Victoria Avenue considers that this would improve their level of amenity.

##### Lower Floor - Bulk @ U/C-OLA

The lower level "bulk of wall" measures 12.0m in length and ranges in height from less than 0m (ie. below NGL) to 6.5m NGL. The setback required for a wall with these dimensions ranges from 1.5m to 1.6m. A setback of 1.644m is provided.

The City's assessment identifies this wall as non-compliant with the DC provisions of the RD Codes on the basis that the wall is setback 1.4m from the boundary. This is incorrect as evidenced by the "As Constructed Survey" undertaken by Sorensen Short & Associated Surveyors in August 2013 which shows the setback is 1.644m.



Ground Floor - PDR-Balcony

The ground floor "Powder Room to Balcony" wall measures 15.0m in length and ranges in height from 3.2m (at the eastern end) to 6.3m above NGL (at the western end). The City's assessment determines the wall height as being 8.5m however this is not agreed on account that the height of the western most portion of the wall comprising the balcony ought to be calculated in accordance with C3.1(ii) of the RD Codes.

The setback required for this wall ranges from 1.5m to 2.0m. A setback of between 1.644m and 3.245m is provided meaning portion of the wall is non-compliant. The non-compliant wall portion has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback slightly further than was approved by the City of Nedlands in 2007. Portion of the wall, for example, is setback 170mm further than required by the 2007 approval.
- The balance of this wall (ie. "bulk of wall") satisfies the DC provisions of the RD Codes.
- The additional setback requirement only arises because of its location on a steeper part of the site.
- The reduced setback does not generate any additional overshadowing of the adjoining property at No. 138 Victoria Avenue beyond that approved in 2007.
- Portion of the wall where the setback variation is greatest (ie. the western portion) comprises a balcony rather than a solid wall structure. This reduces the bulk of the building and therefore ensures any potential impact on the adjoining property at No. 138 Victoria Avenue is minimised.
- The non-compliant portion of wall is restricted to that portion which exceeds a height of 3.5m above NGL. This portion of wall is located at the western end of the wall in the vicinity of the kitchen/eating area.
- All major openings along the wall have been screened to restrict any overlooking of adjoining No. 138 Victoria Avenue. This includes a 1.65m high obscure screen which has been fitted to the balcony at this location (refer Photograph 10).

Upper Floor - U/E-OLA

Part of the upper floor "unenclosed outdoor living area" (balcony) wall (No. 2) measures less than 9.0m in length and ranges in height from 9.3m to 10.0m. The City's assessment determines the wall height as being 11.0m however this is not agreed by the Applicant on account that the wall comprises an unenclosed outdoor living area and ought to be calculated in accordance with C3.1(ii) of the RD Codes.

The setback required for this wall ranges from 4.6m to 4.8m. A setback of 5.1m is provided and therefore satisfies the DC provisions of the RD Codes.



**Photograph 10:** *The southern elevation of the ground floor balcony has been fitted with a 1.65m high obscure screen to restrict the cone of vision into No. 138 Victoria Avenue.*

#### **Visual Privacy**

The following is provided in response to the 'Visual Privacy' table contained in your email correspondence of 26 March 2014.

##### Ground Floor - NW & S (Balcony Rear)

The ground floor rear balcony has been fitted with obscure screening along the northern and southern elevations and therefore satisfies DC provisions C1.1ii of the RD Codes (refer Photographs 7 and 10).

##### Upper Floor - N & NW (Balcony Rear)

The upper floor rear balcony has been fitted with obscure screening along the northern elevation and therefore satisfies DC provisions C1.1ii of the RD Codes (refer Photograph 9).

##### Upper Floor - SE (Balcony Rear)

The upper floor rear balcony has been fitted with obscure screening along the southern elevation and therefore satisfies DC provisions C1.1ii of the RD Codes (refer Photograph 11).





**Photograph 11:** *The southern elevation of the upper floor balcony has been fitted with a 1.65m high obscure screen to restrict the cone of vision into No. 138 Victoria Avenue.*

Upper Floor - SE (Balcony Front)

The upper floor front balcony does not overlook any part of the adjoining property at No. 138 Victoria Avenue by virtue of the dividing fence/retaining wall located along this boundary. If however, the adjoining landowner mainly a concern in relation to potential overlooking from this location, the Applicant is agreeable to installing a 1.65m high obscure screen along the southern side of this balcony.

Upper Floor - N (Balcony Front)

The upper floor front balcony has been fitted with obscure screening along the northern elevation and therefore satisfies DC provisions C1.1ii of the RD Codes .

**Neighbour Consultation**

Neighbouring landowners were invited to inspect the development proposal plans and provide comments to the City. By email dated 25 March 2014, the City provided our Office with a summary of the issues raised during advertising. The following responds to the issues raised. For ease of reference, we have addressed each of the issues in the numerical order they appear in your email correspondence of 25 March 2014.



- 1: Land Fill (southern boundary) – additional fill will require higher fences, resulting in additional bulk. If approved, request approval of the same on neighbouring site.

The land fill located along the southern boundary is addressed above (see pages 4-6). Please refer to previous comments.

- 2: Wall Setback (ground & upper floor, south, bulk) – 50% reduction is major. Bulk and amenity. Overshadow of adjoining OLA and MO's. Visual privacy issues. Has the effect of making the large A/C units closer, and they do not comply with the Reg's (official ENV Health complaint). Landowner's amenity should be maintained to the current level, given that variations have not been supported in the past. Will adversely affect the assessment of complainant's DA with regard to setbacks. If approved, request approval of the same on neighbouring site.

Variations to the DC (setback) provisions of the RD Codes are requested (as detailed above) however the variations do not amount to 50% as suggested by the objector. The extent of the variation is, at most, 0.36m and this relates to a portion of the wall only. This portion of the wall has been fitted with a 1.65m high obscure screen (refer Photograph 3) to ensure compliance with the visual privacy provisions of the RD Codes.

In terms of overshadowing, the dwelling satisfies the DC provisions of the RD Codes and is therefore acceptable.

The A/C units referred to by the objector are located in an area that is setback 3.245m from the southern boundary (refer Photograph 12). This setback is well in excess of the 2.0m setback required under the DC provisions of the RD Codes.

Rowe Group is not aware of any complaints regarding compliance of the air conditioning units with the *Environmental Protection (Noise) Regulations* however the Applicant advises that they are agreeable to the City's Environmental Health Officers undertaking an inspection of the units at a mutually convenient time to ensure compliance with the *Regulations*.

The objector notes that setback variations on the subject site will affect assessment of the objector's Development Application. This is not correct as setbacks are determined by reference to the distance between a building and the property boundary, not an adjoining dwelling.

The objector further notes that variations have not been supported in the past. Rowe Group is unable to comment on this however we do note that the 2007 approval was issued under delegated authority. This could not have occurred if neighbour objections had been received. Notwithstanding, we reiterate that the setback variations along the southern boundary of the subject site are minor and affect a portion of the wall only. This portion of the wall has been fitted with privacy screening as shown in Photograph 3.





**Photograph 12:** *The air conditioning units along the southern boundary are setback more than 2.0m from the boundary and are located behind and below the dividing fence.*

- 3: Wall Setback (lower floor, uncovered OLA, south)– large variation = large visual privacy impact, and not screened. If approved, request approval of the same on neighbouring site.

This wall is setback 1.644m from the southern boundary. Under the DC provisions of the RD Codes, the wall is required to be setback between 1.5m and 2.0m which means that part of the wall does not satisfy the DC provisions of the RD Codes and requires assessment against the DP. As explained above, the non-compliant wall has been assessed against the DP under clause 5.1.3 of the RD Codes and is considered to satisfy the PD for the following reasons:

- The wall is setback the same distance as was approved by the City of Nedlands in 2007.
- The additional setback requirement only arises because of its location on a steeper part of the site.

## No. 136 Victoria Av, Dalkeith



- The wall at this location has been fitted with a 1.65m high obscure screen to restrict any overlooking of adjoining No. 138 Victoria Avenue (refer Photograph 3).
- The wall at this location is unroofed and in this regard does not overshadow the adjoining property at No. 138 Victoria Avenue or generate any building bulk.
- Being without a roof, the impact of the wall on the adjoining property in terms of building bulk is limited.
- The setback of the wall from the western property boundary is 2.5m greater than required under the provisions of the City of Nedlands Town Planning Scheme No. 2.
- Notwithstanding the above, the Applicant is agreeable to the dividing fence between the two (2) properties being increased in height if the owner of No. 138 Victoria Avenue considers that this would improve their level of amenity.

For these reasons, we do not accept that the variation is major nor do we accept that the variation will result in a large visual privacy impact. As evident from Photograph 3, the adjoining property is not visible from the Outdoor Living Area by virtue of the 1.65m high obscure screen.

