



City of Nedlands

Planning and Development Reports

Committee Consideration – 9 June 2020

Council Resolution – 23 June 2020

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PD25.20	No. 45 Portland Street, Nedlands – Additions to Single House and Site Works
Committee	9 June 2020
Council	23 June 2020
Applicant	Brendon Riley
Landowner	Brendon Riley
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Report Type	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Quasi-Judicial	
Reference	DA19-41656
Previous Item	Nil
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Applicant's Justification Report
Confidential Attachments	1. Plans 2. Submission and Arborist Report 3. Assessment

1.0 Executive Summary

The purpose of this report is for Council to determine a development application received from the applicant on 8 November 2019 for proposed additions to a Single House and site works at No. 45 Portland Street, Nedlands.

The applicant is proposing the additions of a carport, storage shed (outbuilding), swimming pool, decking and front fencing at the subject property. Due to the slope of the site, there is also retaining, and associated site works proposed.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. The application was advertised to a total of five (5) adjoining landowner and occupiers. One (1) objection was received during the consultation period.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity and character.

2.0 Recommendation to Committee

Council approves the development application dated 8 November 2019, with amended plans received on 19 February 2020 for the additions to the single house, including the associated site works on Lot 88 on Plan 3062, No. 45 Portland Street, Nedlands, 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. This development approval only pertains to the additions of a carport, a shed, fencing, retaining walls and associated site works as indicated on the determination plans.
3. All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property's Certificate of Title.
4. Prior to occupation of the development the finish of the parapet wall is to be finished externally to the same standard as the rest of the development or in:
 - a) Face brick;
 - b) Painted render;
 - c) Painted brickwork; or
 - d) Other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City of Nedlands.
5. Prior to occupation of the development, all 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 shall be screened in accordance with the Residential Design Codes by either;
 - a) fixed obscured or translucent glass to a height of 1.60 metres above finished floor level;
 - b) Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) an alternative method of screening approved by the City of Nedlands.

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.
6. Fences within the primary street setback area shall not exceed 1.8m in height from natural ground level and are to be visually permeable in accordance with the Residential Design Codes (v1, 2019) above 1.2m in height from natural ground level (refer to advice note 2).
7. The outbuilding shall not be utilised for habitable or commercial purposes without further planning approval being obtained.

8. All stormwater from the development, which includes permeable and nonpermeable areas shall be contained onsite.
9. Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners and hot water systems shall be integrated into the design of the building and not be visible from the primary street, secondary street to the satisfaction of the City of Nedlands.

Advice Notes specific to this proposal:

1. In relation to Condition 4, the dividing fencing is seen to meet the requirement of providing sufficient screening from the raised outdoor living area (decking), with the dividing fencing shown to be at least 1.6m in height above the finished floor level. The dividing fencing is to be at least 75% obscure, permanently fixed, made of a durable material and is to restrict view in the direction of overlooking into an adjoining property. Should the dividing fencing be removed / altered in the future, sufficient screening is to be provided as a replacement to comply with the screening provisions of Clause 5.4.1 – Visual Privacy of the R-Codes (Volume 1).
2. In relation to Condition 6, "Visually Permeable" means the vertical surface has:
 - Continuous vertical gaps of 50mm or greater width occupying not less than one third of the total surface area;
 - Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
 - A surface offering equal or lesser obstruction to view as viewed directly from the street.
3. 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.
4. 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.
5. Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.

6. **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.**
7. **An exterior fixture associated with any air-conditioning unit or hot water system is considered an appropriate location where it is positioned:**
 - **outside of balcony/verandah areas (if applicable) and below the height of a standard dividing fence within a side or rear setback area;**
 - **or within a screened rooftop plant area or nook.**
8. **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. Soakwells of adequate capacity to contain runoff from a 20-year recurrent storm event. 4 Soak-wells shall be a minimum capacity of every 80m² of calculated surface area of the development.**
9. **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.**
10. **Where the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.**

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.

