**

Planning and Development Reports

Committee Consideration – 9 April 2019

Council Resolution – 23 April 2019

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**Council: 23 April 2019**

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| **PD10.19** | **No. 7 Marlin Court, Dalkeith - Two Storey Single Dwelling with Under-croft** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Applicant** | Giorgi Architects & Builders |
| **Landowner** | T. Tai &T Dechaboonako |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Reference** | DA19/33721 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Site photographs 2. Applicant’s Justification |

1. **Executive Summary**

The purpose of this report is for Council to consider a development application received from the applicant on 21 December 2018 for a proposed two storey single dwelling with an under-croft at 7 Marlin Court, Dalkeith.

A design principle assessment is sought in relation to lot boundary setback, cut and fill and visual privacy. It is recommended that the application be approved by Council subject to conditions.

It is considered to satisfy the design principles of the R-Codes and is unlikely to have a significant adverse impact on the local amenity due to the scale and the nature of the proposed development. For further detail refer to the application details section below.

The application was advertised to adjoining neighbours in accordance with clause 2.1 of Council’s Neighbour Consultation Policy. Three objections were received during the advertising period.

1. **Recommendation to Committee**

**Council approves the development application to construct a two-storey single dwelling with an under-croft at (Lot 24) No.7 Marlin Court, Dalkeith, received on 21 December 2019 with amended plans received on 18 March 2019, subject to the following conditions and advice:**

1. **The development shall comply at all times with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**
3. **The parapet wall being finished to a professional standard within 14 days of the proposed development’s practicable completion and be maintained thereafter by the landowner to the City’s satisfaction.**
4. **All structures, retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
5. **Where two storey’s are directly above, the use of the basement level shall be restricted to the uses of plant and equipment, storage, toilets and/or the parking of wheeled vehicles. Prior to occupation of the dwelling, the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the basement is subject to the restriction set-out above.**
6. **Visual privacy screening to be provided in accordance with the Residential Design Codes 2018 along the northern and western sides of the master bedroom 1 balcony, and the southern portions of the upper floor living room windows where setback less than 6m from the southern lot boundary. Amended plans showing this are to be provided as part of the building permit application.**
7. **All visual privacy screens/obscure glass panels to Major Openings/Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the Residential Design Codes 2018. The visual privacy screens/obscure glass panels shall be installed prior to the development’s practicable completion and remain in place permanently, unless otherwise approved by the City (Advice Note 8).**

**Advice Notes specific to this approval:**

1. **With regard to Condition 5, the applicant and the landowner are advised that the Section 70A Notification may not be required when the City’s Local Planning Scheme No. 3 is gazetted. Please contact the City’s Planning department (tel: 9273 3500) to ascertain whether this restriction still applies.**
2. **All crossovers to the street(s) shall be constructed to the Council’s Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council’s Infrastructure Services under supervision onsite, prior to commencement of works.**
3. **Stormwater to be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. All downpipes from guttering shall be connected to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block. Soak-wells shall be a minimum capacity of 1.0m3 for every 80m2 of calculated surface area of the development.**
4. **All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well. The swimming pool shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.**
5. **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.**
6. **Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM. Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, Code of Practice for the Safe Removal of Asbestos 2nd Edition, Code of Practice for the Management and Control of Asbestos in a Workplace, and any Department of Commerce Worksafe requirements. Where there is over 10m2 of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.**
7. **The applicant is advised to consult the City’s Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.**

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

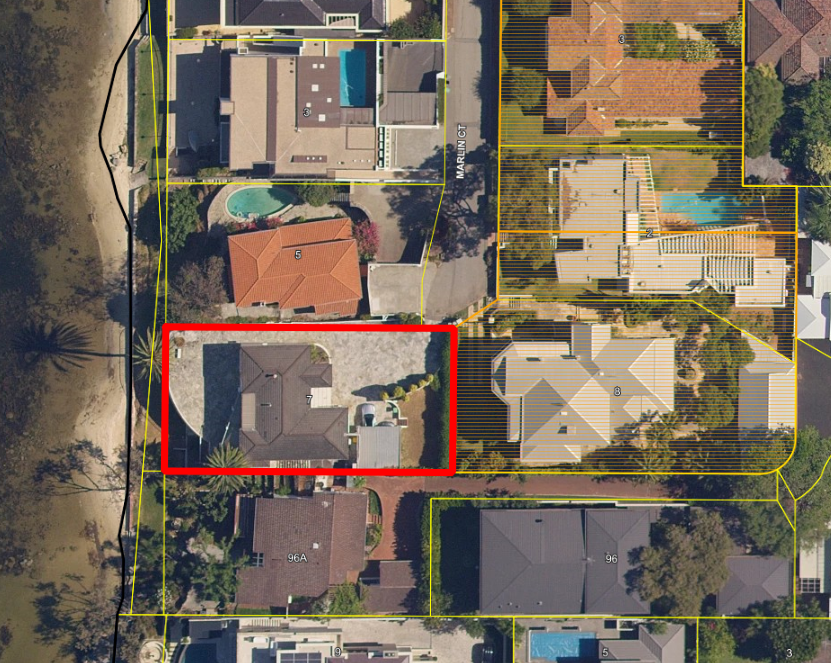
**Prior to installing mechanical equipment, the applicant is advised to consult neighbours, and if necessary, take measures to suppress noise.**

1. **A sewage treatment and effluent disposal system or greywater reuse or treatment system shall not be installed unless an *Approval to Construct or Install an Apparatus for the Treatment of Sewage* has been issued by the City beforehand.**
2. **Screening devices are to be at least 1.6m in height, at least 75 percent obscure, permanently fixed, made of durable material and restrict view in the direction of overlooking to any adjoining property.**
3. **This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.**
4. **Background**

**3.1 Land Details**

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| **Land Area** | 819.5m2 |
| **Local Planning Scheme Zone** | Residential R12.5 |
| **Metropolitan Region Scheme Zone** | Urban |

**3.2 Locality Plan**



1. **Application Details**

The applicant seeks development approval to construct a two-storey single dwelling with an under croft at the property.

The two-storey dwelling with under croft proposes the following:

* A boundary wall with a nil setback to the eastern (side) lot boundary is proposed. The deemed to comply provision is a 1m setback unless the design principles (refer to policy considerations section) are met.
* Excavation of up to 2m in depth is proposed within 1m of the northern (side) lot boundary. The deemed to comply provision is 0.5m of excavation within 1m of the lot boundary unless the design principles (refer to policy considerations section) are met.
* Excavation of up to 4.5m in depth within 1m of the southern (side) lot boundary is proposed. The deemed to comply provisions is 0.5m of excavation within 1m of the lot boundary unless the design principles (refer to policy considerations section) are met.
* A balcony is proposed with a visual privacy (overlooking) setback of 1.69m from the side (northern) lot boundary. The deemed to comply requirements is 7.5m unless the design principles (refer to policy considerations section) are met.
* A living room is proposed with a visual privacy (overlooking) setback of 5.2m from the side (northern) lot boundary. The deemed to comply requirement is 6m unless the design principles (refer to policy considerations section) are met.
* No major openings are proposed from a habitable room directly facing the primary street. The deemed to comply requirement is for a major opening to be provided directly facing the primary street unless the design principles (refer to policy considerations section) are met.

1. **Consultation**

The application was advertised in accordance with the requirements of Council’s Neighbour Consultation Policy. Three objections were received during the advertising period. The following is a summary of the concerns received:

* The dwelling may potentially contribute to building bulk.
* Visual privacy (overlooking) into adjoining properties.
* The proximity of the dwelling to the lot boundaries (reduced setbacks).
* Potential damage to adjoining properties through excavation and construction works.
* Concerns over boundary wall development.

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

By way of support in favour of the application the applicant has provided a detailed justification (refer to Attachment 2).

As the property directly adjoins the Swan River Trust’s Development Control Area the application was also referred to the Department of Biodiversity, Conservation and Attractions (DBCA). DBCA advised the following points in relation to the development application:

* Land adjacent to the Swan Canning River Development Control Area is required to be setback 10m
* Low height structures such as above ground swimming pools with a height exceeding 1m are required to be setback 9.5m
* Private development on public land is not permitted

The plans being presented to Council address all of the above DBCA comments. The DBCA has not asked that any additional conditions and/or advice notes be included if approved by Council.

