



Planning & Development Services Reports

Committee Consideration – 8 May 2012
Council Resolution – 22 May 2012

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PD17.12	No. 36A (Lot 2) Dalkeith Road, Nedlands – Proposed Single Storey Aged or Dependent Persons Dwelling
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Committee	8 May 2012
Council	22 May 2012

Applicant	Ross North Homes
Owner	Mui Lim Tan & Angeline Tan
Officer	Laura Sabitzer – Planning Officer
Director	Jennifer Heyes - Acting Director Planning & Development Services
Director Signature	
File ref	DA12/44 : DA1/36A
Previous Item No's	E167.02
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

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

Recommendation to Committee

Council approves an application for a single storey aged or dependent persons dwelling at No. 36A (Lot 2) Dalkeith Road, Nedlands, in accordance with the application dated 14 February 2012 and plans dated 19 April 2012, with the following conditions:

1. the aged or dependent persons' dwelling shall have at least one permanent occupant aged 55 years or over or a dependent person, as defined in the *Residential Design Codes of WA*, or the surviving spouse of such a person;
2. all crossovers to street shall be constructed to the Council's Crossover Specifications and the applicant / owner to obtain levels for crossovers from the Council's Infrastructure Services under supervision on-site, prior to commencement of works;
3. concrete footpaths must be retained across crossovers;

4. a grated channel strip-drain shall be constructed across the driveway, aligned with and wholly contained within the property boundary and the discharge from this drain to be run to a soak-well situated within the property;
5. all stormwater from building, paved areas and driveways shall be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 10 year recurrent storm event; and soak-wells shall be a minimum capacity of 1 m³ for every 80 m² of paved or roofed surface on the property;
6. ~~without prior approval from the City, the applicant /~~ landowner shall not place any fill or construct retaining walls on the lot other than that shown on the approved plans;
7. all footings and structures to retaining walls, dividing fences and parapet wall shall be constructed wholly inside the site boundaries of the Certificate of Title;
8. the parapet wall shall be finished to a quality finish and professional standard, to the satisfaction of the City;
9. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building / roof has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building / roof to reduce the reflectivity to a level acceptable to Council; and
10. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.

Advice Notes specific to this approval:

1. Any fencing forward of the primary street setback requires further development approval from the City.
2. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres/second.

3. 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 1.8 m from any building and at least 1.8 m from the boundary of the block.
4. Any proposed structure or addition shall not encroach closer than 1.8 m on any soak-well.
5. 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.
6. The City does not recommend any air-conditioner, swimming pool or spa mechanical equipment is installed near a property boundary where it is likely noise from such mechanical equipment in these locations will intrude on neighbouring properties. 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 and use this as a guide on air-conditioner placement so as to prevent noise affecting neighbouring properties. 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 prevent noise affecting neighbouring properties.

Strategic Plan

- KFA 3: Built Environment
- 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.
- KFA 5: Governance
- 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address:	No. 36A (Lot 2) Dalkeith Road, Nedlands.
Zoning MRS:	Urban
Zoning TPS2:	Residential R10
Additional Use TPS2:	Two (2) Senior Persons Dwellings
Lot Area:	485 m ²

History

The below refers to the land prior to the strata subdivision into the two lots: 36 (Lot 1) Dalkeith Road & 36A (Lot 2) Dalkeith Road.

June 1996	The land was rezoned from Residential R10 to Residential R10 with an Additional Use of Two (2) Senior Persons' Dwellings on the land.
November 1998	Administration recommends refusal to strata subdivision of land as the zoning is R10 and a minimum land area requirement under the Residential Planning Codes (1000 m ²) could not be achieved for each new lot.
January 1999	The Western Australian Planning Commission issues approval to the survey strata subdivision. Note: this subdivision application was not cleared.
April 2002	TPG on behalf of the landowner applied for rezoning (Scheme Amendment) of the lot from Residential R10 with Additional Use of Two Senior Persons Dwelling to Residential R20. Therefore wishing to delete the Additional Use of the Two Senior Persons Dwelling.
December 2002	Council resolved not to initiate the Scheme Amendment to rezone the land.
July 2004	Planning approval was granted under delegation for two Senior Persons Dwellings. The planning approval expired in 2006.
August 2006	Administration recommends approval to strata subdivision of land subject to conditions.
March 2007	The Western Australian Planning Commission issues approval to the survey strata subdivision. Condition 4 required a restrictive covenant is to placed on the Certificate of Title stating, " <i>Use and development of the land is restricted to aged or dependent persons' dwellings, as specified in the Residential Design Codes</i> ".
October 2011	The previous owner lodges a planning application for Single Storey Dwelling (Aged Persons). This application was cancelled 16 December 2011.

In February 2012, the City received an application for a single storey aged or dependent persons dwelling on the subject site.

Please note: The subject site has a restrictive covenant on the title, which restricts development to only an aged or dependant persons' dwelling (in accordance with the RCodes) and that the residence has a least one occupant being disabled or physically dependant, aged person over 55, or the surviving spouse of such a person.

Proposal Detail

The subject site is currently a vacant lot. The site photograph shows the relationship of the site with the surrounding built environment. Refer to attachments 1-2.

The proposal is for a single storey aged persons dwelling. Refer to attachments 3-5.

The proposal includes the following variations to the Residential Design Codes (RCodes):

- The proposed plot ratio is 198.33 m². Clause 6.11.2 A2 (i) requires a maximum plot ratio of 100 m²;

Please note:

The living area is 162.99 m² and the garage is 35.34 m², therefore total plot ratio is 198.33 m². In accordance with the RCodes definition of plot ratio, if the garage was below or the same level as natural ground level it would be excluded in the calculation of plot ratio. However as the garage is proposed above natural ground level it is included in the calculation of plot ratio.