11. **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.

12. Adequate dust control measures to be undertaken in accordance with the Environmental Protection Act 1986 (and associated Regulations) and the Health Local Laws 2000.
13. The landowner is advised that all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.
14. Any significant noise generating equipment that installed shall comply fully with the maximum assigned levels of the Environmental protection (Noise) Regulations 1997.
15. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.

3.0 Background

3.1 Land Details

The subject site is located at No. 45 Portland Street, Nedlands. The land is formally identified as Lot 88 on Plan 3062.

The land covers an area of 905.5sqm and has a 20.1m eastern frontage to Portland Street. It is currently occupied by a single storey single dwelling on the land between landscaped front and rear gardens. A driveway is located on the north-eastern corner of the property without front fencing.

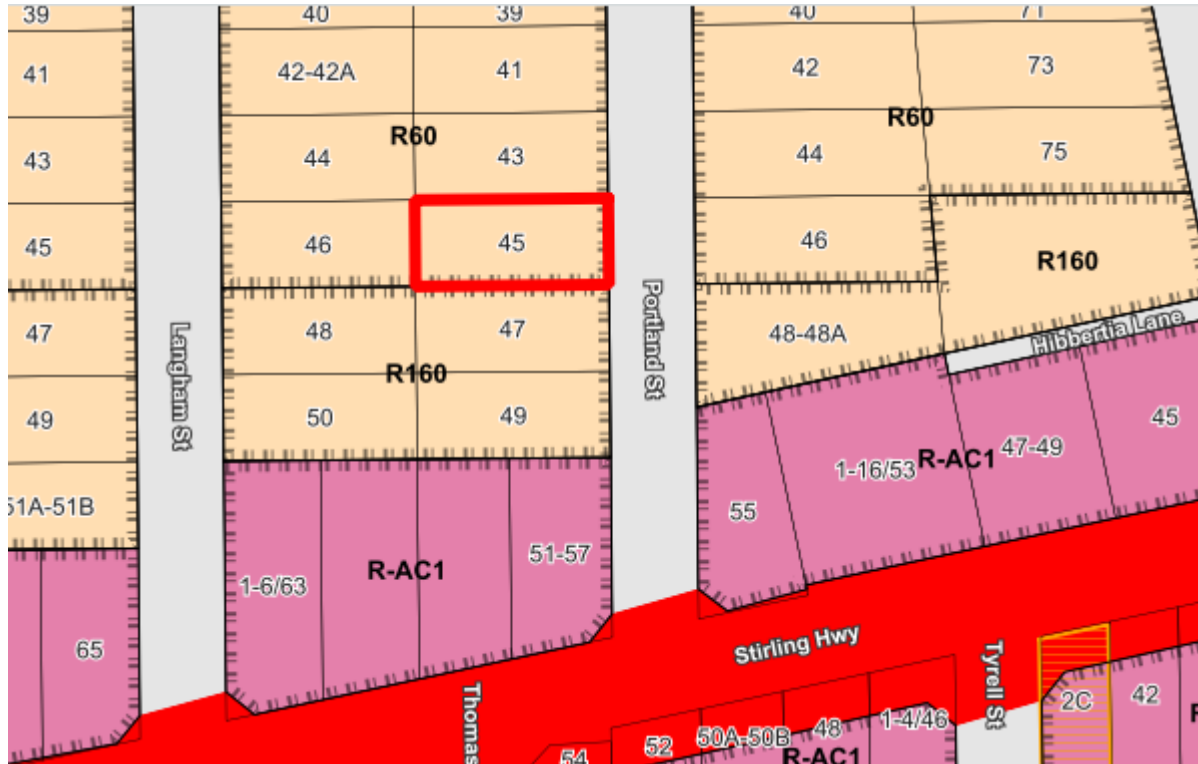
Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R60
Land area	905.5m ²
Additional Use	No
Special Use	No
Local Development Plan	No
Structure Plan	No
Land Use	Residential
Use Class	Permitted (P)

3.2 Locality Plan

Following the gazettal of the Local Planning Scheme No. 3 (LPS 3) on 16 April 2019, the subject properties to the north of No. 49 Portland Street were up coded from the R12.5 density which was allocated in Town Planning Scheme No 2 (TPS 2). With the

gazettal of LPS 3, the subject property of No. 45 Portland Street was up coded to a density of R60.