- 4: Wall Setback (lower floor, undercover OLA, south) – large variation = large visual privacy impact, and not screened. If approved, request approval of the same on neighbouring site.

This objection is repeated (refer item 3) and we therefore provide no further comment. If the objection has been incorrectly summarised and relates to a different wall, please advise.

- 5: Visual Privacy (upper floor, front balcony, east) – will overlook north-oriented OLA's and MO's on adjoining property, and not screened. If approved, request approval of the same on neighbouring site.

The upper floor front balcony does not overlook any part of the adjoining property at No. 138 Victoria Avenue by virtue of the dividing fence/retaining wall located along this boundary. However, given the concerns of the adjoining landowner, the Applicant is agreeable to installing a 1.65m high obscure screen along the southern side of this balcony.

- 6: Prior Objection - concerns regarding floor and roof levels were previously raised during construction.

Rowe Group is not aware of any previous objections relating to floor and roof levels. We do note however, that the finished floor levels of the dwelling are consistent with the levels approved by the City in 2007 and that the dwelling complies with the building height requirements of the City's TPS2.

- 7: Activity within Rooms - A very soft line was agreed to during the previous SAT mediation, clearly in contravention of TPS2 cl. 5.11 (the storey rule), to which there is no discretion. Furthermore, these physical changes are not replicated on the latest 'As Constructed' drawings. The application should be refused on this basis alone; and the relevant rooms physically altered to be inaccessible, to such a



degree that they cannot be easily converted back. The physical use of a non-complying building should not be allowed, in accordance with TPS2 cl. 6.6a.

The Lower Floor of the development was approved by the City of Nedlands on 26 August 2014 under a separate Application for Planning Approval [Reference DA2013/297]. The approval has been implemented and all Conditions satisfied.

The Applicant notes that the dwelling to the immediate north contains habitable rooms on all three (3) levels, despite the requirements of the City's TPS2. The property to the south at No. 140 Victoria Avenue is also understood to contain habitable rooms across all three (3) levels. The Applicant has instructed our Office to submit a formal request for investigation with the City in relation to these properties and we will do so under cover of a separate letter.

8: Precedence - of bulk and amenity, has serious ramifications throughout the City, with other landowners and builders are watching closely the way the City handles this matter, as guidance on how to design buildings on their properties.

Every Application for Planning Approval received by the City of Nedlands is required to be assessed on its merits and in this regard we do not agree with the objectors statement. The Applicant is not requesting any discretion beyond the powers of TPS2 and in this regard, there is no capacity for the establishment of precedent.

9: Magnitude - the extent of the unauthorised works and complete disregard for the City and the planning system, which is why the penalties in the Act are substantial. Accordingly, prosecution should be continued to completion.

The Applicant has been prosecuted by the City and a penalty adequate to ensure deterrence against future breaches has been imposed.

10: Cumulative Effect - due to the extent of the current retrospective works, the cumulative effect should result in a refusal.

When viewed from the rear boundary (Swan River foreshore) in the context of the overall development, the variations are minor and indistinguishable. That is to say, the reduced setbacks and additional fill are not so substantial as to change the appearance of the dwelling from the river foreshore and therefore effect its amenity. The same applies in relation to the view from Victoria Avenue. The dwelling is setback a substantial distance from Victoria Avenue and is positioned lower on the site that the existing dwellings to the immediate north and south.

The lot boundary setbacks and visual privacy elements of the RD Codes have been considered and each element addressed in detail with specific reference to impacts on the amenity of neighbouring properties.

No. 136 Victoria Av, Dalkeith



As demonstrated above, the dwelling satisfies the DP of each element and is considered appropriate on this basis.

The dwelling also complies with the building height requirements of TPS2 and is setback from the rear property boundary (Swan River foreshore) a distance that exceeds the minimum requirement.

Having regard to the above, the cumulative effect of the retrospective works is not considered to be so significant as to warrant refusal of the Application and on this basis, Council is requested to grant its approval.

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

Yours faithfully,



**Claire Richards**  
Rowe Group, Perth Office


cc: Client

<b>Summary of comments received</b>
<b>Issue: Land Fill (southern boundary)</b>
Additional fill will require higher fences, resulting in additional bulk. If approved, request approval of the same on neighbouring site.
<b>Issue: Wall Setback (lower floor, south, uncovered Outdoor Living Area)</b>
A large variation equals a large visual privacy impact, and not screened. If approved, request approval of the same on neighbouring site.
<b>Issue: Wall Setback (ground and upper floors, south, bulk)</b>
<p>A major (50%) reduction. Bulk and amenity. Overshadow of adjoining OLA and MO's. Visual privacy issues. Has the effect of making the large A/C units closer, and they do not comply with the Reg's (official ENV Health complaint).</p> <p>Landowner's amenity should be maintained to the current level, given that variations have not been supported in the past. Will adversely affect the assessment of complainant's DA with regard to setbacks. If approved, request approval of the same on neighbouring site.</p>
<b>Issue: Visual Privacy (upper floor, east, front balcony)</b>
Will overlook north-oriented Outdoor Living Areas and Major Openings on adjoining property, and not screened. If approved, request approval of the same on neighbouring site.
<b>Issue: Prior Objection</b>
Concerns regarding floor and roof levels were previously raised during construction.
<b>Issue: Activity within Rooms</b>
<p>A very soft line was agreed to during the previous SAT mediation, clearly in contravention of the Scheme storey rule, to which there is no discretion. Furthermore, these physical changes are not replicated on the latest 'As Constructed' drawings.</p> <p>The application should be refused on this basis alone; and the relevant rooms physically altered to be inaccessible, to such a degree that they cannot be easily converted back. The physical use of a non-complying building should not be allowed, in accordance with Scheme cl. 6.6a.</p>



<b>Issue: Precedence</b>
The precedence of bulk and amenity has serious ramifications throughout the City, with other landowners and builders are watching closely the way the City handles this matter, as guidance on how to design buildings on their properties.
<b>Issue: Cumulative Effect</b>
Due to the extent of the current retrospective works, the cumulative effect should result in a refusal.
<b>Issue: Magnitude</b>
The extent of the unauthorised works and complete disregard for the City and the planning system, which is why the penalties in the Act are substantial. Accordingly, prosecution should be continued to completion.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

<b>PD25.14</b>	<b>No. 70 (Lot 100) Minora Road, Dalkeith – Two Storey Single House, Pool and Front Fence</b>
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<b>Committee</b>	8 July 2014
<b>Council</b>	22 July 2014
<b>Applicant</b>	Concept Building Design
<b>Owner</b>	Louis Lu (Xin Lu)
<b>Officer</b>	Thomas Geddes- Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	File number of file on which this report is saved in TRIM

## 1.0 Executive Summary

This application is for a two storey single house, pool and front fencing.

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

The proposal involves a rear setback to the attached garage of 1.5m in lieu of 6m and a porch with an overall height of 4.2m in lieu of 3.5m. After consideration, these aspects of the proposal are deemed to meet the relevant design principles or the assessment criteria of the relevant policy.

In addition, objections have been raised in relation to the impact of the proposed dwelling upon the amenity of the adjoining properties and Minora Road. It is considered that the proposal complies with the intent of the scheme provision (Clause 5.5.1) in that its external appearance and any traffic and noise generated by the development is consistent with a residentially zoned site.

As a result, the proposal is recommended for approval subject to the following conditions.

### 1.1 Recommendation to Committee

**Council approves an application for a two storey single house, pool and front fence at No. 70 (Lot 100) Minora Road, Dalkeith in accordance with the application received on 13 February 2014 and the plans received on 19 May 2014, subject to the following conditions:**

- 1. The development shall at all times comply with the approved plans.**

- 2. The use of the cellar level shall be restricted to uses of plant and equipment, storage, toilets and/or the parking of wheeled vehicles. Prior to occupation of the dwelling / development, the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the cellar is subject to the restriction set out above.**
- 3. All street trees in the nature-strip / verge are to be retained and shall not be removed without written approval from the CEO.**
- 4. All crossovers to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the CEO under supervision onsite, prior to commencement of works.**
- 5. The existing crossover shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.**
- 6. Any construction in the nature-strip / verge (including footpaths) will require a Nature-Strip / Verge Permit to be lodged with, and approved by, the CEO, prior to construction.**
- 7. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development.**
- 8. Front walls and fences in the primary street setback area shall be:**
  - a) A maximum height of 1.8m above natural ground level at the base of the wall;**
  - b) Visually Permeable above 1.2m in accordance with the *Residential Design Codes 2013* and Council Policy; and**
  - c) Truncated or reduced to no higher than 750mm within 1.5m of where walls and fences adjoin vehicle access points, including neighbouring properties.**
- 9. All footings and structures to retaining walls, fences and parapet walls shall be constructed wholly inside the site boundaries of the Certificate of Title.**
- 10. All fencing, visual privacy screens and/or obscure glass panels to Major Openings and/or Active Habitable Spaces shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2013* (R-Codes). The structure(s) shall be installed and remain in place permanently, unless otherwise approved by the CEO.**

**Advice Notes specific to this approval:**

- 1) 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.
- 2) 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.
- 3) The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to selecting and locating any air-conditioner or swimming pool or spa mechanical equipment such that noise, vibration and visual impact on neighbours is mitigated. The City does not recommend installing any equipment near a property boundary where it is likely noise in these locations will intrude on neighbouring properties.
  - a) Prior to selecting a location to install an air-conditioner, applicant is advised to consult the online fairair noise calculator at [www.fairair.com.au](http://www.fairair.com.au) and use this as a guide on air-conditioner placement so as to prevent noise affecting neighbouring properties.
  - b) Prior to installing an air-conditioner or swimming pool or spa mechanical equipment, the applicant is advised to consult residents of neighbouring properties and if necessary take measures to suppress noise.
- 4) The landowner is required to limit construction noise and hours in accordance with the *Environmental Protection (Noise) Regulations 1997*.
- 5) All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
- 6) 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.