1. **Assessment of Statutory Provisions**

**6.1 Planning and Development (Local Planning Schemes) Regulations 2015**

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

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development’s height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

If Council does not support the proposed development, there is a right of review (appeal) to the State Administrative Tribunal (SAT) under Part 14 of the *Planning and Development Act (2005)*

**6.2 Metropolitan Region Scheme**

The subject site is zoned ‘Urban’ under the Metropolitan Region Scheme (MRS). The proposal is an urban use and is therefore consistent with the zoning classification under the MRS.

**6.3 City of Nedlands Town Planning Scheme No. 2**

Under the provisions of the Scheme the subject site is zoned Residential R12.5.

**6.3.1 Amenity**

Under clause 5.5.1 of TPS2 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.”*

**6.3.2 Controlled Development Area**

Under clause 5.10.1 the subject property is located within the Controlled Development Area (CDA), whereby any development requires special approval:

*“Any development within the areas bounded by:*

1. *Reserve 17391, The Esplanade, Broadway, lots on the north side of Elizabeth Street and Bruce Street;*
2. *Victoria Avenue, the City boundary, the Metropolitan Region Recreation reserve abutting the Swan River and Reserve 16668; and*
3. *Jutland Parade, Iris Avenue, the Metropolitan Region Recreation reserve abutting the Swan River and Point Resolution Reserve*

*shall require the Council's special approval.”*

**6.4 Policy Considerations**

**6.4.1 Residential Design Codes - State Planning Policy 3.1**

**Lot Boundary Setbacks**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| For properties coded R12.5, there are not deemed-to-comply criteria for ‘boundary wall’ development  Walls absent of major openings to habitable rooms up to 9m in length and less than 3.5m = 1m setback | “*P3.1 – Buildings set back from lot boundaries so as to:*   * *reduce impacts of building bulk on adjoining properties;* * *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and* * *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”* | The garage/store is proposed to have a nil setback to the eastern lot boundary. |
| **Administration Comment**  The garage/store proposed to the eastern lot boundary is deemed to satisfy the relevant design principles of the R-Codes in the following ways:   * The proposed boundary wall is not assessed to contribute to building bulk which would affect the adjoining eastern property as it does not represent a large expanse of blank and unarticulated wall surface. The height of the wall is also similar in size to that of a dividing fence due to the differences in ground levels between 8 and 7 Marlin Court; and * The boundary wall does not compromise the adjoining eastern property’s access to direct northern sunlight by way of positioning; and * The boundary wall does not compromise ventilation to the eastern property’s open spaces as it does not restrict of hinder the adjoining property’s access to prevailing winds; and * The boundary wall does not include within it any major openings to any habitable rooms, nor does it include any associated fill which would trigger visual privacy assessment. In this way the boundary wall does not intrude upon the privacy of the adjoining eastern property.   Based on the above, the proposed eastern and southern lot boundary setback reductions are assessed as being acceptable as they are unlikely to have a detrimental impact on the adjoining properties. | | |

**Street Surveillance**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| C3.1 The street elevation(s) of the dwelling to address the street with clearly definable entry points visible and accessed from the street.  C3.2 At least one major opening from a habitable room of the dwelling faces the street and the pedestrian or vehicular approach to the dwelling. | *“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.”* | Clearly definable point of entry to the provided through vehicular access gate.  No major openings from habitable room are proposed to face the street. |
| **Administration Comment**  Due to the lot configuration and orientation, providing adequate surveillance of the street is restricted to a 4.6m wide section of the property which addresses Marlin Court.  Notwithstanding the constraints of the lot, the proposed development is also assessed as satisfying the relevant design principles of the R-Codes as:   * There is a clear and definable point of entry to the property; and * The lot is situated at the end of a cul-de-sac where a pedestrian would pass the frontages of five neighbouring dwellings therefore it is likely that enough passive and active surveillance of the streetscape will be possible; and   The existing dwelling on the property does not provide street surveillance in the form of a major opening from a habitable room, and therefore does not reduce the amount of street surveillance of Marlin Court from the property. | | |

**Site Works**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Excavation or filling behind a street setback line and within 1m of a lot boundary, not more than 0.5m above the natural ground level at the lot boundary except where otherwise stated in the scheme, local planning policy, local structure plan or local development plan. | “P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.  P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.” | Excavation up to 2m in lieu of 0.5m within 1m of the northern lot boundary.  Excavation up to 4.5m in lieu of 0.5m within 1m of the southern lot boundary |
| **Administration Comment**  The excavation along the northern and southern portions of the property satisfies the corresponding R-Code design principles as:   * The excavation is stepped toward the Swan River and is generally consistent with the downward sloping topography; * Fill is utilised along portions of the southern and northern boundaries to mitigate the impact of excavation to balance the stepping tiers of excavation, which is consistent with the principles of developing on heavily graded sites; * The excavation along the southern lot boundary is a response to the topography across the property in the east-west direction; * The excavation works are supplemented with retaining walls, which mitigate the visual impact of excavation on the northern and southern adjoining properties; and * No concerns were raised by the DBCA regarding the proposed work.   Considering the above, the scale and the location on the property of the proposed work is unlikely to have a detrimental impact on the surrounding neighbours’ amenity. | | |

**Visual Privacy**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Major openings and unenclosed outdoor active habitable spaces, which have a floor level of more than 0.5m above natural ground level and overlook any part of any other residential property behind its street setback line are a minimum distance as prescribed below:   * Major openings to bedrooms and studies setback on areas coded R50 or lower to be 4.5m setback * Major openings to habitable rooms other than bedrooms or studies setback on areas coded R50 of lower to be 6m setback * Unenclosed outdoor active habitable spaces on areas coded R50 or lower to be 7.5m setback   are provided with permanent screening to restrict views within the cone of vision from any major opening or an unenclosed outdoor active habitable space. | *“P1.1 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.   *P1.2 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).” | Kitchen, visual privacy setback 2.8m in lieu of 6m (no screening proposed) to southern lot boundary.  Balcony visual privacy setback 2.7m in lieu of 7.5m (partial screening proposed) to northern lot boundary.  Living room visual privacy setback 5.2m in lieu of 6m (no screening proposed) to northern lot boundary. |
| **Administration Comment**  The proposed dwelling will result in overlooking being possible into properties to the immediate north and south behind their street setback areas. This does not satisfy the design principles of the R-Codes in relation to visual privacy as it will result in habitable rooms and/or outdoor living areas on the adjoining properties being overlooked.  The visual privacy measures could be adequately addressed and mitigated through screening measures. Adequate justification has not been supplied as to why this cannot be provided.  The only exception to this, which does satisfy the design principles, being where the living room is setback 5.2m in lieu of 6m from the northern lot boundary. As the area on the neighbouring property which is less than 6m from the living room contains no major openings nor outdoor living area, only solid dividing fencing.  If the application is approved by Council it is recommended that a condition be included which requires visual privacy screening to be provided in accordance with the R-Codes along the northern and western sides of the master bedroom 1 balcony, and the southern portions of the living room window where setback less than 6m from the southern lot boundary. | | |

1. **Conclusion**

The proposed development is assessed as satisfying the design principles of the R-Codes in terms of site works and lot boundary setbacks. Considering the nature and the scale of the development, the site layout and the local development context the Design Principle assessment items are unlikely to have a detrimental impact on the local amenity.

The living room visual privacy (overlooking) element of the proposal satisfies the design principles, however the balcony element of the proposed development does not. To address the issue, it is recommended that visual privacy screening be required to be installed around the balcony.

Considering the above, it is recommended that Council approves the application subject to conditions.