As shown in the map below, the properties to the north, east and west to No. 45 Portland Street have a density of R60. The properties to the south of No. 45 Portland Street have a density of R160. The subject property is approximately 80m directly to the north of Stirling Highway.



The subject property is surrounded by Single Houses and a locality that displays residential characteristics. There is a mix of dwelling styles along Portland Street, including single storey and two-storey single houses. The subject property has a downward slope from the southern lot boundary to the northern lot boundary.



4.0 Application Details

The applicant seeks development approval for additions to a single house and associated site works, details of which are as follows:

- Front fencing
- Carport addition along southern lot boundary.
- Shed / Storage (outbuilding) addition along northern lot boundary.
- Swimming pool addition on northern lot boundary.
- Decking associated with the swimming pool on northern lot boundary.
- Retaining on northern lot boundary.
- Brick lot boundary fence along northern lot boundary.

4.1 Background Details

The application was lodged to the City of Nedlands on 8 November 2019. The application was assessed against the R-Codes and relevant Local Planning Policies. The application was informally advertised over the Christmas period to the adjoining landowners. Following consultation with the adjoining landowners, the plans were amended, with several changes made including:

- Re-location of the carport to the southern lot boundary
- Relocation of the outbuilding from the northern lot boundary to provide a setback to the northern lot boundary
- Changes to the colours and materials schedule

Amended plans for this development application were received on 19 February 2020 and the application was re-assessed against the R-Codes and relevant Local Planning Policies. The application was formally advertised by way of letter, with plans published on Your Voice. The outcome of the advertising is presented in Section 5.0 below.

5.0 Consultation

The applicant is seeking assessment under the Design Principles of the R-Codes for the following:

- Lot Boundary Setbacks
- Site Works
- Retaining Walls

The development application was advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to five (5) adjoining landowner and occupiers. One (1) objection was received during the consultation period.

The following table is a summary of the concerns/comments raised and the City's response and action taken in relation to each issue:

Submission	Officer Response	Action Taken
<p>The proposed development is unfair and unreasonable as it does not protect the amenity of the residential area or the character of the residential area.</p>	<p>Refer to detailed assessment against the Design Principles of the R-Codes for Lot Boundary Setbacks, Site works and Retaining Walls under Section 6.2 of this report. The Design Principles discuss the compatibility of the development within the residential area.</p>	<p>Development complies with design principles – no action required.</p>
<p>The development does not respond to the local context where the adjoining property interfaces with the rear yard of the adjoining neighbouring lot in terms of bulk, scale and height.</p>	<p>Refer to detailed assessment against the Design Principles of the R-Codes under Section 6.2 of this report.</p>	<p>Complies with design principles – no action required.</p>
<p>An alternative design would have a lesser impact on the amenity of the adjoining property:</p> <ul style="list-style-type: none"> - if the pool was repositioned, - if the decking and pool were located central to the property or setback from common boundaries and - if the development respected and responded to the existing contours and levels on the land to minimise earthworks and retaining. 	<p>The applicant was provided with a second opportunity to amend the plans after the advertising period of the application was complete.</p> <p>The applicant chose to continue with the design of the development as presented with the plans attached with this report as the applicant had already once amended their plans after the first round of advertising during the Christmas break.</p> <p>The City of Nedlands does not have a Detailed Area Plan or Local Development Plan to specify the location of particular development within the lot for this property.</p> <p>As such, the City cannot require the specific positioning of development. Therefore, the development proposal is assessed as presented against the R-Codes.</p> <p>In addition, the applicant has advised that the location of the pool and the east – west orientation of the pool along the northern boundary was chosen to benefit from the northern orientation to the sun. Furthermore, the swimming pool chosen is a lap pool which would not fit in a north – south orientation.</p>	<p>No action required.</p>