## **1.2 Strategic Community Plan**

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design principles of the Residential Design Codes of Western

Australia, contributing to well-planned and managed development in the City of Nedlands.

## 2.0 Background

<b>Property address</b>	No. 70 (Lot 100) Minora Road, Dalkeith
<b>Lot area</b>	1012m <sup>2</sup>
<b>Zoning:</b>	Residential
<b>Metropolitan Region Scheme</b>	Urban
<b>Town Planning Scheme No. 2</b>	R10

## 2.1 Key Relevant Previous Council Decisions

N/A

## 2.2 Legislation / Policy

- Planning & Development Act 2005
- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes of WA 2013 (RCodes)
- Council Policy 6.4 – Neighbour Consultation (Neighbour Consultation policy)

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

The proposed variations from the City's Policies deemed-to-comply requirements of the R-Codes were advertised from 19 March 2014 to 2 May 2014 and a two-storey development notification sign was placed on site from 2 April to 16 April 2014. The City received two (2) objections to various aspects of the proposal, which will be detailed below.

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

## 4.0 Budget / Financial Implications

N/A

## 5.0 Risk management

N/A

## 6.0 Discussion

### 6.1 Introduction



The proposal involves a new two storey single house, pool and front fence to be constructed at 70 Minora Road Dalkeith. The proposal meets the requirements of the City's Town Planning Scheme No. 2, Residential Design Codes of Western Australia and the relevant City policies, excepting the proposed rear setback and porch height.

The proposed dwelling is located 9 metres from the Minora Road boundary with a porch at 7.5m. The garage for the dwelling is located at the rear of the dwelling, set back 1.5m from the rear property boundary. The dwelling has a minimum setback of 4.13m from the eastern boundary and 1.81m from the western boundary.

## 6.2 Consultation

Pursuant to the consultation carried out, the City received two (2) objections which raised the following issues:

### Issue Raised:

- 1) The building will be overbearing and negatively impact the character and amenity of the neighbourhood due to:
  - a. The form, façade and scale of the development; and
  - b. The poor integration of solar panels on the roof of the dwelling.

### Administration comment:

In response to this objection, the applicant has removed the solar panels from the proposal and reduced the finished floor level of the dwelling by 500mm. The proposed dwelling is consistent with the building height and street setback requirements of the Town Planning Scheme. With regard to the impact of the proposed dwelling upon the surrounding streetscape, there are multiple examples of double storey homes of a similar scale on both sides of Minora Road between Alexander Road and Hynes Road. The impact of the dwelling upon the street will be further softened by the proposed landscaping (refer attachment 3).

### Issue Raised:

- 2) The overbearing visual impact of the development is compounded by the:
  - a. Height and scale of the proposed portico entry;
  - b. The fill and retaining to the front setback
  - c. The location of the crossover to the centre of the property, preventing landscaping to offset the impact of the development; and
  - d. The lack of integration and awkward placement of the solar panels forward of the main roof.

### Administration comment:

The applicant has reduced the level of fill to the front setback to be in accordance with the R-Codes requirements and the amended proposal involves a maximum of 200mm fill within the first three metres of the front setback (a maximum of 500mm permitted). The applicant has also provided a landscaping plan for the site (refer attachment 3) It is considered that the 9m front setback provides adequate space in

which to provide a well maintained front garden. The location of a sewer manhole in the verge to the eastern side of the site prevents the development of a new crossover in this location.

As noted above, the solar panels have been removed from this application.

**Issue Raised:**

- 3) The dwelling will result in a feeling of “*intrusion and intimidation*” which will diminish the use and enjoyment of front gardens and verandahs of nearby residences.

**Administration comment:**

The applicant has reduced the height of the proposed dwelling by 500mm and has provided a landscaping plan for the mitigation of the impact of the proposed dwelling upon the streetscape.

**Issue Raised:**

- 4) Bedroom 4 and the proposed upper alfresco area will overlook the rear yard of the adjoining property. This area has been noted as a sensitively used area of the adjoining property.

**Administration comment:**

The windows onto bedroom 4 have been amended in accordance with the R-Codes deemed-to-comply requirements to limit any overlooking impact. The upper alfresco to the rear of the dwelling has been set back more than 7.5m from the western site boundary and screened along its eastern side and therefore complies with the deemed-to-comply requirements of the R-Codes Visual Privacy requirements. Under clause 2.5.4 of the R-Codes a decision maker “*shall not refuse to grant approval to an application where the application satisfies the deemed-to-comply provisions of the R-Codes and the relevant provisions of the scheme and any relevant planning policy*”. The City of Nedlands does not provide any specific guidelines in relation to visual privacy under its Scheme or Policies.

**Issue Raised:**

- 5) The proposed fill and retaining to the front setback area will “loom large” above the adjoining property.

**Administration comment:**

The finished level of the dwelling has been reduced to limit the necessity for any fill along the adjoining property boundaries. The proposed retaining walls are primarily below the natural ground level of the adjoining site, or less than 0.5m above the natural ground level of the adjoining sites in accordance with the relevant deemed-to-comply R-Codes requirements.

**Issue Raised:**

- 6) The excavation to the rear of the property may negatively impact upon mandarin trees on the adjoining property.

**Administration comment:**

A landowner is permitted to cut back any encroaching roots to the property line and any further removal is subject to civil agreements between neighbours. The applicant has agreed to minimise any impact to vegetation where possible.

## **6.3 R-Codes deemed-to-comply Requirements**

### **Rear setback**

The proposed garage to the rear of the dwelling is set back 1.5m from the rear boundary in lieu of 6m. This is due to the fact that the garage is attached to the dwellings by way of the alfresco area. If the structure were to be detached from the main dwelling, it could be assessed as an outbuilding which complied with the deemed-to-comply requirements of the R-Codes in relation to outbuildings (clause 5.4.3). As the structure is attached to the dwelling the proposed garage setback requires assessment against the design principles of the R-Codes relating to lot boundary setback (clause 5.1.3).

### **Design Principle Assessment**

#### *Building Bulk*

The proposed structure will have an overall height of approximately 2.5m as seen from natural ground level at the adjoining properties to the east and south of the subject site, and approximately 3.5m from the natural ground level of the property to the west. The structure is set back more than 5m from both the east and west boundaries and so the impact of this building is considered to be minimal. The roof of the proposed garage will extend approximately 0.5m above a standard dividing fence to the rear of the property due to the proposed lowered rear yard.

#### *Privacy*

The garage is a non-habitable structure and has been lowered from natural ground level. It is not considered to have a significant impact upon the privacy of adjoining properties.

#### *Overshadowing*

The shadow generated to the south at midwinter by this structure will not exceed those generated by a standard 1.8m dividing fence. It is not considered that the shadow cast by this garage will have a significant effect upon adjoining properties due to its lowered finished level.

## **6.4 City Policy Requirements**

## Porch Height

The proposed porch has an overall height of 4.2m in lieu of 3.5m as required under City of Nedlands Policy 6.23, relating to structures permitted to be forward of the primary street setback line. Under this policy, variations are to be assessed with regard to the impact upon adjoining properties and the streetscape as a whole.

It is not considered that the proposed height of the porch will have a significant negative effect upon the Minora Road streetscape considering the prevalence of larger carports at a lesser setback. The location of landscaping and existing street trees which will aid in the amelioration of the bulk of the porch. It is also considered that the design of the porch fits with the form of the remainder of the dwelling.

The impact of the porch height is considered to be minimal as a porch with a pitched roof and a wall height of 3.5m could exhibit a similar overall height. The proposed porch is considered to be in proportion with the form of the dwelling.