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| **PD11.19** | **No. 99 Waratah Ave, Dalkeith - Proposed Change of Use (from Shop to Health Studio)** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Applicant** | H Clarke |
| **Landowner** | S Franetovich |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Reference** | DA19-34141 |
| **Previous Item** | Nil |
| **Delegation** | In accordance withClause 6.3 (Special Procedures) of Town Planning Scheme No 2 Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Traffic Engineering letter |

1. **Executive Summary**

The purpose of this report is for Council to consider a development application, received from the applicant on 24 January 2019, for a proposed change of use from retail to health studio at 99 Waratah Avenue, Dalkeith.

A health studio is an ‘AA’ use under TownPlanning Scheme No. 2(TPS2), in addition to this there are no car parking requirements for a health studio under TPS2. The application was advertised in accordance with clause 2.1 of Council’s Neighbour Consultation Local Planning Policy and 2 objections and 1 non-objection were received.

It is recommended that the application be approved by Council, as considering the nature and the scale of the proposed use it is unlikely to have a detrimental impact on the local amenity.

1. **Recommendation to Committee**

**Council approves the development application dated 24 January 2019 to change the use from Shop to Health Studio at Lot 384 (No. 99) Waratah Avenue, Dalkeith, subject to the following conditions and advice:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **The proposed use complying with the Health Studio definition stipulated under the City’s Town Planning Scheme No. 2 (refer to advice note 1).**
3. **A maximum of two staff are permitted on the premises at any one time.**
4. **The operating hours of the Health Studio is restricted to between the following:**

**Monday and Friday, 6:00am to 8:05pm;**

**Saturday 7:00am to 12:15pm; and**

**Sunday 8:30am to 11:05am.**

1. **All clients visiting the business are to do so via prior appointment only.**
2. **No materials and/or equipment being stored externally on the property which is visible from off site, and/or obstructs pedestrian access ways, street parking bays and/or any street (un)loading bays.**
3. **Any signage being maintained by the landowner to the City’s satisfaction.**

**Advice Notes specific to this proposal:**

1. **With regard to condition 4, the applicant and landowner are advised that the use Health Studio, is defined as being the following under Town Planning Scheme No. 2:**

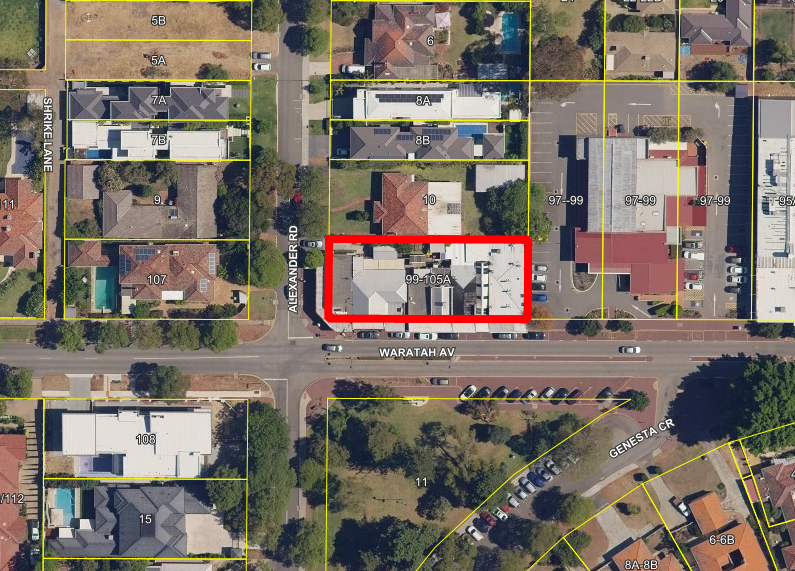
***“Health Studio - means any land and building designed and equipped for physical exercises, recreation and sporting activities including outdoor recreation;”***

1. **This decision does not obviate rights and responsibilities of strata owners under the *Strata Titles Act 1985*, which may require additional consultation and/or permissions from the stratum, prior to the commencement of works.**
2. **Noise levels are to comply with the *Environmental Protection (Noise) Regulations* *1997*.**
3. **Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia. Where these are situated externally to the public building, the area providing access to the sanitary conveniences shall be illuminated.**
4. **Service and/or delivery vehicles are not to service the premises before 7.00 am or after 7.00 pm Monday to Saturday, and/or before 9.00 am or after 7.00 pm on Sundays and Public Holidays unless otherwise approved by the City beforehand.**
5. **This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.**
6. **Background**

**3.1 Land Details**

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| **Land area** | 1012m2 |
| **Local Planning Scheme Zone** | Retail Shopping |
| **Metropolitan Region Scheme Zone** | Urban |

**3.2 Locality Plan**



**Location of the proposed health studio**

1. **Application Details**

The applicant seeks development approval to change the use of the premises from a shop to a health studio, details of which are as follows:

* The proposed business is a Pilates Studio.
* The business is proposed to serve a maximum of 11 clients per session, with one instructor on site per session.
* Sessions will run from 6:00am to 8:05pm weekdays, 7:00am to 12:15pm on Saturdays and 8:30am to 11:05am on Sundays.
* One session is proposed to be held at any one time.
* There will be a minimum of a 10-minute break between sessions.
* No parking is proposed to be available on site.

1. **Consultation**

The development application was advertised in accordance with Council’s Neighbour Consultation Policy. Two objections and one non-objection were received. The following is a summary of the concerns raised / comments received:

* Increased noise resulting from higher traffic volumes.
* Increased need for car parking, where no new car parking is proposed.
* Increased occurrence of verge parking at the front of residential properties.
* Increased competition for car parking affecting trade of neighbouring businesses.
* Uncivilised operating hours.

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

1. **Assessment of Statutory Provisions**

**6.1 Planning and Development (Local Planning Schemes) Regulations 2015**

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

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development’s height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

If Council does not support the proposed development, there is a right of review (appeal) to the State Administrative Tribunal (SAT) under Part 14 of the *Planning and Development Act (2005)*

**6.2 Metropolitan Region Scheme**

The subject site is zoned ‘Urban’ under the Metropolitan Region Scheme (MRS). The proposal is an urban use and is therefore consistent with the zoning classification under the MRS.

**6.3 City of Nedlands Town Planning Scheme No. 2**

**6.3.1 Amenity**

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

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

**6.3.2 Car Parking**

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| **TPS2 Car Parking Required** | **Car Parking Bays Proposed** | **Shortfall** |
| **Existing Use – Retail**  Car parking requirement under the current use of Retail, requires 9 car bays under TPS2 | Zero bays are provided on site. | A shortfall of 9 bays is present. |
| **Proposed Use - Health Studio:**  No car parking requirement is stipulated under TPS2 for this use therefore it is at Council’s discretion. | No shortfall is present under the TPS2, as no requirement is listed |

The applicant has provided a Traffic Engineering Letter to the City as part of their application (refer to attachment 1). This report indicates the following:

* There are 77 street parking bays provided within the immediate vicinity of 103A Waratah Ave, Dalkeith.
* An average of 25 bays were identified to be free during operating hours.
* Overall, “…carparking is considered to have sufficient spare capacity to cater for the needs of patrons of the subject site.”

**6.4 Draft Local Planning Scheme No. 3**

The subject site is to be re-zoned under draft Local Planning Scheme No. 3 (LPS 3) from Retail Shopping to Mixed Use.

The following is applicable under a LPS3 planning assessment:

* A use such as that being proposed is deemed to be a Private Recreation use under LPS 3 which is defined as being the following:
* Private Recreation is to be an ‘A’ use within the Mixed-Use zone.

**6.4.1 Draft Parking and Access and Traffic Local Planning Policy**

Under the draft Parking and Access and Traffic Local Planning Policy the following car parking requirements are proposed for the use:

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| --- | --- | --- |
| **Policy Requirements** | **Car Parking Bays Proposed** | **Shortfall** |
| **Existing Use – Retail**  1 car bay per 30m² of NLA  1 bicycle space per 50m² of NLA  54.2m² of NLA therefore 2 car bays and 2 bicycle spaces required. | Zero bays are provided on site. | 2 car bays and 2 bicycle bays |
| **Proposed Use - Health Studio:**  1 car bay per 20m² of NLA.  1 bicycle space per 50m² of NLA  54.2m² of NLA therefore 3 car bays and 2 bicycle spaces required. | 3 car bays and 2 bicycle bays |

1. **Conclusion**

Considering the number of staff and clients on site per session it is likely that the health studio will require up to 12 car bays at any one time. No car bays are proposed to be provided due to the existing site layout.