<p>Objection to nil setbacks proposed by the decking and retaining wall to support the pool on the northern lot boundary which presents excessive scale and bulk, impacting on amenity and availability of natural light.</p>	<p>Refer to detailed assessment against the Design Principles of the R-Codes for lot boundary setbacks under Section 6.2 of this report</p>	<p>Complies with design principles – no action required.</p>
<p>Design does not respond to natural features of the lot and the fill proposed is not minimal. Site works should be limited to 0.5m.</p>	<p>Refer to detailed assessment against the Design Principles of the R-Codes for Site Works under Section 6.2 of this report</p>	<p>Complies with design principles – no action required.</p>
<p>Retaining wall will detrimentally impact the adjoining property as it will damage two significant trees and the scale of the boundary wall and fence.</p>	<p>Refer to detailed assessment against the Design Principles of the R-Codes for retaining walls under Section 6.2 of this report.</p>	<p>Complies with design principles – no action required.</p>
<p>The objector provided an Arborist Report in relation to the impact of the proposed development on the trees of the adjoining property.</p>	<p>The Arborist Report indicates that “it can be reasonably assumed that minimal impact would be experienced by the Jacaranda or the Hibiscus if works only occurred within 45 Portland and that appropriate measures are taken to not disturb spoils or roots beyond the fence line.” The arbour report is contained in Confidential Attachment 3.</p> <p>The Arborist Report recommendation 2 states that all construction is to be restricted to the property boundary of No. 45 Portland Street.</p> <p>Therefore, as a part of the recommendation of the development application, all works proposed are to be wholly contained within the property’s lot boundaries.</p> <p>The report also explains that the sinker roots which are vertical roots that strongly contribute to the tree stabilisation are “within the boundary of No. 43 Portland Street and further root zone exploration would be required to verify the existence of such roots within No. 45 Portland Street.”</p> <p>The Arborist Report recommendations will be presented to the applicant so as to encourage the applicant to take measures to reduce the impact of the construction upon the neighbouring property.</p>	<p>Condition no. 3 recommended</p>

<p>Incidental note on retaining walls: The existing retaining wall shown on drawing DA.08A has been cracked and deflected due to the tree roots of the Liquidambar tree on the boundary of No. 45 Portland Street which would need to be replaced - it could not be retained as suggested on the drawing.</p>	<p>Noted</p>	<p>No Action Required</p>
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Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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.

6.2 Residential Design Codes – Volume 1 (State Planning Policy 7.3)

The applicant is seeking assessment under the Design Principles of the R-Codes for lot boundary setbacks, site works and retaining walls as addressed in the below assessment tables:

Clause 5.1.3 – Lot Boundary Setbacks:

<p style="text-align: center;">Design Principles</p>
<p>The application seeks assessment under the design principles which are as follows:</p> <p>“P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</p> <ul style="list-style-type: none"> • 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. <p>P3.2 Buildings built up to boundaries (other than the street boundary) where this:</p> <ul style="list-style-type: none"> • makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas; • does not compromise the design principle contained in clause 5.1.3 P3.1; • does not have any adverse impact on the amenity of the adjoining property; • ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.”