## 6.5 Preservation of Amenity

TPS2 clause 5.5.1 (Preservation of Amenity) states (emphasis added):

*'Without limiting the generality of Clause 6.5 the **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 response, it is considered that the proposed development does not adversely affect the amenity of the surrounding area (as discussed elsewhere). The external appearance of the development is contemporary in nature and consistent with the external development of a single residential dwelling. Traffic congestion and noise generated by the dwelling following construction will be consistent with a single residential dwelling. Accordingly, the proposal is supported by the City, subject to the recommended conditions.

## 6.6 Consideration of Applications

TPS2 clause 6.4.1 (Consideration of Applications) states (emphasis added):

*'In considering any application for planning approval the **Council may have regard to the appropriateness of the proposed use and its effect on the Scheme area, and in particular the provisions of this Scheme or any By-laws in force in the district and the relationship of these to the proposed development or use.***

In response, the proposal for a single house in a residential zone, which is a 'P' permitted use, will have a typical effect on the area. Accordingly, the land use for this proposal is supported by the City, subject to the recommended conditions.

## 6.7 Orderly & Proper Planning

TPS2 clause 6.5.1 (Determination by Council) states (emphasis added):

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

In response, the proposal complies with Scheme provisions, with some discretionary variations which are justified (see above). Accordingly, the proposal represents orderly and proper planning, and is supported by the City, subject to the recommended conditions.

## 6.8 Conclusion

It is considered that the proposed dwelling satisfies the listed design principles where the proposal does not comply with the deemed-to-comply requirements of the R-Codes. The garage is considered to have a minimal impact upon adjoining properties and the proposed porch is considered to be appropriate due to its form fitting in with the remainder of the design of the dwelling.

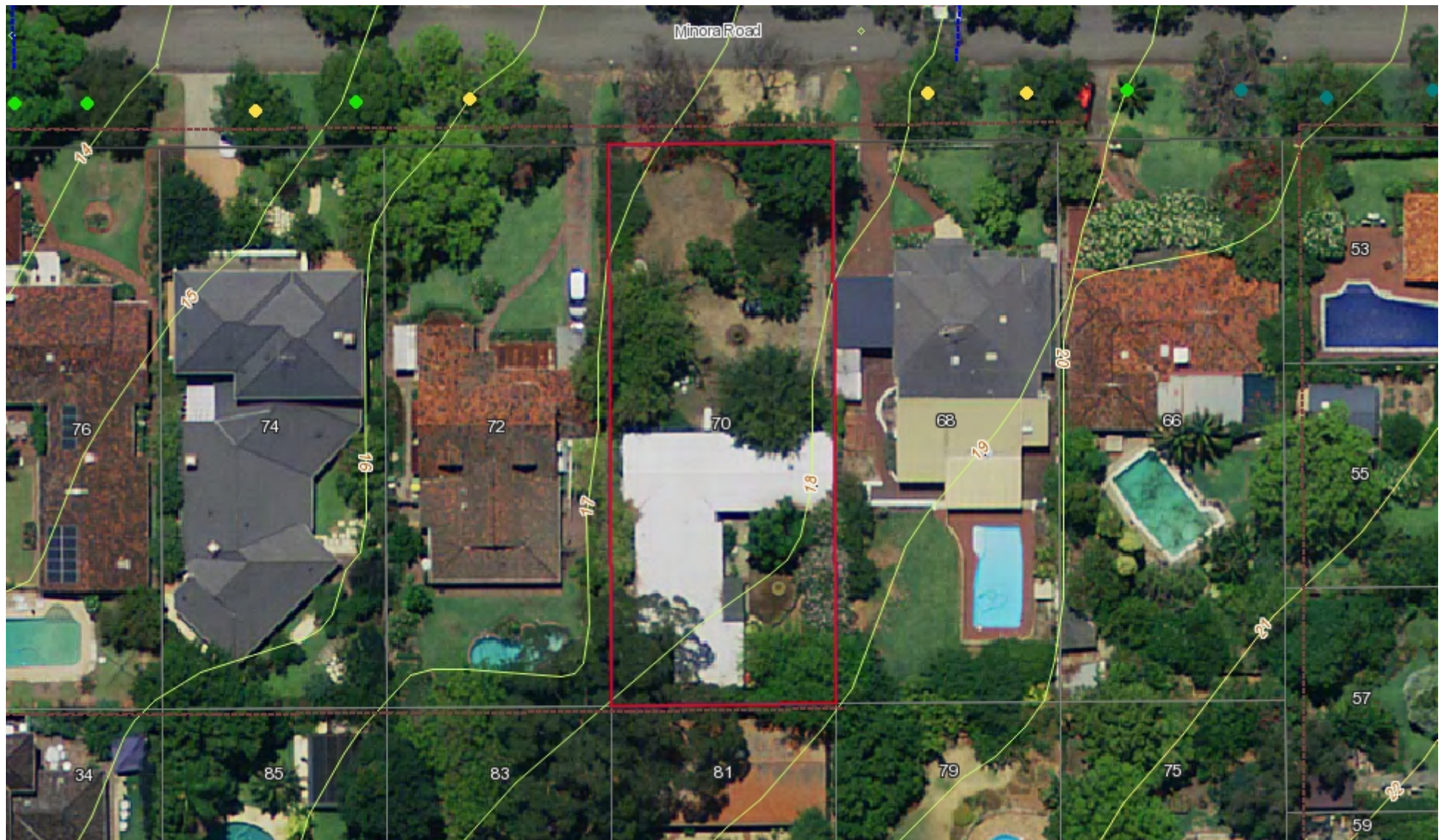
Access to direct sunlight and ventilation adjoining properties is maintained; the privacy of adjoining sites is maintained due to effective use of screening and compliance with the R-Code visual privacy setback and screening requirements and the dwelling is set back from lot boundaries in accordance with the deemed-to-comply requirements, other than the rear setback to the rear garage, which is considered to meet the design principles of the R-Codes.

The proposed dwelling is considered to be in accordance with the Scheme requirements relating to the amenity of the locality, as the form of the dwelling is consistent with the residential zone and will not generate undue noise or traffic hazards. Due to the above reasons, the proposal is recommended for approval subject to the recommended conditions.

## 7.0 Attachments

1. Locality Plan
2. Proposal Plans
3. Landscaping Plan





City of Nedlands

The City of Nedlands accepts no responsibility for the accuracy of this image or the results of any actions taken when using this image