- The proposed open space is 59.1 %. Clause 6.4.1 requires minimum 60 % open space for properties coded R10.
- The lounge is proposed to be setback 1.02 m from southern (side) boundary. Clause 6.3.1 A1 (i) requires the lounge to be a minimum of setback 1.1 m;
- Proposed filling on the northern (side) exceeds 0.5 m above natural ground level (NGL). Clause 6.6.1 A1.4 requires that filling within 1 m of a common boundary to not exceed 0.5 m above NGL; and
- The garage parapet wall is proposed to be up to 0.46 m higher than the existing high brick wall. Clause 6.3.2 A2 i requires the parapet wall to abut an existing wall of similar or greater dimension.

Referrals

The City's Engineering and Environmental Health departments have provided standard conditions should the proposal be approved. The City's Building department has assessed the proposal against the adaptable housing standards (AS4299:1995) and determined it complies with the relevant standards.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Notification period: 12 March 2012 to 26 March 2012

The proposed variations to the RCodes were advertised by letter to the adjoining properties for a period of 14 days.

Comments received: Two (2) objections

Summary of comments received	Officers technical comment
<p>Issue: Plot ratio</p> <p><i>'We strongly oppose such a gross disregard of RCodes requirements in relation to plot ratio. Not only would allowing such a large residence to be constructed on a small block greatly reduce our amenity and privacy, but the whole streetscape of an R10 would be compromised. We are adamant that the RCodes must be applied for any construction on this recently constructed block, and the plot ratio be curtailed at 100 m².'</i></p>	<p>Not Upheld</p> <p>Due to the proposal not meeting the acceptable development provision (proposed 198.33 m² in lieu of 100 m² of the RCodes, the proposal is then assessed against the relevant performance criteria. This is examined further in the Discussion section, where it is considered that the relevant performance criteria are satisfied.</p> <p>The proposed residence is considered to be in scale and complementing to the existing streetscape.</p>
<p>Issue: Plot ratio</p> <p>The previous owner is concerned that prospective buyers of the lot were told that the maximum allowable size of a dwelling is 100 m² and that this proposal is for a plot ratio area of 202.13 m².</p>	<p>Noted</p> <p>Both the previous owner and the prospective buyers of No. 36A Dalkeith Road were consistently informed that the acceptable development standard of the RCodes requires an Aged or Dependant Persons' Dwelling to have a maximum plot ratio of 100 m² or where the maximum plot ratio is greater than 100 m², Council's discretion would be required.</p> <p>There are detailed file notes confirming these conversations that advise that the required standard for plot ratio is 100 m² and that Council discretion is required for any proposals above 100 m².</p>
<p>Issue: Direct overlooking from Bedroom 3</p> <p><i>'We very strongly object to window setback only slightly more than half of the RCodes requirement. Our residence has windows aligned with the proposed Bedroom 3 window and our privacy would be very seriously compromised by such a small setback'.</i></p>	<p>Not Upheld</p> <p>The plans were amended on 19 April 2012 showing a hi-lite window from Bedroom 3 (refer to attachment 5). Prior to the amendment a large window was proposed.</p> <p>The hi-lite window has a sill height greater than 1.6 m above finished floor level. As a result, the window is no longer classed as a major opening.</p>

	<p>The window now meets the Acceptable Development Provisions of RCodes Clause 6.8.1 and is no longer a variation.</p>
<p>Issue: Southern retaining wall setback</p> <p><i>'We object to having a zero setback for the southern retaining wall, and are of the opinion that the retaining wall must extend no more than 500mm above NGL, or else be setback from boundary by 1.5 m...'</i></p>	<p>Not Upheld</p> <p>The plans were amended on 19 April 2012 showing the southern retaining wall no higher than 0.5 m above NGL (refer to attachment 4 & 5). Prior to the amendment, the retaining wall was proposed up to 1.2 m above NGL.</p> <p>As the retaining wall is no higher 0.5 m above NGL, it meets the Acceptable Development Provisions of RCodes Clause 6.3.3. Therefore, this is no longer a variation.</p>
<p>Issue: Fill on southern side within 1 m of boundary</p> <p><i>'We object to proposal to take fill along southern boundary to 700 mm above the figure permitted by the RCodes. We consider that the 500 mm permitted by the RCodes is a more generous allowance for filling within 1.0m of our common boundary.'</i></p>	<p>Not Upheld</p> <p>The plans were amended on 19 April 2012 showing fill no greater than 0.5 m above NGL (refer to attachment 3 & 5). Prior to the amendment, fill was proposed up to 1.2 m above NGL.</p> <p>As fill does not exceed 0.5 m above natural ground level within 1 m of the common boundary, it meets the Acceptable Development Provisions of RCodes Clause 6.6.1. As a result of the amendment, this is no longer a variation.</p>
<p>Issue: Verandah setback from southern boundary</p> <p><i>'We object to the proposal to reduce the verandah setback from 1.5 m to 1.02 m. The distance of 1.5 m was considered to be an appropriate setback distance by the drafters of the RCodes, for good reason and we fully agree with their conclusion.'</i></p>	<p>Not Upheld</p> <p>The plans were amended on 19 April 2012 showing the verandah 1.5 m from the southern boundary (refer to attachment 3 & 4). Prior to the amendment, the verandah was setback 1.02 m.</p> <p>As verandah is setback 1.5m, as required in RCodes Clause 6.3.1 A1ii. The setback meets the relevant Acceptable Development Provisions and is no longer a variation.</p>