The property contains various office, shop and restaurant uses the peak hours of operation for which are likely to be different to that of the health studio.

Based on the car parking assessment provided as part of the development application an ample amount of car parking bays are likely to be available when the health studio and the other businesses on the property are all operating.

Considering the above, the proposal is unlikely to have a detrimental impact on the local amenity therefore it is recommended that Council approves the application.

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| **PD12.19** | **No. 50 Haldane Street. Mt Claremont – Proposed Single Dwelling** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Applicant** | O. Pearce |
| **Landowner** | S. Wilson |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Reference** | DA19-33832 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Site photographs 2. Applicant’s justification |

1. **Executive Summary**

The purpose of this report is for Council to consider a development application received from the applicant on the 9 January 2019, for a proposed single dwelling at 50 Haldane Street, Mount Claremont.

A design principle assessment is sought in relation to lot boundary setbacks, street wall fencing and vehicular access. It is recommended that the application be approved by Council subject to conditions.

It is considered that the proposed development satisfies the design principles of State Planning Policy 3.1- Residential Design Codes (R-Codes). The proposal will not have a significant adverse impact on the local amenity due to the nature, size and scale. For further details refer to the application details section below.

The application was advertised to adjoining neighbours in accordance with clause 2.1 of Council’s Neighbour Consultation Policy. One objection was received in response to the proposal.

It is recommended that the application be approved by Council.

1. **Recommendation to Committee**

**Council approves the development application to construct a single dwelling at (Lot 702) No.50 Haldane Street, Mount Claremont, received on 9 January 2019 with amended plans received on 21 February 2019, subject to the following conditions and advice:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All footings and structures associated with the retaining walls and any fencing shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
3. **All fencing/visual privacy screens to Major Openings/Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the Residential Design Codes 2018. The fencing/visual privacy screens shall be installed prior to the development’s practicable completion and remain in place permanently, unless otherwise approved by the City.**
4. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

**Advice Notes specific to this approval:**

1. **A separate development application is required to be submitted to and approved by the City prior to erecting any fencing within the street setback area(s) which is not compliant with the deemed-to-comply provisions of the Residential Design Codes, and/or erecting any fencing behind the primary street setback area which is more than 1.8m in height above natural ground level.**
2. **All crossovers to the street(s) shall be constructed to the Council’s Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council’s Infrastructure Services under supervision onsite, prior to commencement of works.**
3. **The concrete footpath(s) shall be retained across the proposed crossover(s).**
4. **Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Work Application (NSWA) to be lodged with, and approved by, the City’s Technical Services department, prior to construction commencing.**
5. **All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Development approval.**
6. **All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m3 for every 80m2 of calculated surface area of the development.**
7. **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.**
8. **The applicant is advised to consult the City’s Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.**

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

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

1. **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. **Background**

**3.1 Land Details**

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| --- | --- |
| **Land Area** | 377m² |
| **Local Planning Scheme Zone** | Residential R10/20 |
| **Metropolitan Region Scheme Zone** | Urban |

**3.2 Locality Plan**



1. **Application Details**

The applicant seeks development approval to construct a single storey dwelling with an under-croft garage. The dwelling is approximately 169m² in area, comprises three bedrooms, a kitchen/living/dining room and bathrooms/utilities.

Design principle assessment is required for the following departures from the deemed-to-comply criteria of the R-Codes:

* Vehicular access is proposed from the primary street (Haldane Street) in lieu of the adjoining right of way (Acacia Lane);
* The north-western portions of street wall fencing to Haldane Street being proposed to be solid up to 1.8m in height in lieu of 1.2m;
* The street fencing to Acacia Lane is proposed to be up to 2.4m in height in lieu of 1.8m;
* The side (eastern) lot boundary setback distance to the ensuite and balcony is proposed to be 1m in lieu of 1.1m;
* The rear (southern) setback distance to the kitchen and Bed 2 is proposed to be 1m in lieu of 6m; and
* Open space provided is proposed to be 55.2% in lieu of 60%

1. **Consultation**

The application was advertised in accordance with clause 2.1 of Council’s Neighbour Consultation Policy. One objection was received during the advertising period.

The objection relates to vehicular access from Haldane Street in lieu of from Acacia Lane, and concerns about the proposed location of the crossover and the potential impact this may have on traffic and/or pedestrian safety.

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

1. **Assessment of Statutory Provisions**

**6.1 Planning and Development (Local Planning Schemes) Regulations 2015**

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

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development’s height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

If Council does not support the proposed development, there is a right of review (appeal) to the State Administrative Tribunal (SAT) under Part 14 of the *Planning and Development Act (2005)*

**6.2 City of Nedlands Town Planning Scheme No. 2**

Under the provisions of the Scheme the subject site is zoned Residential R10/20

**6.2.1 Amenity**

Under clause 5.5.1 of TPS2 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.”*

**6.2.2 Dual Density Coding**

Under clause 5.3.1 (a) of TPS2 grouped dwelling development in areas with dual density coding are to comply with the development requirements for that of the lower density code:

*“where an area is designated with an R. Code R.12.5/R.20 or R.10/R.20 no development other than a single dwelling house complying with R.12.5 or R.10 requirements (as the case may be) is permitted…”*

**6.3 Draft Local Planning Scheme No. 3**

Under Draft Local Planning Scheme No.3 (LPS 3) the existing dual density coding of R10/R20 is proposed to be changed to R20. If this occurs the following deemed-to-comply provisions under the R-Codes would be applicable to the property, amongst others:

* A 1m rear lot boundary setback will potentially be permissible.
* The minimum amount of open space required will be reduced to 50%.

**6.4 Policy Considerations**

**6.4.1 Residential Design Codes - State Planning Policy 3.1**

**Lot Boundary Setbacks**

|  |  |  |
| --- | --- | --- |
| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Buildings which are set back in accordance with the following provision, subject to any additional measures in other elements of the R-Codes:   1. buildings set back from lot boundaries in accordance with Table 1, Tables 2a and 2b (refer to Figure Series 3 and 4). | *P3.1 – Buildings set back from lot boundaries so as to:*   * *reduce impacts of building bulk on adjoining properties;* * *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and* * *minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”* | * The eastern setback distance for the ensuite, master bed and balcony is proposed to be setback at 1m in lieu of 1.1m. * The rear (southern) setback to the kitchen and bed 2 is proposed at 1m in lieu of 6m. |
| **Administration Comment**  The reduced lot boundary setbacks are deemed to be acceptable as they do not detrimentally impact the existing or future amenity of the locality. The proposed reduction in lot boundary setbacks satisfy the relevant design principles for the following reasons:   * The setback distances to Acacia lane and the rear lot boundary are consistent with existing forms of development on nearby properties; * The reduced setback to the eastern (side) lot boundary is deemed to be minor in nature, and of little detrimental impact on the adjoining property as the reduced setback is adjacent to a garage wall free of windows or major openings; * The reduced rear (southern) setback provides an opportunity for the dwelling to maximise the northern aspect of the property for habitable rooms and outdoor living areas whilst still maintaining the required overshadowing requirements of the R-Codes for the adjoining southern property; * The reduced rear (southern) setback is consistent with the setback requirements applicable to the future development context of the location under LPS3, and is therefore deemed to be acceptable to the future amenity and characteristics of the locality; and * The dwelling includes design features such as windows and louvres, which provide screening, and break up the appearance and bulk of external walls, minimising its potential impact on adjoining properties and reducing the loss of privacy to adjoining properties.   Considering the above, the reduced setbacks to the lot boundaries will not have a detrimental impact on the existing or future amenity of the locality. | | | |