No. 70 Minora Road

Monday, June 09, 2014

1:500

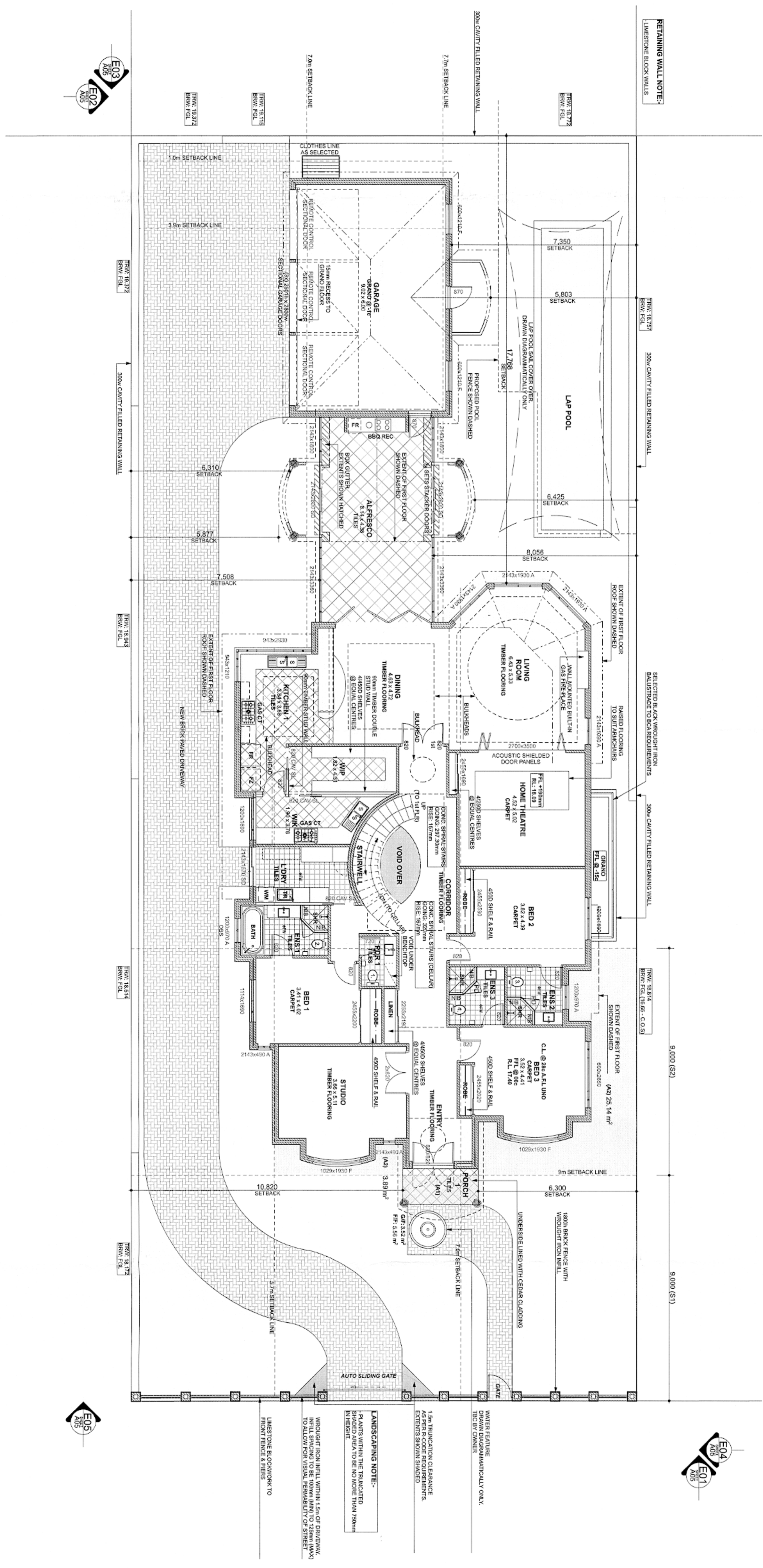












**RETAINING WALL NOTE:**  
LIMESTONE BLOCK WALLS

SELECTED BLACK WROUGHT IRON  
BALUSTRADES TO MATCH REQUIREMENTS

**LANDSCAPING NOTE:**  
- PLANTS WITHIN THE TRUSCARTO  
SHADING AREAS TO BE NO MORE THAN 700mm  
TALL.  
- WINDOUT FROM INLET WITHIN 1.5m OF DRIVEWAY.  
- NOT ALL APPLYING TO THE FRONT GARDEN TO BE MAINTAINED  
- MAINTAINED TO THE FRONT GARDEN TO BE MAINTAINED  
- MAINTAINED TO THE FRONT GARDEN TO BE MAINTAINED

**WATER FEATURE:**  
DOWN DOWN MANUALLY ONLY.

**1.5m TRUSCARTO CLEARANCE:**  
AS PER CODE REQUIREMENTS  
FOR TRUSCARTO CLEARANCE  
FOR TRUSCARTO CLEARANCE

**LIMESTONE BLOCK WALLING TO:**  
FRONT FENCE & PERS

**BUILDING AREAS**

GROUND FLOOR AREAS	48.07
ALFRESCO	45.51
DECK	288.57
GROUND COVER	288.57
<b>TOTAL GROUND COVER</b>	<b>444.67 m<sup>2</sup></b>
1st FLOOR AREAS	24.48
ALFRESCO	22.92
DECK	1.56
<b>TOTAL 1st FLOOR AREAS</b>	<b>24.48 m<sup>2</sup></b>
<b>TOTAL AREAS</b>	<b>727.21 m<sup>2</sup></b>

**GROUND FLOOR PLAN**  
Scale 1:100



**PROJECT:**  
Proposed Double Storey Residence

**CLIENT:**  
M. Louis Lu

**ADDRESS:**  
70 Winora Road Dalketh

**DATE:**  
16/06/2014

**REVISIONS:**

Rev	Date	Item
1	16/05/2014	DD-AT - CHANGES FOR DA APPROVAL
2	16/06/2014	DD-AT - CHANGES FOR DA APPROVAL

**DESIGNER:**  
EQUUS ARCHITECTURE

**DATE:**  
16/06/2014

**SCALE:**  
AS SHOWN

**DRAWING NUMBER:**  
A03 of A05

**APPROVAL:**

Drawn	BTW/B	Date	16/06/2014
Checked	AS	Scale	AS SHOWN

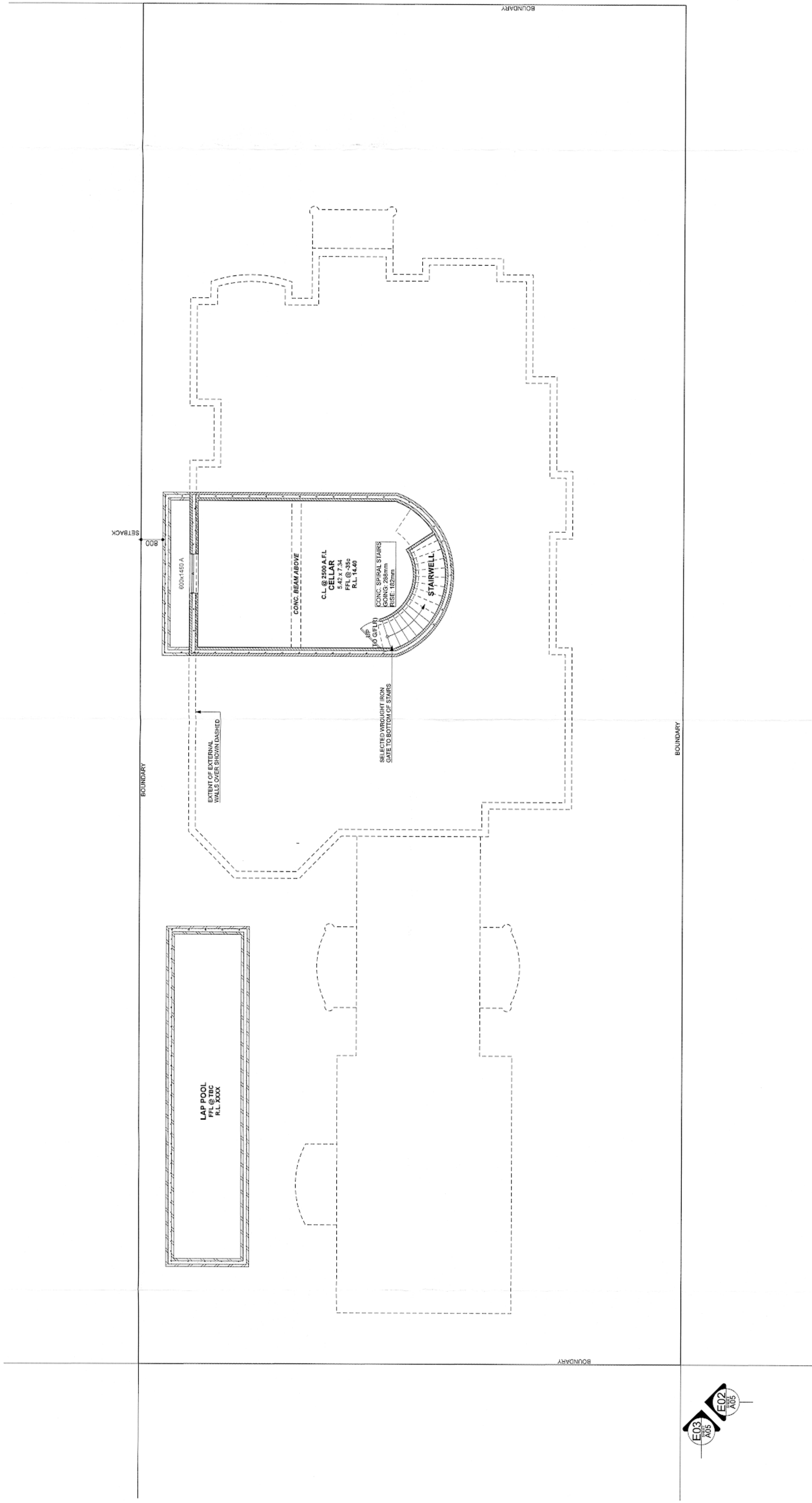
**COUNCIL:**  
COUNCIL

**REF:**

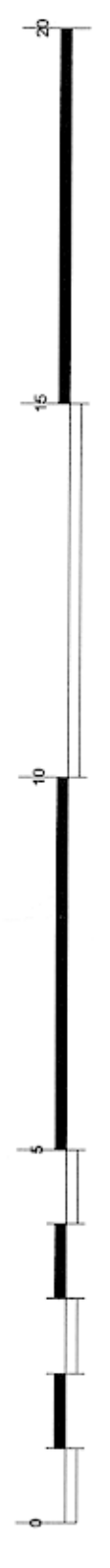
**JOB NO.:**  
CR-184-13

**STAGE / REVISION:**  
DD-X





BUILDING AREAS	
GROUND FLOOR AREAS	48.97
ALFRESCO	55.53
CELLAR	288.57
GROUND LIVING	464.67
<b>TOTAL FLOOR AREAS</b>	<b>857.74</b>
ALFRESCO	55.53
BALCONY 1	10.84
BALCONY 2	29.82
<b>TOTAL FLOOR LIVING</b>	<b>272.29</b>
<b>TOTAL AREA</b>	<b>727.61m<sup>2</sup></b>