<p>Issue: Lounge room setback from southern boundary</p> <p><i>'As the lounge wall is an unbroken brick wall, with no windows, we have no objection to this variation.'</i></p>	<p>Upheld</p> <p>The lounge room is setback at 1.02 m in lieu of 1.1 m from the southern boundary. This is considered to be a minor variation posing no significant adverse impacts to the adjoining property.</p> <p>This variation is examined further in the Discussion section.</p>
<p>Issue: Garage parapet wall</p> <p><i>'It is my understanding that a parapet wall can only be built along a boundary with permission from the adjoining owner. No such permission has been granted and I object to its construction.'</i></p>	<p>Not Upheld</p> <p>The proposed garage parapet wall abuts an existing high brick wall. The parapet wall is 0.12 m – 0.46 m higher than the abutting wall (refer to attachments 7 & 8). Due to the existing high brick wall, it is considered that the parapet wall will not contribute to adversely impact the adjoining owner.</p> <p>The parapet wall does not require direct permission from the adjoining landowner, however the adjoining owner can object to the proposed parapet wall when it does not meet the acceptable development provision of the RCodes. When an adjoining landowner/s objects, the proposal is assessed according to the relevant performance criteria, whilst having due regard to the objection.</p> <p>This variation is examined further in the Discussion section.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the City's Councillors prior to the meeting.</p>	

Legislation

- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes of WA 2010 (RCodes)
- Council Policy 6.4 – *Neighbour Consultation*

The proposal is assessed under TPS2, RCodes and Council policies. Furthermore, as the proposal is for an aged or dependent persons dwelling, the proposal has been assessed against RCodes Clause 6.11.2 'Aged or Dependent Persons Dwellings'. The objective of Clause 6.11 is "to ensure that dwellings for the aged and for people with special needs can be provided within normal residential areas".

Budget / financial implications

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

Risk Management

Nil

Discussion

The variations to the Residential Design Codes are discussed as follows:

Issue: Plot ratio

Requirement	Clause 6.11.2 A2 i requires a maximum plot ratio of 100 m ² for single houses.
Applicants Proposal	The proposed plot ratio is 198.33 m ² (or 162.99 m ² excluding the garage). Refer to attachment 6.
RCodes Performance Criteria	<p>Clause 6.11.2 Performance Criteria</p> <p><i>P2 Dwellings that accommodate the special needs of aged or dependent persons and which:</i></p> <ul style="list-style-type: none"> • <i>are designed to meet the needs of aged or dependent persons;</i> • <i>are located in proximity to public transport and convenience shopping;</i> • <i>have due regard to the topography of the locality in which the site is located; and</i> • <i>satisfy a demand for aged or dependant persons' accommodation</i>
<p>Landowners justification summary</p> <p>Note: A full copy of the landowners' justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>We have been living in Webster Street since 1976, and our three children have moved out when they got married. As we grow older our [current] house and garden is too big for us to maintain.</p> <p>During the last three years we have been trying to down size to a smaller single storey house in Nedlands without success. We [would] like to continue to live in Nedlands because our family and friends also live in Nedlands.</p> <p>The reason we need more than two bedrooms is that our grandchildren stay with us from time to time, and in case we become sick in the future and one of our daughters can stay and look after us.</p> <p>We need a minimum of 3 bedrooms as my wife has to live in a separate bedroom due to my medical issues.</p>

	<p>The area of our land is 485 m² and if we are not given the opportunity to build a reasonable sized house then we will have a large garden which will require water and labour.</p> <p>We as senior citizens are encouraged not only to live independently as long as possible but also to have a reasonable quality of life.</p>
<p>Applicant justification summary</p>	<p><i>"Due to the nature of the site sloping upwards from front to rear and in addition to the cross-fall we have established a finished floor level of RL12.30 as an average of the finished floor level of the adjoining residences (namely RL13.10 for 36 Dalkeith Road & RL11.5 for 38 Dalkeith Road)."</i></p>
<p>Officer technical comment</p>	<p>The development is considered to comply with the above performance criteria.</p> <p>The following comments are in relation to the Performance Criteria under Clause 6.11.2 of the RCodes;</p> <p><i>Designed to meet the needs of aged or dependent persons:</i></p> <p>The proposed residence has been designed and complies with the adaptable housing standards (AS4299:1995). For example, the proposed residence has wider doorways and passages, and the same floor level throughout the residence.</p> <p><i>Located in proximity to public transport and convenience shopping:</i></p> <p>The subject property is in close proximity to a bus stop which is serviced by route #25 (East Perth-Claremont). Furthermore, additional frequent bus routes can be accessed along Stirling Highway. Convenience shopping can be accessed at Captain Stirling Shopping Centre which is a short walking distance (approximately 300 m) from the subject property.</p> <p><i>Due regard to the topography of the locality in which the site is located:</i></p> <p>The topography of the lot is that the lot rises towards the east, and levels range from RL10.5 at the front of the lot to RL12.5 at the rear (refer to attachment 2). The lot also has a slight gradient north – south. The topography of the surrounding lots is sloping land, with the lot in question, located on the higher area of land.</p>

As a result of the adaptable housing standards the floor level and access into the property is required to be level (even) or provide permanent ramps where there are changes in levels. The applicant has determined the finished floor level (FFL) at 12.3, as being the average floor level of adjoining houses (No. 36 Dalkeith Road & No. 38 Dalkeith Road).

A streetscape study has determined that a number of residences in Dalkeith Road (between Stirling Highway and Carrington Street) have a finished floor level higher than the natural ground levels. It is considered that the proposal has due regard of the topography of the locality.

Satisfy a demand for aged or dependant persons' accommodation:

There is demand from elderly residents in the Nedlands community who wish continue living in the area but would like to 'downsize' and reside in a smaller, more manageable property.

The lot has an Additional Use of a Senior Persons Dwelling under TPS2, this is the result of a previous Council decision. The proposal allows for the construction of a specialised house to meet the needs of the aged and dependent persons in the Nedlands locality. The Residential Design Codes state that the intentions of aged or dependent persons' dwellings are, "to encourage the development of small-scale specialised housing in local communities, as an alternative to larger scale, relatively segregated complexes".