**Open Space**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Open space provided in accordance with Table 1 (refer Figure Series 6) (for an R10 coded lot a minimum of 60% open space is required). | *P4 Development incorporates suitable open space for its context to:*   * *reflect the existing and/or desired streetscape character or as outlined under the local planning framework;* * *provide access to natural sunlight for the dwelling;* * *reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;* * *provide an attractive setting for the buildings, landscape, vegetation and streetscape;* * *provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and* * *provide space for external fixtures and essential facilities.”* | 55.2% open space. |

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| **Administration Comment**  The proposed reduction in lot boundary setbacks satisfy the relevant design principles for the following reasons:   * It is consistent with the future open space requirements of the locality under LPS3; * The open space variation is as a consequence of the WAPC approving a lot size (377sqm) which is significantly less than what the R-Codes require for the R10 coding (875sqm minimum and 1,000sqm average); * The design and positioning of the dwelling on the lot allows for the habitable rooms and outdoor living areas to maximise the natural sunlight offered from the north of the property; * The external appearance of the dwelling minimises the impacts of building bulk on adjoining properties (as indicated above); and * The proposed setback to the northern property boundary (Haldane Street) is greater than what is required and provides the opportunity for residents of the dwelling to use the open space external to the building directly from habitable rooms. |

**Street Walls and Fences**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Front fences within the primary street setback area that are visually permeable above 1.2m of natural ground level, measured from the primary street side of the front fence.  Each of the following is acceptable material for a fence on a Residential lot:   1. A timber fence (consisting of pickets or overlapping panels); 2. A fence constructed of corrugated reinforced cement sheeting; 3. A fence constructed of masonry, stone or concrete; 4. A metal panel fence; or 5. A wrought iron fence.   In primary street setback areas, solid fencing to a maximum height of 1.2 metres above natural ground level, and visually permeable fencing to a maximum height of 1.8m above natural ground level.  Dividing fences are not to be higher than 0.75 metre above natural ground level, within 1.5 metres of where it adjoins vehicle access points where a driveway meets a public street and where two streets intersect.  Within the 1.5m area stipulated under clause 4.4 of this policy, the following obstructions are deemed acceptable by the City:   1. One pier with a maximum height of 2.1 metres above natural ground level with a length and width of no greater than 0.5m; 2. All other solid structures to be reduced to a height of no greater than 0.75 metres above natural ground level; and 3. All visually permeable structures to a maximum height of 1.8 metres above natural ground level. | “*Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2), 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.* | Street boundary fencing in the north-western portion of the site is proposed to be solid to 1.8m above natural ground level in lieu of 1.2m. |
| **Administration Comment**  The proposed fencing satisfies the relevant design principles of the R-Codes and the objectives of Council’s Fill and Fencing Local Planning Policy for the following reasons:   * The solid portion of fencing does not abut up to an adjoining dwelling and is located adjacent to similarly large walls/fencing provided along the laneway by adjoining properties; * The solid portion of fence maintains compliant vehicular sightlines between Acacia Lane and Haldane Street; and * The solid portion of the fence is to be used to screen the proposed outdoor living area immediately adjacent to Acacia Lane and Haldane Street, and will contribute to reducing the impact of traffic frequenting the laneway and passing on Haldane Street. | | |

**Vehicular Access**

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| **Deemed-to-Comply**  **Requirement** | **Design Principles** | **Proposed** |
| Access to on-site car parking spaces to be provided:   * where available, from a right-of-way available for lawful use to access the relevant lot and which is adequately paved and drained from the property boundary to a constructed street; * from a secondary street where no right-of-way exists; or * from the primary street frontage where no secondary street or right-of way exists. | *P5.1 Vehicular access provided for each development site to provide:*   * vehicle access safety; * reduced impact of access points on the streetscape; * legible access; * pedestrian safety; * minimal crossovers; and * high quality landscaping features. | Driveway greater than 0.5m from side lot boundary and located greater than 6m from a street corner. |
| **Administration Comment**   * The proposed means of vehicular access to the property satisfies the relevant design principles for the following reasons: * The proposed driveway location provides sufficient separation distance to services, street poles, trees and obstructions; * The proposed driveway location maintains the required sightlines for vehicular entry and exit points; * The proposed crossover is consistent with the width and splay requirements; and * The vehicle entry point is from a legible gazetted road and will not constitute or contribute to a proliferation of vehicle crossovers along that portion of Haldane Street. | | |

1. **Conclusion**

The proposal is deemed to satisfy the design principles of the R-Codes in relation to open space, lot boundary setbacks, street walls and vehicular access.

Considering that the development potential of the site is restricted due to its size, and the local development context (both current in potentially in future), the proposal is unlikely to have a detrimental impact on the local amenity.

It is recommended that Council approves the application.

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| **PD13.19** | **Christ Church Grammar School – Request for Endorsement of Possible Acquisition of Landfill Site** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Applicant** | Taylor Burrell Barnett |
| **Landowner** | State of WA |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Mark Goodlet, Chief Executive Officer – Nature of interest – Impartiality. Extent of interest being that his child is a student at John XXIII College. |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Previous Item** | PD 74.18- Christ Church Grammar School - Possible Acquisition of Landfill Site |
| **Attachments** | 1. Applicants formal request for endorsement |

1. **Executive Summary**

The purpose of this report is to support increased recreational space in Mt Claremont using land currently owned by the State Government. The proposal is for Christ Church Grammar School (CCGS) to acquire the land shown in Table 1 owned by the State Government to operate as an extension to their current playing fields. This would be available for both the school and general community use. Council is asked to write a letter of support for these parcels to be developed at playing fields which may potentially aid in CCGS’s proposal to acquire the land.

It is recommended that a letter or support be given by the Council for the land to be used for recreational playing field purposes available to the public. This does not explicitly endorse the school purchasing the land but is open to any proponent looking to purchase the site for the use of playing fields which are accessible by the wider community.

1. **Recommendation to Committee**

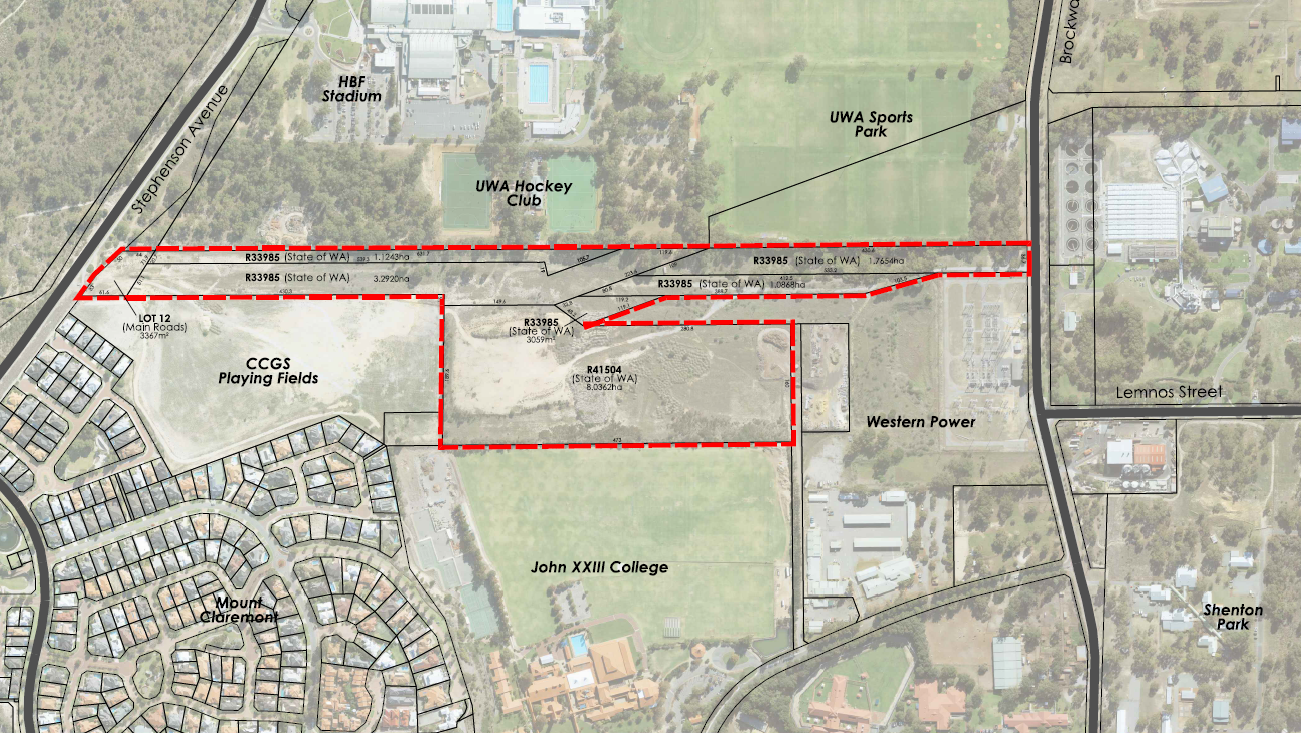
**Council instructs Administration to write a letter of endorsement from the City to support the lots shown in Table 1 to be developed as playing fields. With the conditions that:**