CELLAR FLOOR	
Drawn:	BTW/B
Date:	16/04/2014
Checked:	RF
Scale:	AS SHOWN
Job No.:	CP-186-13
Stage / Revision:	A02 of A05
DD-K	DD-K

Rev.	Date	Item	Issued To
K	16/06/2014	DD ALT - CHANGES FOR DA APPROVAL	COUNCIL
J	14/05/2014	DD ALT - CHANGES FOR DA APPROVAL	COUNCIL

Address:  
70 Minora Road Dalketh

Client:  
M. Louis Lu

Project:  
Proposed Double Storey Residence

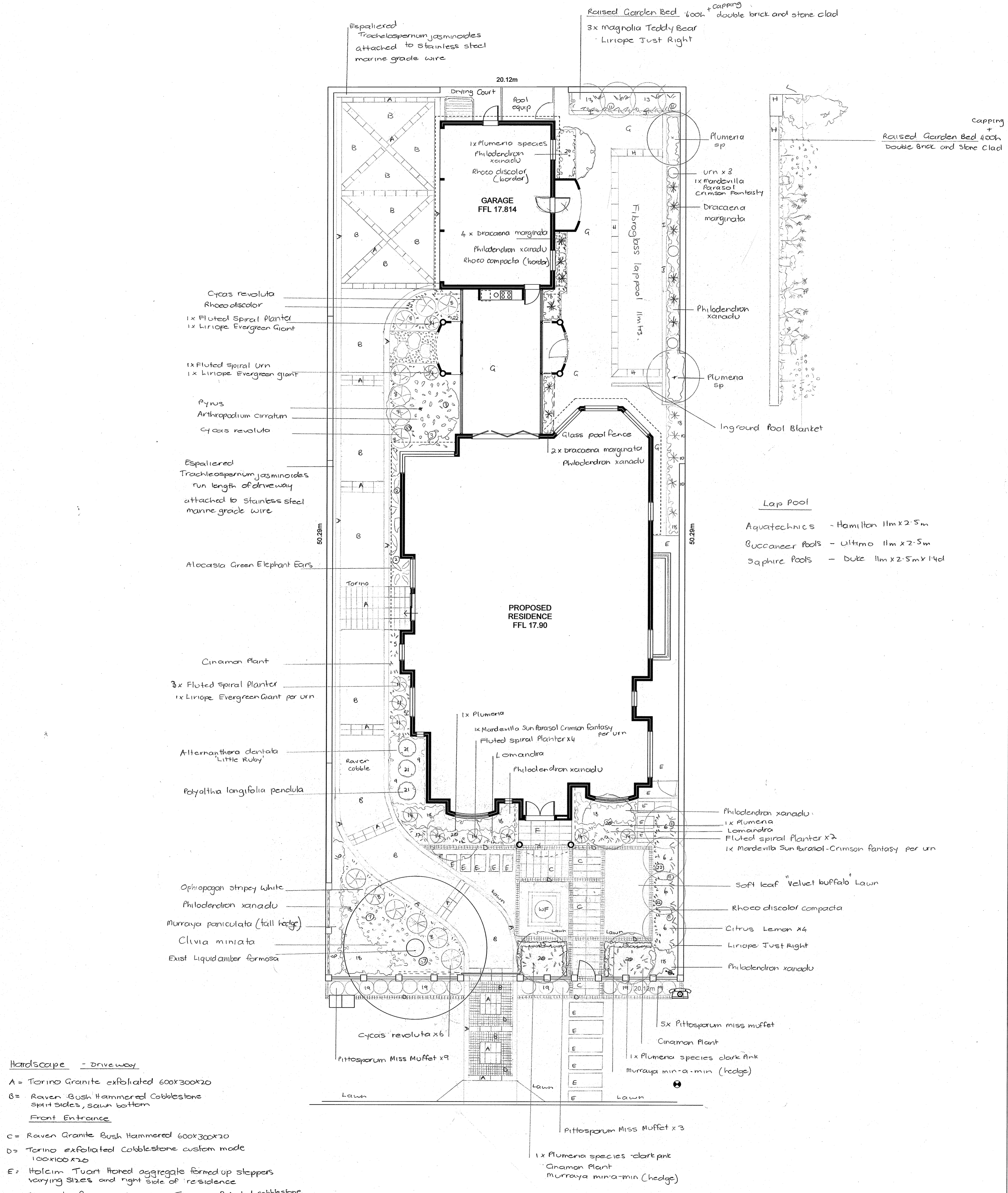
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- Hardscape - Driveway**
- A = Torino Granite exfoliated 600x300x20
  - B = Raven Bush Hammered Cobblestone split sides, sawn bottom
- Front Entrance**
- C = Raven Granite Bush Hammered 600x300x20
  - D = Torino exfoliated Cobblestone custom made 100x100x20
  - E = Holcim Tuart Honed aggregate formed up steps varying sizes and right side of residence
  - R = Riser to front portic step Torino exfoliated cobblestone custom made
  - F = Raven Granite Exfoliated 600x300x20
- G = Jerico Modular Tiles 200-600mm, 11mm French random
  - H = Jerico tumbled Coping 900x400x30
  - I = Matakata Travertine Light Medium 457x457x12 cut to size
  - J = Matakata Travertine Light Medium pencil round edge 1200x300x30 cut to size

- Other notes / suggestions**
- Reverse garage door opening into Garage for pool compliance regulations
  - Recommend Alfresco stacker doors if in Alfresco scope to be changed to Louvers with 90mm openings or windows that slide up against themselves starting at 1200h for pool compliance regulations

**Water Feature** 1800w x 1900L x 300d  
 capping = Raven Granite Exfoliated 600x300x20 cut to size  
 w/f urn = Brittany 830d x 1720h

This drawing and the concepts within remain the property of Mondo Landscapes. They shall not be copied or lent without prior consent from Mondo Landscapes.	All dimensions and levels to be checked and verified on site prior to commencing any work from these drawings.	Construction to be in accordance with Local Authority guidelines.
	Whilst every effort is made to construct the design as per the plan, some minor variations may be required on site.	Landscape to determine levels once area is cleared.

Louis Lu  
 70 Minora Road Dalkeith 6009 WA


Base Plan

**MONDO LANDSCAPES**

Designed and Drawn by:-  
 Beverley Harrison 0409 209 446  
 Debbie Taylor 0417 171 198  
 Drafted by Andrew Atkinson  
 www.mondolandscapes.com.au

Scale 1:100 15th April 2014

<b>PD26.14</b>	<b>Reasons required for Scheme Amendment No. 201 Rezone Lot 346 (No. 11) Bedford Street.</b>
----------------	--

<b>Committee</b>	8 July 2014
<b>Council</b>	22 July 2014
<b>Applicant</b>	MW Urban Planning and Development
<b>Owner</b>	Mark & Hilary Dolling
<b>Officer</b>	Jason Moore
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	TPN/A201
<b>Previous Item</b>	22 April 2014 - PD13.14 10 December 2013 - PD58.13

## 1.0 Executive Summary

The purpose of this report is to present Scheme Amendment 201 to Council again in order to obtain a Council resolution that is acceptable to the Department of Planning and allow Council to endorse the schedule of submissions.

Council resolved to discontinue all future work on the amendment on 22 April 2014 at its Ordinary Meeting.

## 1.1 Recommendation to Committee

### Council

- 1) Does not wish to proceed with scheme amendment No. 201 as it deems this amendment to be contrary to orderly and proper planning for the following reasons:
  - a. there is no current strategic vision that allows for the subdivision of lots in the area;
  - b. a subdivided lot would be out of character to the area; and
  - c. one off scheme amendments constitute ad hoc planning.
- 2) Endorses the schedule of submissions;

## 1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Governance and Civic Leadership

## 2.0 Background

<b>Property address</b>	Lot 346 (No. 11) Bedford Street, Nedlands
<b>Lot area</b>	1011m <sup>2</sup>
<b>Zoning:</b>	R10
<b>Metropolitan Region Scheme</b>	Urban
<b>Town Planning Scheme No. 2</b>	Residential

Council initiated the scheme amendment in December 2013. The amendment was considered by council at its meeting of 22 April 2014 and resolved to discontinue all future work on the amendment.