Other comments:

The performance criteria of Clause 6.11.2 relates to the special requirements for aged and persons dwellings. These requirements include plot ratio, adaptable housing standards AS4299:1995 and outdoor living area requirements.

The living area of the residence is 162.99 m² and the garage is 35.34 m². In accordance with the RCodes definition of plot ratio, if the garage was below or the same level as natural ground level it would be excluded as plot ratio. The definition states that "...areas used exclusively for the parking of wheeled vehicles at or below natural ground level..." are not included as plot ratio. As the garage is above natural

	<p>ground level it is included as plot ratio. In other words if the garage was at or below natural ground level it would not be include as plot ratio, and therefore the area would be 162.99 m².</p> <p>The requirement that the lot is to have an Aged or Dependent Persons Dwelling is a result of previous decisions. The lot is 485 m² whilst the Acceptable Development Provision of the RCodes requires maximum plot ratio of 100 m².The proposed residence is considered to be of a modest size and only contains rooms which are considered necessary in a modern home.</p>
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Issue: Open space

Requirement	Clause 6.4.1 A1 requires minimum 60 % open space for properties coded R10.
Applicants Proposal	Proposed open space is 59.1 %
RCodes Performance Criteria	<p>Clause 6.4.1 Performance Criteria</p> <p><i>P1 Sufficient open space around buildings:</i></p> <ul style="list-style-type: none"> • <i>to complement the building;</i> • <i>to allow attractive streetscapes;</i> • <i>to suit the future needs of residents, having regard to the type and density of the dwelling.</i>
Landowners/ applicant justification summary	See justification for plot ratio
Officer technical comment	<p>The development is considered to comply with the above performance criteria.</p> <p>The following comments are in relation to the Performance Criteria under Clause 6.4.1 of the RCodes:</p> <ul style="list-style-type: none"> • <i>To complement the building</i> • <i>To allow attractive streetscapes</i> <p>The building is setback from the southern boundary and has a front setback of 9 m as per Clause 5.3.3 of TPS2. This allows for the appearance of open space from the street, and allows adequate space for landscaping to complement the building and the existing streetscape of Dalkeith Road.</p> <p><i>To suit the future needs of residents, having regard to the type and density of the dwelling:</i></p>

	<p>The proposed Aged or Dependent Persons Dwelling has been designed in regard to the future needs of current and future residents.</p>
	<p>The design allows for these functions of open space to be met. The explanatory guidelines of the RCodes states that functions of open space include; "access to...car parking spaces, opportunities for a range of domestic activities... and space for utilitarian purposes, such as clothes drying and storage"., The a double garage and area on the driveway to provides access to car parking spaces. The 75 m² rear yard, front yard and area on the northern side of the dwelling allows for adequate space to complete domestic activities (i.e. gardening and outdoor entertaining) as well as for utilitarian purposes (i.e. clothes drying).</p> <p><i>Other comments:</i></p> <p>The lot is required to be used for an Aged or Dependent Persons Dwelling and is coded R10 as a result of previous decisions.</p> <p>The average size of a lot coded R10 is 1000 m², whilst No. 36A Dalkeith Road which is coded R10 is only 485 m². If the property was coded R20 or R25 where the average size of a lot is 350 – 500 m² the minimum open space requirement would be 50 %, and therefore the proposal would comply. The proposal does not meet the open space requirement for a R10 coding by 0.9 % or 4.36 m². It is considered this will cause minimal impact in the circumstances.</p>

Issue: Lounge room setback

Requirement	Clause 6.3.1 A1 i under Table 2a, requires a minimum setback of 1.1 m.
Applicants Proposal	The proposed lounge room is setback 1.02 m.
RCodes Performance Criteria	<p>Clause 6.3.1 Performance Criteria</p> <p><i>P1 Buildings setback from boundaries other than street boundaries so as to:</i></p> <ul style="list-style-type: none"> • <i>provide adequate direct sun and ventilation to the building;</i>

	<ul style="list-style-type: none"> • <i>ensure adequate direct sun and ventilation being available to adjoining properties;</i> • <i>provide adequate direct sun to the building and appurtenant open spaces;</i> • <i>assist with protection of access to direct sun for adjoining properties;</i> • <i>assist in ameliorating the impacts of building bulk on adjoining properties;</i>
	<ul style="list-style-type: none"> • <i>assist in protecting privacy between adjoining properties.</i>
<p>Applicant justification</p>	<p>No justification provided.</p>
<p>Officer technical comment</p>	<p>In regards to assessment under the abovementioned performance criteria, the officers comments are as follows:</p> <p>The variation is considered to be a minor setback variation, being 1.02 m in lieu of 1.1 m.</p> <p>The proposed development is considered to comply with the performance criteria mentioned above, for the following reasons:</p> <p><i>Provide adequate direct sun and ventilation to the building:</i></p> <ul style="list-style-type: none"> • <i>Ensure adequate direct sun and ventilation being available to adjoining properties;</i> • <i>Provide adequate direct sun to the building and appurtenant open spaces; and</i> • <i>Assist with protection of access to direct sun for adjoining properties.</i> <p>The variation will not detrimentally affect direct sun or ventilation to either property. Although the setback variation is to the southern boundary it is not considered to detrimentally affect the direct access of sun and ventilation to the property to the south.</p>

	<p><i>Assist in ameliorating the impacts of building bulk on adjoining properties:</i></p> <p>The proposed wall is single storey and 4.4 m long. The wall is not considered to be of significant bulk which would adversely impact the adjoining property.</p> <p><i>Assist in protecting privacy between adjoining properties:</i></p> <p>The wall in question is a blank wall with no windows proposed. Furthermore, the wall is adjacent to a carport at the adjoining property. Therefore, privacy is not impacted between the two properties.</p>
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Issue: Garage parapet wall