1. **The sites are remediated, and any contamination issues are resolved;**
2. **That the sites are amalgamated;**
3. **The sites are used for sport and recreational purposes;**
4. **The sites are open to the public for use; and**
5. **That the City has the opportunity to participate in the planning and development of the playing fields.**
6. **Background**

**3.1 Land Details**

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| --- | --- |
| Land Area | 16.3ha in total |
| Local Planning Scheme Zone | No Zone with a small parcel of Recreation |
| Metropolitan Region Scheme Zone | Urban with a small section of Public Purpose - Hospital |

**3.2 Locality Plan**



The subject sites are located within the North Eastern area of Mt Claremont. The parcels ownership and vesting arrangements are shown below in Table1. The sites are currently unused due to site contamination from the former landfill site.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Reserve No./Lot No./ Plan No.** | **Volume** | **Folio** | **Area** | **Registered Proprietor(s)** |
| R33985 Lot  10949 on Plan  216951 | LR3141 | 650 | 1.1243ha | STATE OF WA (Minister for Sport and Recreation) |
| R33985 Lot 10781 on Plan 216951 | LR3141 | 649 | 3.2920ha | STATE OF WA (Minister for Sport and Recreation) |
| R33985 Lot 9206 on Plan 213700 | LR3141 | 646 | 0.3059ha | STATE OF WA (Minister for Sport and Recreation) |
| R33985 Lot 9208 on Plan 213700 | LR3141 | 647 | 1.0868ha | STATE OF WA (Minister for Sport and Recreation) |
| R33985 Lot 9209 on Plan 213700 | LR3141 | 648 | 1.7654ha | STATE OF WA (Minister for Sport and Recreation) |
| R41504 Lot 12970 on Plan 219939 | LR3111 | 283 | 8.0362ha | STATE OF WA (Minister for Sport and Recreation) |
| Lot 12 on Plan 024305 | 2205 | 636 | 0.3367ha | COMMISSIONER OF MAIN ROADS |

1. **Application Details**

The school is wanting to use these parcels of land for extension of their current playing fields adjacent to the site. CCGS is seeking support from the City for their potential acquisition of the former landfill site.

The sites are contaminated and will require substantial costs to remediate. The State Government has not indicated that they are able or willing to remediate the site. The school is aware of the site contamination and associated costs and are willing to undertake works to solve this issue on these sites.

The general public would have access to use the playing fields for non-organised sport and passive recreation, such as dog exercising, walking and general kick-to-kick, as is the case at the existing CCGS St John’s Wood playing fields.

The access and management arrangements are detailed in Attachment 1. CCGS has expressed that their intention is that access to the playing fields and associated facilities would be made available to the general public and community sports clubs for training and competition outside of the times the school is required to use the facilities. The school would require exclusive use of the oval and facilities at the following times, almost exclusively during the school term (38 weeks per annum):

* Monday to Thursday afternoons (3:30 – 5:00pm), for sports training;
* Friday afternoons (1:30 – 5:00pm) – for organised fixtures; and
* Saturday mornings (8am – 12:00pm) – for organised fixtures.

Outside of these times, community groups would have the ability to book the playing fields and facilities including change rooms and toilets, consistent with the arrangements at the existing CCGS playing fields.

Bookings would be advertised and scheduled online with a link placed on the City of Nedlands website. The bookings would be coordinated via an in-house resource, which would be utilised exclusively to book facilities to the general public and community groups. This resource is currently used by CCGS and regularly approached by community groups for access to playing fields, the school pool, gymnasium and boarding facility.

1. **Consultation**

CCGS has contacted the City’s Councillors to discuss the proposal. The school has indicated a desire from the Council to participate in future planning and development of the site if they are able to acquire the land.

The applicant has indicated that CCGS has discussed the proposal to acquire this land with the University of WA (UWA) and John XXIII College whereby they may wish to share the acquisition for similar purposes however this has not yet been confirmed or finalised.

CCGS has also approached the Department of Local Government, Sport and Cultural Industries (DLGSCI) for a letter of endorsement similar to that requested from the City. The applicant has informed that the DLGSCI has verbally confirmed their support of the proposal for the site to be used as playing fields.

1. **Supporting Documents**

**6.1 Metropolitan Region Scheme**

Majority of the subject site is zoned ‘Urban’ under the Metropolitan Region Scheme (MRS), with a small portion to the east being zoned Public Purpose – Hospital. It is likely that the applicant will have to undergo an MRS amendment to remove the no longer relevant Public Purpose – Hospital zoning over the eastern positions of the site.

**6.2 City of Nedlands Town Planning Scheme No. 2**

Under the provisions of the Scheme the subject site is largely unzoned with a small area in the centre, adjacent to the City’s depot have a recreation zoning. It is acknowledged by the applicant that a Scheme Amendment will be required to zone the lots so that they are suitably identified in Town Planning Scheme No.2 (TPS2) for the intended development.

**6.3 City of Nedlands Local Planning Scheme No.3**

Under the provisions of the proposed new Local Planning Scheme No.3 (LPS3) due to be gazetted soon, the parcels will all be zoned Urban Development. This zoning will allow for the applicants to submit a development application to operate playing fields on the site.

**6.4 Local Planning Strategy**

The City’s endorsed Local Planning Strategy sets out the following aims for the Mt Claremont East Precinct:

* Retain and enhance the character and streetscape of the existing residential areas.
* Comprehensively plan for the remaining non-residential areas.
* Land uses and development within this area shall not conflict with the urban character being predominantly of sporting, research and educational facilities.
* Prevent the encroachment of sensitive land uses and residential development within the Subiaco WWTP odour buffer area.
* Consider opportunities to consolidate and improve access throughout the precinct.

The proposal to use these sites for recreation purposes is in line with the City’s Local Planning Strategy for the area.

**6.5 AK Reserve / UWA Sports Park Master Plan**

The AK Reserve / UWA Sports Park Master Plan was adopted by the WAPC in 2006 as a requirement of the Perry Lakes Redevelopment Act 2005 (PLRA). The Master Plan identifies sporting ovals on the subject land, including a cricket oval and rugby oval. This is shown in Figure 2 of Attachment 1.

**6.6 Environmental Considerations**

The subject land is located over the former Brockway Landfill site. Initial environmental investigations have been undertaken which indicate that landfill material remains buried across the subject land and asbestos-containing materials are located in some of the surface soils.

The applicant acknowledges that the subject land would be required to be remediated prior to development of playing fields, which may comprise capping with clean fill along with some degree of water and land fill gas management. CCGS are willing to undertake all required remediation works, understanding remediation works may be similar to those required on the adjacent CCGS St John’s Wood ovals which were recently developed.

The northern section of the site has many Water Corporation easements which are used for sewerage and drainage outfalls to the ocean. Development of this site would require discussions with the Water Corporation in relation to these easements.

**6.7 Perry Lakes Redevelopment Act 2005**

The parcels of land were formerly located within the *Perry Lakes Redevelopment Act 2005* (PLRA) Area. The Governor proclaimed completion of the PLRA on the 25 November 2016, meaning that any applications over this area now received by the City will be assessed under the City’s TPS2.