The City received correspondence from the Department of Planning (Attachment one) stating that no reasons had been provided to support Council's decision as required by Town Planning Regulations 1967 (No 18(1)(e)). The Department cannot process Council's decision until the resolution complies with the provisions and has therefore requested Council provide reasons.

### 2.1 Key Relevant Previous Council Decisions

Council initiated the scheme amendment proposal at its Ordinary Council Meeting on 10 December 2013 in accordance with the *Planning and Development Act 2005*.

Council resolved to discontinue all future work on the amendment at its Ordinary Council Meeting on 22 April 2014.

### 2.2 Proposal Detail

As Council had not provided reasons to support its resolution in April, the Department of Planning has requested Council justify its position.

### 2.2 Legislation / Policy

- *Planning and Development Act 2005*
- *Town Planning Regulations 1967*

### 3.1 What consultation process was undertaken?

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

The consultation for the amendment that was carried out is detailed in the attached report. No further consultation was required.

## 4.0 Budget / Financial Implications

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

## **5.0 Risk management**

If Council does provide the reasoning to support the Council decision not to progress with the scheme amendment the Department of Planning will be unable to complete its processes.

## **6.0 Discussion**

In the absence of Council's reasons for refusal of the scheme amendment, Administration recommends that an overarching reason for refusal could be to uphold orderly and proper planning on the following grounds:

- there is no current strategic vision that allows for the subdivision of lots in the area;
- a subdivided lot would be out of character to the area; and
- a one off scheme amendments constitutes ad hoc planning.

## **6.4 Conclusion**

It is recommended that the justification for the refusal should be based on the overarching concern for orderly and proper planning.

## **7.0 Attachments**

1. Letter from Department of Planning
2. Locality Plan
3. Schedule of Submissions



Hi Jason,

I am writing in regards to Scheme Amendment 201. Council's minutes state that Council's resolution was to discontinue the amendment, however there were no reasons for this decision provided as part of the minutes. Town Planning Regulations (No 18(1) (e)) require that a summary of the reasons be provided when the resolution is not to proceed with the amendment. Therefore, could you please arrange for Council to provide reasons for their decision in relation to this scheme amendment to the Commission?

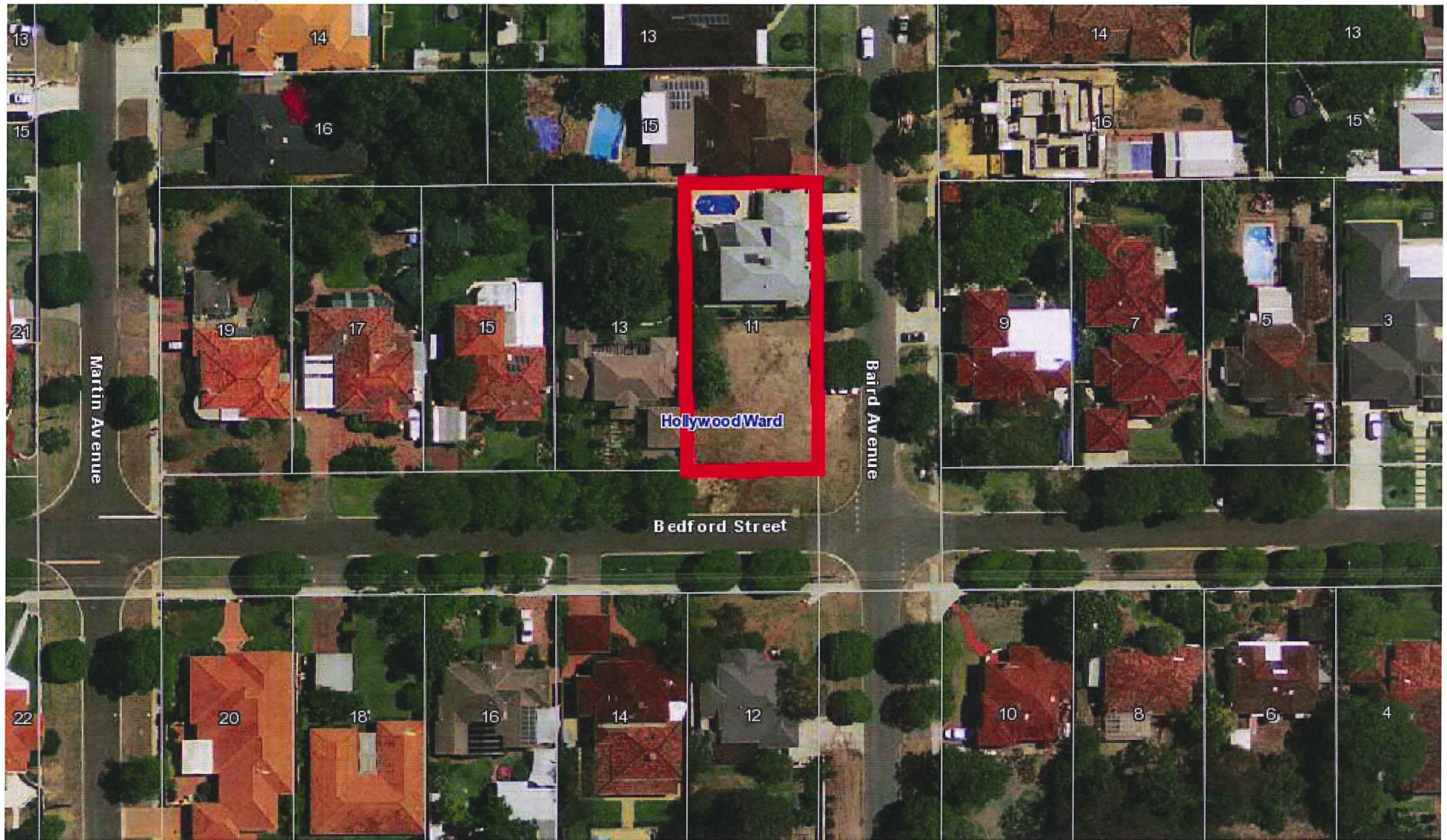
Also, the table of submissions submitted with the Scheme Amendment documentation contains officer's responses in the third column. Could you please confirm that the schedule of submissions which was submitted to the Commission was adopted by Council.

If you have any queries in regards to this e-mail please contact the undersigned.

Regards

**Lilia Palermo** | Senior Planning Officer | Perth and Peel Planning  
Department of Planning | Unit 2b, 11-13 Pinjarra Rd | Mandurah WA 6210  
T (08) 9586 4687 | F (08) 9581 5491  
E [Lilia.Palermo@planning.wa.gov.au](mailto:Lilia.Palermo@planning.wa.gov.au) | W [www.planning.wa.gov.au](http://www.planning.wa.gov.au)





City of Nedlands

The City of Nedlands accepts no responsibility for the accuracy of this image or the results of any actions taken when using this image

Subject Site\_ Attachment 2- PD26.14

Monday, 18 November 2013

1:914




## Schedule of Submission for Scheme Amendment No. 201

ID	Summary	Officers Response
1	<ul style="list-style-type: none"> <li>No Objection</li> <li>There is the infrastructure capacity to service the amendment.</li> </ul>	Noted
2	<ul style="list-style-type: none"> <li>No Objection</li> </ul>	Noted
3	<ul style="list-style-type: none"> <li>Supports the proposal</li> <li>Local Area plan will improve the streetscape once a new dwelling has been built.</li> <li>The required additional landscaping will mitigate the impact of the reduced setbacks.</li> <li>Reduced side setback will have minimal impact.</li> <li>Subdivision aligns with Directions 2031.</li> </ul>	Noted
4	<ul style="list-style-type: none"> <li>Does not support the proposal.</li> <li>Subdivision in this area should not be supported.</li> <li>Subdivision will be detrimental to the area.</li> </ul>	Local area plan will reduce detriment to the area.
5	<ul style="list-style-type: none"> <li>Supports the proposal.</li> <li>Subdivision of corner blocks is a sensible way to increase density while maintain character.</li> <li>It is unreasonable to allow ad hoc subdivision.</li> </ul>	Noted
6	<ul style="list-style-type: none"> <li>Supports the proposal.</li> <li>Local Housing Strategy proposed corner lot subdivision until it was amended.</li> <li>Area has been in a state of flux waiting for corner lot subdivision.</li> </ul>	Noted
7	<ul style="list-style-type: none"> <li>Does not support the proposal.</li> <li>The area has always been 1000m<sup>2</sup> blocks.</li> <li>In 2004 community opposed corner lot subdivision.</li> <li>Subdivision approval will set a precedent.</li> <li>Draft Stirling Highway Special Control Area Provisions provide enough diversity in the area.</li> <li>Owners have made no attempt to improve the vacant block.</li> </ul>	No precedent will be set, every application is evaluated on its merits.
8	<ul style="list-style-type: none"> <li>Do not object to the proposal, provided that No. 10 Bedford is also allowed to subdivide.</li> </ul>	Additional lots will not be added to the amendment.
9	<ul style="list-style-type: none"> <li>Does not support the proposal.</li> <li>The amendment will set a precedent that allows subdivision.</li> </ul>	No precedent will be set, every application is evaluated on its merits.
10	<ul style="list-style-type: none"> <li>Does not support the proposal.</li> <li>The amendment will set a precedent that allows subdivision.</li> </ul>	No precedent will be set, every application is evaluated on its merits.