Requirement	<p>Clause 6.3.2 A2 i requires boundary walls to "...abut an existing or simultaneously constructed wall of similar or greater dimension".</p>
Applicants Proposal	<p>The proposed parapet wall abuts an existing high brick wall. The garage parapet wall is 0.12 m - 0.46 m higher than the abutting wall.</p>
RCodes Performance Criteria	<p>Clause 6.3.2 Performance Criteria</p> <p><i>P1 Buildings built up to boundaries other than street boundary where it is desirable to do so in order to:</i></p> <ul style="list-style-type: none"> • <i>make effective use of space; or</i> • <i>enhance privacy; or</i> • <i>otherwise enhance the amenity of the development; or</i> • <i>not have any significant adverse effect on the amenity of the adjoining property; and</i> • <i>ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted.</i>
Applicant justification	<p><i>"The proposed garage parapet wall is offset 30 mm from the existing neighbours wall. The top of our proposed parapet wall ranges only 120 mm at the rear and 460 mm at the front, above the existing neighbours wall".</i></p>

<p>Officer technical comment</p>	<p>In regards to assessment under the relevant performance criteria, the officers comments are as follows:</p> <p>The proposed parapet wall abuts an existing high brick wall (refer to attachments 7 & 8).The proposed parapet wall is 0.12 m - 0.46 m higher than the existing brick wall.</p> <p>The parapet wall does not meet the acceptable development provision because the abutting wall is not of a greater dimension, and it is questionable whether it is of a similar dimension. As a result, the parapet wall is being assessed against the performance criteria of Clause 6.3.2.</p> <p>The proposed garage parapet wall is considered to comply with the abovementioned performance criteria for the following reasons:</p> <p><i>Make effective use of space:</i></p> <p>It is a narrow lot, with a frontage of 12.24 m. Under TPS2, the property is required to have two covered car bays (i.e. a garage) behind the front setback line. The building on the boundary allows for effective use of space, whilst allowing for surveillance of a street from a habitable room (in this case, the proposed lounge room) and the above TPS2 requirement to be met.</p> <p><i>Not have any significant adverse effect on the amenity of the adjoining property:</i></p> <p>It is considered that the parapet wall will not pose significant adverse effect on the amenity of the adjoining property. This is because the existing brick high wall is already overheight, and the additional height of the parapet wall is considered minor (refer to attachment 8). The parapet wall will cause minimal impact to the amenity of 36 Dalkeith Road and the locality.</p> <p><i>Ensure that direct sun to major openings to habitable rooms and outdoor living areas of adjoining properties is not restricted:</i></p> <p>Due to the existing high brick wall, the addition of the parapet wall will have negligible impact to the adjoining property's access to direct sun. It is therefore considered that the proposal will not impact access from direct sun to the adjoining</p>
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	<p>property's windows. The location of the parapet wall will not impact the adjoining property's outdoor living area.</p> <p>To ensure that the portion of the parapet wall above the existing brick wall is finished to an acceptable standard, it is recommended that the following condition is included:</p> <p><i>'The parapet wall shall be finished to a quality finish and professional standard, to the satisfaction of the City'.</i></p>
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Issue: Fill along northern boundary

Requirement	<p>Clause 6.6.1 A1.4 states:</p> <p><i>"...filling behind a street setback line and within 1 m of a common boundary not more than 0.5 m above the natural level at the boundary..."</i></p>
Applicants Proposal	<p>Filling within 1 m of northern boundary is up to 0.7 m above NGL.</p>
RCodes Performance Criteria	<p>Clause 6.6.1 Performance Criteria</p> <p><i>P1 Development that retains the visual impression of the natural level of the site, as seen from the street or other public place, or from an adjoining property.</i></p>
Applicant justification	<p><i>"We propose to fill against an existing high brick boundary wall on the northern side boundary, the top of this wall being at RL14.24 - RL14.74 (with reference to our finished floor level at RL12.30)."</i></p> <p><i>"Due to the nature of the site sloping upwards from front to rear and in addition to the cross-fall we have established a finished floor level of RL12.30 as an average of the finished floor level of the adjoining residences (namely RL13.10 for 36 Dalkeith Road & RL11.5 for 38 Dalkeith Road)."</i></p>
Officer technical comment	<p>The proposed fill is considered to comply with the relevant performance criteria for the following reasons:</p> <p>The proposed northern fill is behind the proposed garage and cannot be viewed from the street.</p> <p>The affected property to the north has higher ground levels than the subject site. For example, the levels between the properties vary by over 1.3 m (refer to attachment 3).</p> <p>The existing high brick wall between the subject site and the adjoining property prevents the visual impression of one site being higher than another.</p>

	It is therefore considered that the impact of the proposed level of fill will not negatively impact the visual impression of the natural ground level. Nor will it negatively impact the neighbouring property.
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Other issues: Response to additional points in landowners justification