**6.8 Mount Claremont Sports Precinct structure plan Draft Development Concept (2004)**

A study was commissioned by the Department of Sport and Recreation and the Department of Planning and Infrastructure in 2005 to provide a detailed planning framework for a regional sports complex at Mt Claremont. The study provided two possible options for development of the site as a sports precinct. Figure 1 shown in Attachment 1 of this report shows the possible outcome of the structure plan. This study’s main emphasis was to allow for future expansion and development of sports facilities, associated infrastructure and other land uses within the study area.

**6.9 Mt Claremont North-East Structure Plan Investigation**

At the Council Meeting on the 23October 2018 Council resolved to direct administration to prepare a Project Plan and Community Engagement Strategy for the Mt Claremont North-East area which includes the sites discussed by CCGS. This is required for the City to explore options for future development and planning for the Mt Claremont north-east area. The proposal by CCGS is aligned with this decision by Council as they will be using the central sites which are currently underused and poorly configurated. The applicant has also expressed interest to be included in any future planning undertaken by the City for this area.

1. **Conclusion**

Administration supports the endeavours of CCGS seeking to acquire the former landfill site consisting of the lots listed in Table 1 above, for playing fields. The proposal is in line with the City’s overall vision for the area as stipulated in the Local Planning Strategy.

Administration believes that the school’s development of these sites for recreation will provide a benefit to the community and as stated previously will be open for public use. The sites currently are unused and unable to be rehabilitated due to the substantial cost by either the City or the State Government. The school are willing to take on the costs involved and develop this site as a recreational facility that can be used by the community as well as the school.

The potential amalgamation and decontamination of these sites proposed by the school would allow for these sites to no longer be left unused and would be asset to both the school and the community. The City recommends that Council support the land be developed for playing fields.

Assuming that the City provides in-principle support for the proposal, CCGS will engage with the Department of Planning, Lands and Heritage (Lands Division) to seek its agreement to remove the vesting of the subject land and sell the land to CCGS. If CCGS proceeds to purchase the land, consultation will be undertaken with the City of Nedlands to progress the necessary planning to facilitate development of the subject land.

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| **PD14.19** | **Establishment of a Design Review Panel** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Reference** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Design Review Guide – Department of Planning, Lands and Heritage (February 2019) |

1. **Executive Summary**

The purpose of this report is for Council to consider whether or not to establish a Design Review Panel (DRP) which would provide independent expert design review advice for complex planning proposals.

With the anticipated imminent gazettal of Local Planning Scheme No. 3 (LPS 3) the City is likely to experience a higher level of growth in development occurring in the locality and community expectations about the quality of built form outcomes are likely to be increased particularly with the adoption of State Planning Policy 7.0 (SPP7.0) Design WA.

Larger scale developments and projects with a strong design focus require additional expertise and a Design Review Panel can provide additional input in areas such as architecture, heritage, landscape design and amenity. With a higher importance on ameliorating design impacts and mitigating any potential impact on established neighbourhoods from new development a Design Review Panel could be considered as a way of complying with SPP7.0.

Ensuring that the City has a consistent approach to built form design should be addressed and a DRP is suggested as the preferred approach. It is noted that there will be an expectation of the Development Assessment Panels (DAP’s) that applications before them would have undertaken a design review process prior to being presented for determination by the DAP.

Should Council decide to proceed with a DRP a local planning policy (LPP) would need to be prepared for operational and procedural purposes to outline how the DRP members would be appointed and what type of development will be referred to the DRP. This along with terms of reference will need to be established and presented to Council for approval.

It is recommended that Council establishes a DRP and instructs administration to prepare the Local Planning Policy and Term of Reference referred to above.

1. **Recommendation to Committee**

**That Council:**

1. **Instructs the City’s Administration to establish a Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals;**
2. **Instructs the City’s administration to prepare a Local Planning Policy outlining the types of development, policies and projects that will be referred to the Panel, a set of Design Principles that the panel will use for a basis for review and relevant operations and procedures for the panel; and**
3. **Receive a further report following assessment of the expressions of interest to consider further appointment of panel members and the draft local planning policy.**
4. **Background**

Previous planning reform by the WA Planning Commission (WAPC) identified the need for initiatives and actions for the improvement of design and development. This is now being delivered as Design WA. Stage 1 which aims to deliver elements with a direct planning reform mandate, including:

* State Planning Policy 7.0 Design of the Built Environment (SPP 7.0)
* State Planning Policy 7.3 Residential Design Codes Volume 2 - Apartments
* Design Review Guide (the Guide). Refer to Attachment 1.

The Guide sets a best-practice model for the establishment of DRP’s offering practical advice on how to establish and operate a panel and to encourage consistency, as existing design review processes evolve.

DRP’s provide independent expert advice and informed assessment of proposals, guided by a performance-based set of design quality principles. It offers feedback and observations that will lead to the improvement of proposals but does not redesign them.

The majority of metropolitan local governments already have DRP’s established or are in the process of forming a DRP. It has been confirmed by the WAPC that Design Review Panels will not form part of the Regulations and are therefore not mandatory.

It is also noted that the City has approached the Western Suburbs Regional Organisation of Councils (WESCROC) to explore if a joint DRP could be formed and resources being shared amongst the participating Local Governments. A position has not yet been formed, however this will inform any future recommendations to Council regarding a DRP for the City of Nedlands.

1. **State Planning Policy 7.0 - Design of the Built Environment**

SPP 7.0 addresses design quality and built form outcomes in Western Australia. It seeks to deliver the broad economic, environmental, social and cultural benefits that derive from good design outcomes and supports consistent and robust design review and assessment processes across the State.

An objective of SPP 7.0 is a coordinated strategy of design quality mechanisms to achieve design outcomes that meet government and community expectations, including, amongst others, design review (skilled evaluation expertise).

SPP 7.0 stipulates that Planning authorities, including local governments, should establish or arrange access to design review processes to review complex planning proposals, those proposals identified as benefitting from design review, or as set out in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Whilst it is an advisory process, it is expected that decision-makers give due regard to the advice and any recommendations provided by the DRP.

1. **Design Review Guide**

The Guide has been prepared to assist local governments in meeting the requirement for design review outlined in SPP 7.0.

The guide has been based on design review methodology developed by the UK Commission for Architecture and the Built Environment (CABE), which is widely considered to represent international best practice and is utilised in successful design review processes throughout Australia.

The Guide stipulates that once the decision is made to form a DRP, resources must be committed to make it happen. It is important to be clear how the panel is run, the processes by which design review is accessed and how the advice and recommendations are provided and used.

The DRP’s role is to provide information and advice to decision makers, not to make a decision. For this reason, a DRP should not be a committee of Council under the *Local Government Act 1995* but should be established as an independent panel with separate membership and terms of reference. The Council should endorse the terms of reference for the panel and may endorse panel appointments.

DRP members are to have a range of design and built environment expertise in one or more of the following disciplines:

* Architecture (essential)
* Landscape architecture (essential)
* Urban design (essential)
* Heritage
* Sustainability and environmental design
* Services engineering
* Accessibility
* Transport planning
* Planning
* Public art
* Civil and/or structural engineering

The panel should consist of a quorum of not less than four and not more than six members. Panel members are appointed for an agreed term - usually two years.

1. **The Preparation of a Local Planning Policy**

If the Council chooses to set up a DRP a local planning policy would need to be prepared to outline the following, as a minimum:

* Panel membership;
* The role of the panel;
* The operation of the panel;
* Any design principles the panel is to have regard to when considering proposals;
* The format of the panel meeting;
* The roles and responsibilities of each panel member;
* The frequency of the DRP meetings; and
* The panel member fees.

1. **Budget / Financial Implications**

There is a cost associated with establishing and maintaining a DRP which depends on:

* The types of applications that the local government requires to be presented to a DRP;
* The frequency of meetings;
* The number of members who attend each meeting;
* The amount of time allocated for each meeting (preparation and attendance);
* Whether there is a fee charged to applicants;
* Staff time required for the preparation and operation of the meetings; and
* Member sitting fees.