<b>PD27.14</b>	<b>Draft Local Planning Policy – Ancillary Accommodation</b>
----------------	--

<b>Committee</b>	8 July 2014
<b>Council</b>	22 July 2014
<b>Applicant</b>	City of Nedlands
<b>Officer</b>	Christie Downie – Sustainable Planning Officer
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	TPN/165
<b>Previous Item</b>	PD11.14 22 April 2014

## 1.0 Executive Summary

The proposed Local Planning Policy is required to clarify the meaning of the term 'related' in Clause 5.3.4 (d) of Town Planning Scheme No 2 in relation to the restrictions imposed by the scheme on Ancillary Accommodation.

The purpose of this report is for Council to adopt this Local Planning Policy (Attachment 1).

### 1.1 Recommendation to Committee

**Council:**

1. **adopts the proposed Draft Local Planning Policy – Ancillary Accommodation; and**
2. **instructs Administration to finalise the policy in accordance with Clause 8.3.5 of Town Planning Scheme No 2.**

### 1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Governance and Civic Leadership

## 2.0 Background

Clause 5.3.4 of the City of Nedlands Town Planning Scheme No 2 prescribes additional provisions for Ancillary Accommodation to residential dwellings in the City of Nedlands.

Clause 5.3.4 (d) imposes the restriction that “the Ancillary Accommodation will be occupied by a person related to the persons occupying the remainder of the dwelling”. The term “related” is open to interpretation.

In the past this term has been understood to mean that the occupant/s of the ancillary accommodation is/are member/s of the family of the occupants of the main dwelling. This understanding aligned with the planning framework at that time.

The focus on the need for family connections between the occupier of the ancillary accommodation and the main dwelling was removed with the changes to the Residential Design Codes in 2013. A wider interpretation of the term “related” is appropriate.

## 2.1 Key Relevant Previous Council Decisions

The Council resolution from 22 April 2014 is as follows;

Council approves the proposed Local Planning Policy – Ancillary Accommodation for the purposes of public consultation.

As a result of this resolution, the proposed draft Local Planning Policy has undergone public consultation in accordance with Clause 8.3.2 of Town Planning Scheme No 2.

## 2.2 Legislation / Policy

*City of Nedlands Town Planning Scheme No. 2*

Clause 5.3.4 of the City of Nedlands Town Planning Scheme No 2 prescribes additional provisions for Ancillary Accommodation to residential dwellings in the City of Nedlands.

Clause 5.3.4 (d) imposes restrictions on the person/s permitted to occupy an ancillary accommodation being “.....a person related to the person occupying the remainder of the dwelling”.

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

The public consultation of the draft Local Planning Policy was carried out in accordance with Clause 8.3.2 of Town Planning Scheme No 2.

Required by legislation:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Required by City of Nedlands policy:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 3.2 How and when was the community consulted?



Notice of the proposed Local Planning Policy was published in the Post Newspaper for three consecutive weeks (9 May, 16 May and 23 May 2014) and remained open for comment for a further 21 days.

A notice and copy of the draft Local Planning Policy was also available on the City’s website.

One submission was received. The comments made in the submission are based on other restrictions in Town Planning Scheme No 2, and are not applicable to this draft Local Planning Policy.

#### **4.0 Budget / Financial Implications**

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

The creation of local planning policies does not have any financial implication for the City.

#### **5.0 Risk management**

This proposal does not pose any risk to the quality of living in the City, but failing to progress this local planning policy poses the risk that Council is not fulfilling its function to serve its community.

#### **6.0 Discussion**

##### **The objective of the proposed policy**

Provisions that allow for Ancillary Accommodation on residential properties exist in the Residential Design Codes 2013 and Town Planning Scheme No 2. These provisions aligned until the recent changes to the Residential Design Codes.

One of the additional provisions in the City’s Town Planning Scheme No 2 restricts the use of the ancillary accommodation to “..a person related to the person occupying the remainder of the dwelling”.

The term “related” is open to interpretation.

In the past this term has been understood to mean that the occupant/s of the ancillary accommodation is/are member/s of the family of the occupants of the main dwelling but the focus on the need for family connections between the occupants was removed with the changes in the planning framework.

This change has made it possible to allow for a more expansive interpretation of the term “related”.

In this context the local planning policy proposes that “related” should include persons that have:

- a family relationship with the occupants of the main dwelling; and

- an association or connection derived from meeting a need (other than financial) of the occupant/s of the main dwelling;

but excludes any association or connection between the occupants of the main dwelling and the ancillary accommodation that is of a purely commercial nature.

### **Aspects this policy is not intended to address**

The focus of the policy is only to guide the manner in which ancillary accommodation can be used. It is not intended to address any other criteria relating to ancillary accommodation (e.g. permitted size of dwelling, building materials, facilities to be provided with the ancillary accommodation) as these are adequately provided for in the provisions for ancillary accommodation in the Residential Design Codes and Town Planning Scheme No 2 and other general clauses in the scheme, particularly clause 5.5, Preservation of Amenity.

## **6.1 Consultation**

The only submission received is not relevant to the proposed draft Local Planning Policy, as it addressed restrictions to height of residential properties in the City of Nedlands under Clause 5.11 (i) of Town Planning Scheme No 2.

As the submission addresses aspects outside the scope of the proposed draft local planning policy it cannot be considered in this context.

## **6.2 Conclusion**

The proposed policy allows property owners greater flexibility in the use of ancillary accommodation on their site. It adds to the attractiveness of Nedlands as a residential area and aims to address the changing needs of the community.

As no objections have been received in relation to this policy it is recommended that Council adopts the draft Local Planning Policy – Ancillary Accommodation without modification, and instructs Administration to complete the process to formalise that the policy has been adopted as a Local Planning Policy.

## **7.0 Attachments**

1. Local Planning Policy

# Ancillary Accommodation Local Planning Policy

<b>KFA</b>	KFA 3 - Built Environment
<b>Status</b>	Council
<b>Responsible division</b>	Development Services
<b>Objective</b>	To clarify the interpretation of clause 5.3.4(d) of the City of Nedlands Town Planning Scheme No 2

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## Context

Clause 5.3.4 of the City of Nedlands Town Planning Scheme No 2 prescribes additional provisions for Ancillary Accommodation to residential dwellings in the City of Nedlands.

Clause 5.3.4 (d) imposes restrictions on the type of person that is permitted to occupy an ancillary accommodation.

## Policy Area

This policy applies throughout the City.

## Background

Clause 5.3.4 (d) provides that *“the Ancillary Accommodation will be occupied by a person related to the person occupying the remainder of the dwelling”*.

The term “related” is open to interpretation.

In the past this term has been understood to mean that the occupant/s of the ancillary accommodation is/are member/s of the family of the occupants of the main dwelling. This understanding aligned with the planning framework at that time.

The focus on the need for family connections between the occupier of the ancillary accommodation and the main dwelling was removed with the changes to the Residential Design Codes in 2013.

A wider interpretation of the term “related” is appropriate.

## Policy Focus

The focus of this policy is to expand the interpretation of the term “related” in clause 5.3.4 (d) of the City of Nedlands Town Planning Scheme No 2 to permit ancillary accommodation to be used by persons that have

- a family relationship with the occupants of the main dwelling; and
- an association or connection derived from meeting a need (other than financial) of the occupant/s of the main dwelling.

The purpose of the expanded interpretation does not extend to permit that ancillary accommodation can be used by persons whose only association or connection to the occupants of the main dwelling is of a purely commercial nature.

### **Statement**

In the context of clause 5.3.4 (d) the term “related” refers to a family relationship or a connection or association that is more than purely commercial.

As a result of the wider interpretation, an ancillary accommodation can be occupied by a family member of the occupant/s of the main dwelling or by a person that meets a need of one or more occupants of the main dwelling eg carer, au pair, domestic employee, gardener and such like.

The wider interpretation does not permit the letting of ancillary accommodation on the basis of a purely commercial relationship such as a landlord/tenant relationship.

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### **Related documentation**

Town Planning Scheme No 2

### **Related Local Law/legislation**

*Planning and Development Act 2005*

### **Related delegation**

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### **Issued**

Date approved by Council

### **Amendments**

Dates amendments approved by Council

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