Landowners justification	Officer technical comment:
<p><i>'We have been led to believe that we could build a reasonable residence on the 485 m² block'</i></p> <p>(refers to Shellabears Real Estate flyer stating the lot had previously approved plans for a 2 storey home of 4 bedrooms, 2 bathrooms, lounge, dining, family room, alfresco and double garage)</p>	<p>Noted</p> <p>Two (2) Senior Persons Dwellings were approved at 36 Dalkeith Road under delegation in 2004 (noting 36A Dalkeith Road was not a separate lot at this time). This planning approval was valid for two years, and as the development did not commence has since expired.</p> <p>Although this planning application was approved, it does not set a precedent and has no bearing for this application. This is a new application and is required to be assessed against the current planning controls and the merits of the proposal.</p>
<p><i>'No. 17 Stanley Street has been divided into two blocks for over 55's and the back block No. 49 Edward St has a large double storey house built on it'</i></p>	<p>Noted</p> <p>No. 49 Edward Street was approved under delegation in 2004. This property comprises of four bedrooms, two bathrooms and double garage.</p> <p>Although this planning application was approved, it does not set a precedent and has no bearing for this application.</p> <p>Each site has varying characteristics, each building is different and therefore each planning application is required to be assessed on its merits on a case by case basis. Furthermore, the application was approved eight years ago, and may be subject to differing planning controls.</p>
<p>Note: A full copy of the landowners' justification received by the City has been given to the City's Councillors prior to the meeting.</p>	

Amenity and Other Considerations under the Scheme

Preservation of Amenity

TPS2 clause 5.5.1 under section 5.5 *Preservation of Amenity* states:

'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.'

Consideration of Applications

TPS2 clause 6.4.1 under section 6.4 *Consideration of Applications* states:

'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.'

The original lot was zoned with an Additional Use of Two (2) Senior Persons Dwellings in 1996 as a result of previous Council decision. The development application being considered is for a proposed residence on the southern half of the lot.

The proposed residence in its current form is considered to be appropriate and will not adversely impact the amenity of the surrounding area. It is considered that the proposed residence is in scale and complements the existing streetscape. The proposed single house use is a use consistent for which the land is zoned.

In assessing this requirement, it is considered that the proposed development is appropriate, subject to the recommended conditions.

Conclusion

As discussed above, the proposed Single Storey Aged or Dependent Persons Dwelling meets the applicable performance criteria of the Residential Design Codes. Furthermore it is considered that the proposed residence will not adversely impact adjoining properties, the amenity of the surrounding area or the existing streetscape.

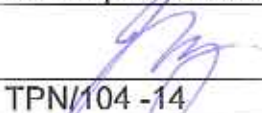
Accordingly, the application is recommended for approval with conditions.

Attachments

1. Locality plan (aerial)
2. Existing site plan
3. Proposed site plan
4. Floor plan
5. Elevation plans
6. Floor plan showing plot ratio area
7. Photo of existing high brick wall between No.36 & 36A Dalkeith Rd
8. Elevation plan showing height of existing brick wall and the proposed garage parapet wall

PD18.12	Final Approval of Proposed Outline Development Plan for complex formerly known as Swanbourne Hospital for the Insane - Lot 12040 Heritage Lane Mt Claremont
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Committee	8 May 2012
Council	22 May 2012

Applicant	The Planning Group
Owner	Swanbourne Estate Developments Pty Ltd
Officer	Gabriela Poezyn - Manager Strategic Planning
Director	Jennifer Heyes - Acting Director Planning & Development Services
Director Signature	
File ref	TPN/104 -14
Previous Item No's	D99-06 – 12 December 2006 D18.1 – 8 May 2007 D22.08 – 27 May 2008 D58/10 – 10 August 2010 D37.11- May 2011
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is for Council to adopt a proposed draft Outline Development Plan (ODP) for the Old Swanbourne Hospital Site.

Recommendation to Committee

Council:

1. does not accept the Outline Development Plan (ODP) for the Old Swanbourne Hospital Site, Lot 12040 Heritage Lane Mt Claremont approved by the WAPC in 26 July 2011 with the final document endorsed in 27 March 2012 because the proposal includes elements that are either;
 - a. contrary to the City Town Planning Scheme No. 2 (TPS2);
 - b. contrary to previous State Administration Tribunal (SAT) decisions for the site; and/or
 - c. had not been canvassed with the community during the community consultation process.
2. approves the Outline Development Plan (ODP) as per attachment 8; and

3. refers the approved Outline Development Plan (ODP) as per attachment 8 to the WAPC in accordance with clause 3.8.7 of the City's Town Planning Scheme No. 2 (TPS2).

Advice Notes:

1. With reference to condition 1 the following elements in the WAPC endorsed ODP are not supported for the following reasons:

- a. *Height of Courtyard Building:*

Reason - The wording is contrary to the SAT decision and the proposal that was subject to public consultation.

- b. *Number of permitted dwelling units in the Historic buildings:*

Reason - Leaving the number of permitted dwellings to be determined at development approval stage is contrary to the SAT decision that stipulated that 28 dwellings would be appropriate on the site.

- c. *Parking area for Montgomery Hall:*

Reason - Parking for Montgomery Hall between the Historic building and the Public Open Space is contrary to the TPS2 provision and was not consulted on with the community as part of the consultation process for the ODP.

- d. *Access from Abbey Gardens to Montgomery Hall parking area to west of Montgomery Hall:*

Reason - Additional access for vehicles other than service vehicles to Montgomery Hall from Abbey Gardens is contrary to the City's scheme and was not consulted on with the community as part of the consultation process for the ODP.

- e. *Circular Drive:*

Reason - Having Circular Drive in private ownership is contrary to the provisions of TPS2 and unacceptable from a practical perspective as vehicles from Heritage Lane are unable to be diverted elsewhere due to the topography of the area should Circular Drive no longer be available to the public because it is privately owned.

Strategic Plan

KFA 3: Built Environment

- 3.3 Promote urban design that creates attractive and liveable neighbourhoods.
- 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

KFA 5: Governance

- 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Zone:	Special use as outlined under Clause 5.15 of the City's TPS2
Lot Frontage:	Numerous frontages. Main frontage is to Heritage Lane.
Area:	2.4819 ha

The proposed draft ODP was approved by the WAPC on 26 July 2011 and endorsed 27 March 2012.

History

A full summary of the history of development planning and proposals for the site is attached (as per attachment 1).