A summary of the costs associated with DRPs at other local governments has been provided to Council as a confidential attachment. It would also be possible to charge an applicant a fee for referring an application to the DRP.

1. **Risk management**

The risks associated with not having a DRP include the following:

* Complex applications will not be reviewed by a panel of built form design experts relating to new assessment criteria as prescribed by Design WA;
* Applications before the JDAP may not be approved due to lack of DRP consideration, potentially causing delays and additional costs for applicants and administration; and
* Alternative expert advice in the areas of architecture, sustainability / energy efficiency, landscape architecture and arborists amongst others will need to be engaged separately to adequately address the complex assessment items required to be vetted by the City as part of Design WA.

1. **Options**

* Do nothing – there is no requirement for a Local Government to set up a DRP. However, it is recommended as best practice and the lack of design review of an application may cause delays and additional costs to the applicant in demonstrating they have complied with SPP7.0. As design review is likely to apply to medium to high density developments and above it is unknown, at this stage, how many applications would likely to need review that are also decided by Council. In many cases the value of the development would mean it is decided by the JDAP in any case;
* Set up a DRP – this is the recommended option. Council would be able to set the Terms of Reference as well as select the members for the Panel. A DRP would ensure that Council, when it is the decision maker, could be satisfied that the principles of SPP 7.0 have been considered and advice provided; or
* Participate in a joint DRP – it is possible that the number of applications requiring design review, where Council is the decision maker, will be low. In which case it may not be viable to set up a DRP just for the City of Nedlands. It is possible to refer applications to another existing DRP or set one up for a small group of local governments such as the Western suburbs Councils. With this option Council would have a reduced or joint role in setting Terms of Reference and selecting membership of the DRP.

1. **Conclusion**

Development in the City is likely to no longer be dominated by single storey dwellings. Instead some areas are likely to experience greater levels of redevelopment as a result of LPS 3 becoming operative.

Establishing a DRP to provide independent expert architectural and design advice on large-scale and complex development that can impact the community is seen by Administration as best practice for the City. As the City moves into an increasingly sophisticated planning assessment process including an increase in more intensive density and varied development typologies, the DRP therefore becomes increasingly important and it is therefore important that the Council is provided with professional expertise. It Is therefore recommended that Council pursue the establishment of a DRP and instruct Administration to prepare and develop the relevant terms of reference, policies and procedures to establish the Panel.

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| **PD15.19** | **Itinerant Food Vendor Application (Ice Cream Van)** |
|  | |
| **Committee** | 9 April 2019 |
| **Council** | 23 April 2019 |
| **Applicant** | Silver Asjarv |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Director** | Peter Mickleson – Director of Planning & Development |
| **Reference** | File No. COMP-1374877427-8910 |
| **Attachments** | 1. Itinerant food business application form 2. Photos of mobile food service facility 3. Trading in Public Places Local Law 2000 – Local Law 8 |

1. **Executive Summary**

On 19 February 2019, an application to operate a mobile food service facility, namely an ice cream van was lodged with the City of Nedlands. The application (Attachment 1) was lodged by Mr. Silver Asjarv of 593 Great Northern Highway Herne Hill.

The applicant was requested to lodge an application after a noise complaint was received regarding the music associated with operation of the food business. Furthermore, it was found that the van had been operating within the City of Nedlands without approval.

**Recommendation to Committee**

**That council approves an application by Mr Silver Asjarv to operate an itinerant Food Vendor within the City of Nedlands subject to the following conditions:**

1. **Applicant to hold a valid City of Nedlands Itinerant Food Vendor’s Licence;**
2. **Applicant to operate on a Sunday only from 10.00am to 7.00pm;**
3. **Applicant not trade within 50 metres of a permanent food business of the same food type;**
4. **Only remain at a location for as long as there is a customer making a purchase. If there is no customer making a purchase, the permit holder must move on from that location within a reasonable time of the last purchase having been made;**
5. **Maximum time in one location is not to exceed 10 minutes;**
6. **Service of ice creams, confectionary and drinks only are permitted;**
7. **Music, or any other forms of sound to attract customers, is not permitted to be played whilst the vehicle is parked;**
8. **Trading activities may be prohibited in certain areas should noise complaints be received and substantiated;**
9. **This Licence must be displayed in a conspicuous place on the vehicleand the permit must be produced to any Authorised Person or any police officer when requested;**
10. **The vehicle must be maintained in a clean and safe condition and in good repair;**
11. **The sale of food must comply with the *Food Act 2008,* *Food Regulations 2009* and the *Australia New Zealand Food Standards Code;***
12. **A current Public Liability Insurance must be attained for the vehicle; and**
13. **This licence may be cancelled by the City of Nedlands if the vendor has not complied with the conditions of the licence or the provision of any written law or policy related to the activity.**

**Discussion/Overview**

The applicant proposes to operate an ice cream van between Thursday and Sunday between the hours of 10.00am and 7.00pm.

The food business is registered and garaged in the City of Swan. It also holds a license to operate in the City of Perth, City of Joondalup, Shire of Mundaring and Town of Mosman Park.

**Site Inspection**

The interior of the van was inspected on 12 March 2019 by the City’s Environmental Health Department. The van was found to be in a clean and sanitary condition and suitably constructed for the sale of ice cream, shaved ice and soft drinks.

**Complaints, Damage and Community Impact**

A noise complaint pertaining to amplified music from the ice cream van was lodged with the City on 18 February 2019 by a Dalkeith resident. The complainant alleged that the music was creating a nuisance.

Whilst noise associated with braking systems and propulsion of motor vehicles is exempt under the *Environmental Protection (Noise) Regulations 1997* *(*the *Regulations*), amplified music, whether from a premises or vehicle, is classified as noise and is therefore required to comply with the Regulations.

As with most ice cream vans, amplified music is played from the van during transit to attract customers. The volume of the music is usually such that it can be heard in the street/vicinity where the van is situated.

Under the *Regulations*, noise from premises must not exceed assigned levels or unreasonably interfere with the health, welfare, convenience, comfort, or amenity of an occupier of premises receiving the noise. Although amplified music played from the van is likely to exceed assigned noise levels for short periods of time, it is unlikely that the noise will be occurring for a long enough period to constitute a nuisance or be regarded as unreasonable.

**Traffic/Parking**

The City’s Ranger Services have advised that, provided relevant parking and stopping restrictions are adhered to, the van is unlikely to adversely impact upon traffic flow in residential areas.

**Public Liability**

A copy of the public liability insurance policy to the value of 20 million dollars has been provided with the application, however as required under the City of Nedlands Local Law *Trading in Public Places 2000,* the City of Nedlands has not been listed as an interested party.

**Food Hygiene**

As previously mentioned, the van has been inspected and found to be suitably constructed for the sale of ice cream, shaved ice and soft drinks. Soft serve ice cream being a dairy product is regarded as a potentially hazardous food (PHF) product and therefore requires adequate temperature control to prevent the growth of bacteria. The van is fitted with a refrigerated soft serve machine that is able to maintain soft serve mixtures below 5 degrees celsius. The applicant has indicated that the machine is currently cleansed and sanitized on a daily basis.

Provided that good food hygiene practices are employed by the van operator, it is unlikely that the van will present any substantial public health risk to the community. Furthermore, the van, operator and food handler staff have undergone ‘I’m Alert’ food safety training.

**Legislative Requirement**

The City of Nedlands is required to either approve or refuse the application under the City of Nedlands Local Law relating to *Trading in Public Places 2000* (Attachment 3).

The van complies structurally with the requirements of the *Australian and New Zealand Food Standards Code* and the *Food Act 2008.*

**Consultation**

Various surrounding councils have been contacted regarding this application:

* The Town of Claremont does not permit itinerant food business to operate under Activities on Thoroughfare and Public Places Local Law;
* The Town of Cottesloe does not permit temporary food vendors to trade unless part of an approved event; and
* The Town of Mosman Park has approved Tiger Soft Serve as an itinerant food business subject to twelve (12) conditions to maintain the license.

**Budget/Financial Implications**

If approved, the applicant will be responsible for payment of an annual trading in public places fee of $1548.