The summary of the history of this ODP is:

5 May 2009	Revised Outline Development Plan submitted
16 June 2009	City advises applicant of list of outstanding information
August 2009	WAPC approval of subdivision applications for the northern and southern wing (WAPC 131108 and WAPC 131109)
21 May 2009	Revised Outline Development Plan submitted which address the queries raised in June 2009 and changed circumstances since the subdivision approvals.
24 August 2010	Council considered the revised Outline Development Plan and supports the proposal in principle for consultation purposes subject to amendments to bring the proposal in line with the 2005 Development Plan.
1 September 2010	Council decision is referred to WAPC for consent to advertise
8 February 2011	WAPC considers the proposal and recommends that a revised proposal which represents a compromise between the applicant's proposal and the City's amendments is advertised for public comment. (Attachment 2)

March 2011	Public consultation undertaken by City of Nedlands
May 2011	Council recommended approval of the advertised ODP on the condition that the ODP document was amended to incorporate a number of key issues for the City. (Refer to attachment 4)
August 2011	The WAPC granted final approval for a proposed ODP subject to modifications of the ODP
December 2011	The WAPC produces a final document incorporating the approval of August 2011.
	WAPC reconsiders the content of the ODP as the early document includes errors, conflicting statements and is ambiguous and endorses an ODP (as per attachment 5). This proposal does not incorporate key aspects of City's approval of the draft ODP and includes aspects that were not subject to the community consultation process for the ODP or tested to determine the City's position.
27 March 2012	

Apart from the desirability to finalise this matter, with the current sale of the residential properties that were created with the subdivision of the north and south wing, having an ODP in place has become a priority. The reason for the urgency is that these properties cannot be developed unless an adopted ODP exists over the overall lot.

With a WAPC approved ODP in place, the following options are available to the City:

Option Number	Option	Implication
1	Accept the WAPC approved ODP as being valid and operative	Inconsistent and not accountable decision making.
2	Challenge the validity of the WAPC approved ODP in Court	Significant court costs in the Supreme Court
3	Decline to accept the WAPC approved ODP and approve an ODP proposal that aligns with approval that was granted by Council in May 2011.	Council displays a consistent and accountable approach to decision making. The drawback would be that there would be two concurrent ODPs for the area which will complicate the development approval process, which is when the validity of each is tested.

Proposal Detail

It is considered appropriate that Council approves an ODP for this site that aligns with the scheme, the City's policy, community concerns raised during the consultation process and the previous SAT decisions.

As the WAPC approved ODP does not meet these criteria it is proposed that the City approves a revised ODP that is based on the ODP that Council approved following the public consultation process.

The proposed ODP largely aligns with the WAPC approved ODP document but varies from the WAPC approved ODP in the following areas, which are addressed in full under the Discussion section of this report:

1. Height of Courtyard Building
2. Number of permitted units in the Historic buildings
3. Parking area for Montgomery Hall
4. Access from Abbey Gardens to Montgomery Hall parking area to west of Montgomery Hall
5. Circular Drive

Legislation

The relevant legislation is clauses 3.8 and 5.15 of the City's TPS2 and the City's Policy 6.13. For full extract of the legislation refer to attachment 6.

Consultation

Having completed the consultation period and determined the matter at the Council meeting of May 2011 no further consultation is required.

A summary of the comments that were received during the community consultation period from 8 March 2011 – 29 March 2011 of the "Draft ODP approved for Advertising by the WAPC" is attached. (Refer to attachment 3).

Budget/financial implications

Budget:

- | | | |
|--|---|--|
| Within current approved budget: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| Requires further budget consideration: | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

Financial:

The role of the City in this regard is to determine the proposed draft ODP, which does not have budget implications other than normal operating costs.

Risk Management

The risk of adopting the proposed ODP which varies from the WAPC approved ODP is that two (2) different ODPs will exist for the site. This will complicate the development application process which is when the validity of each will be tested.

Alternatively the City could adopt the ODP proposed by the WAPC, but the associated risk of this approach is that the City would be seen to be inconsistent in its decision making and not be accountable. The reason for this view is because the WAPC ODP does not align with the City's policy for the site, which has determined the position that the City has maintained throughout this process, and is contrary to community wishes.

Discussion

Is the WAPC approved ODP acceptable?

1. Content of Approval:

While there is a need for an ODP for the area, there is also the need that the ODP is balanced.

Community expectations, which were set as a result of a lengthy consultation process that accompanied the sale of the land to the developer, exist for this site. They were also incorporated into TPS2 and the City's policy for the land, and have since informed the City's position, and provided the basis from which the City gave conditional approval in May 2011.

The WAPC approved ODP appears to have adopted the applicant's proposal. Not only were very few of the conditions that the City requested following the advertising period incorporated into the final proposal, but the final approval also included aspects that the developer had previously sought, but had been refused following the SAT hearing.

2. WAPC approval Process:

The adoption process through which the WAPC arrived at the approved ODP does not exist in the approval process for ODPs specified in the City's scheme (Clause 3.8) and there is no other legislation that would legitimise the process adopted.

From the provisions of Clause 3.8 it is Council, and not the WAPC, that controls the process to adopt an ODP as follows (emphasis added):

- a. Clause 3.8.2 requires that an ODP is prepared "for all the land in the Development Zone or **such a part thereof as Council shall require**" and must provide a list of information including "**such other information as shall be required by the Council**"
- b. Under clause 3.8.3 Council has the discretion to approve the ODP "in principle" and is only required to refer it to the WAPC once it has approved the ODP in principle.
- c. Under clause 3.8.6 "**Council may after consultation with the applicant amend the ODP**".
- d. Under clause 3.8.7 Council has the discretion not to "decide not to proceed with the proposal" or may submit the approved ODP to the WAPC for adoption.

From this process it follows that an ODP goes no further if the Council:

- a. does not agree to the ODP in principle or
- b. does not approve of the ODP following the consultation process.

As the WAPC has adopted a final ODP that is materially different to the proposal that the Council supported, there is an argument in regards to the validity of the WAPC approved document. Legal advice has confirmed this position.

Alternative to the WAPC approved ODP

An alternative to the WAPC approved ODP is for the City to adopt an ODP that reaffirms its May 2011 approval. This proposed revised ODP would result in variations from the WAPC approved ODP.

The variations derive from:

1. evaluating the changes to the WAPC approved ODP that were made after the consultation process.
2. re-evaluating the conditions of approval granted by Council in May 2011 in the light of the WAPC's comments to determine the merit of these conditions for a proposed ODP.

In regards to 1 above, a number of "new" aspects were incorporated into the WAPC approved ODP. These are "new" in the sense that had not formed part of the proposal that the Council commented on in the May 2011 decision or been advertised for public comment during the consultation period. It is recommended that these matters are corrected in the proposed ODP:

1. Height of Courtyard Building

WAPC document	Proposed ODP	Location in document where changes are made	Reason for change
<p>A new building may be constructed in the heritage buildings courtyard limited in height so that the building should not be visible over the roof line of the existing heritage from any point on the perimeter of the site.</p> <p>The scale of the buildings should be consistent with the scale of the existing heritage buildings that form the courtyard. The design of the new courtyard building is to be to the satisfaction of the Heritage Council of Western Australia in consultation with the City of Nedlands</p>	<p>A new building may be constructed in the heritage buildings courtyard limited to a maximum height of no greater than approximately 10 meters above the current level of the courtyard.</p>	<p>Insert new wording on Map under "New Courtyard building" and Pg 23 under heading "New Courtyard Building".</p>	<p>To align with the SAT decision and the proposal that was subject to public consultation.</p> <p>The wording in the WAPC document would allow a building in the courtyard to exceed the height of the historical building by more than two storeys, as this additional height would not be visible from the boundary of the site. Such additional height is however very visible when viewed from a distance, and the wording is designed to allow significant height in excess of 10 m by default.</p>

2. Number of permitted units in the Historic buildings

WAPC document	Proposed ODP	Location in document where changes are made	Reason for change
The number of dwellings to be accommodated in the existing heritage buildings will be determined at the development application stage.	A maximum of 28 residential dwellings may be developed in the area comprised by the Existing Hospital buildings, the associated courtyard and the Administration Building.	Pg 23 under the heading "Residential Dwellings"	To align with SAT decision which determined that the maximum number of dwellings to be expected in the historic buildings and a courtyard building should not exceed 28 dwellings.

3. Parking area for Montgomery Hall

WAPC document	Proposed ODP	Location in document where changes are made	Reason for change
Area between the POS and Montgomery Hall can be sensitively landscaped to allow for car parking to be constructed in such a way as to have minimal impact on aesthetic qualities of the heritage buildings, to the satisfaction of the Heritage Council of WA.	Wording to be deleted so that no parking is provided in the area between Montgomery Hall and the Public Open Space.	Map: dot point 9 be deleted from text box entitled "Montgomery Hall"	Parking for Montgomery hall in this location is contrary to the TPS2 provision and was not consulted on with the community as part of the consultation process for the ODP.

4. Access from Abbey Gardens to Montgomery Hall parking area to west of Montgomery Hall

WAPC document	Proposed ODP	Location in document where changes are made	Reason for change
Yellow arrow branching away from the north/south arrow between Abbey Gardens and Montgomery Hall.	Delete Yellow arrow branching away from the north/south arrow between Abbey Gardens and Montgomery Hall.	Map	Additional access for vehicles other than service vehicles to Montgomery Hall from Abbey Gardens is contrary to the City's scheme and was not consulted on with the community as part of the consultation process for the ODP.

In regards to 2 above, a re-evaluation of each of the conditions of approval granted by Council in May 2011 is attached (refer attachment 7). Given the view of the WAPC in relation to a number of these conditions it is recommended that they are not pursued apart from the following issue which is recommended to be included in the proposed ODP to be approved by Council.

5. Circular Drive

WAPC document	Proposed ODP	Location in document where changes are made	Reason for change
Provision not included	Circular Drive shall be not less than 725m ² and is to be created as a public road.	Insert the proposed wording on Pg13 under "Circular Drive" and in the Map under the heading of "Circular Drive"	To align with the provisions of TPS2 and for practical purposes as vehicles from Heritage Lane are unable to be diverted should Circular Drive no longer be available to the public because it is privately owned.

Implications of having two concurrent Outline Development Plans

The only complication associated with two concurrent outline development plans is to determine which plan takes precedence for the development of a Detailed Area Plan and Planning Approvals.

As the information in regard to the north and south wing in both plans is identical, it is only the central area of the ODP which contains the heritage buildings that will be affected by the existence of two ODPs. Any future planning process of this area will involve significant amounts of time and negotiation and testing the validity of the concurrent ODPs will be one of the numerous development issues that will have to be addressed at the time.

Conclusion

As the WAPC approved ODP is flawed from the City's perspective it is recommended that a number of amendments to this proposal are made so that the Council approves a revised ODP, as shown in attachment 8.

Both ODPs will exist concurrently until their validity is determined as part of the development process of the ODP area that includes the historic buildings.

Attachments

1. Full Summary history of ODP
 2. Outline Development Plan approved by WAPC for advertising February 2011
 3. Responses from public consultation period
 4. Council decision May 2011
 5. WAPC final approved ODP document April 2012
 6. Extract from relevant legislation
 7. A re-evaluation of the conditions of approval granted by Council in May 2011
 8. Council approved ODP
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