Deemed-to-Comply Requirement
<p>The deemed to comply setback for the decking on the northern lot boundary is 1.5m.</p> <p>The deemed to comply setback for the retaining on the northern lot boundary is 1.5m.</p> <p>Building on boundary is only deemed to comply when building on boundary is proposed to one lot boundary.</p> <p>Building on boundary is only deemed to comply when building on boundary is proposed behind the front setback area.</p>
Proposed
<p>A nil setback is proposed to the northern lot boundary by the decking.</p> <p>A nil setback is proposed to the northern lot boundary by the retaining.</p> <p>Building on boundary is proposed to two lot boundaries – to the northern lot boundary (decking and retaining) and to the southern lot boundary (carport).</p> <p>The building on boundary to the southern elevation for the carport is proposed within the front setback area.</p>
Administration Assessment
<p>The lot boundary setback provisions are considered to successfully meet the Design Principles for Clause 5.1.3 of the R-Codes as per the assessment provided below.</p> <p>The nil setback proposed by the decking and the retaining on the northern lot boundary, with the brick screening wall on top of the retaining has a total height of 3.13m above the NGL of the northern lot boundary. This total height of 3.13m is lower than a typical single storey wall height of 3.5m above NGL. This total height of 3.13m is considered to be relatively standard for a residential property and as such, is not considered to add any significant building bulk to the adjoining properties around No. 45 Portland Street, Nedlands. Additionally, the deemed-to-comply wall height for building on boundary for an R60 zoning is 3.5m. The total height of the building on boundary along this elevation is 3.13m which is lower than the deemed-to-comply provisions.</p> <p>In relation to building bulk, there is an existing garage on the property at No. 45 Portland Street which is located along the northern boundary. This application proposes the removal of this garage and it will be replaced with a carport; however, this carport will be located on along the southern lot boundary. The removal of the garage from the northern lot boundary will reduce the building bulk impacts upon the northern adjoining property.</p> <p>The nil setback proposed by the decking and the retaining on the northern lot boundary with a maximum height of 3.13m with the brick boundary fencing on top is not considered to impact on the sun and ventilation to the building as the structures are located on the boundary fence. Additionally, any overshadowing from the building on the boundary will fall within the lot itself due to the orientation of the lot being an east – west orientation.</p> <p>The proposed brick boundary fence over the retaining and decking along the lot boundary will eliminate any overlooking onto adjoining properties. Therefore, it is highly unlikely to result in any loss of privacy or amenity to the adjoining properties.</p> <p>The decking and retaining are considered to make more effective use of space along the northern lot boundary for the swimming pool which is orientated so as to benefit from the northern sun exposure. This will benefit the landowners in being able to more effectively use their outdoor living area.</p> <p>The decking and retaining along the northern lot boundary will still provide direct sun to major openings to the habitable rooms on the adjoining property to the north as the overshadowing of the decking and retaining will fall within the lot. The provision of the</p>

screen wall on top of the decking will provide additional screening so as not to result in any overlooking or loss of privacy upon the neighbouring property at No. 43 Portland Street, Nedlands.

Additionally, the northern property at No. 43 Portland Street, Nedlands has a swimming pool in the north eastern corner of the property in the front setback area. The proposed retaining in this application which is on the northern boundary of 45 Portland Street and the southern boundary of No. 43 Portland Street is unlikely to detrimentally impact on the direct sun exposure to the adjoining northern lot.

This application proposes building on boundary on two lot boundaries- along the northern and southern lot boundaries. The retaining and decking is proposed along the northern lot boundary whereas the carport is proposed to be located on the southern lot boundary. The re-location of the parking facility to the southern lot boundary will assist in reducing any building bulk upon the northern lot and therefore, the application seeks to reduce the impact of building bulk upon the northern property.

It should be noted that the amount of building on boundary on the southern lot boundary is for a total length of 6.8m which equates to only 15% of the total southern lot boundary length. The proposal of the second building on boundary in lieu of one building on boundary is considered to be minor in scale.

The carport has a maximum wall height of 2.5m above NGL and is not considered to unduly impact on building bulk when viewed from the adjoining property to the south, as the carport location is within the front setback area. Therefore, the carport will not negatively impact on any direct sun and ventilation to the southern property as the carport abuts a driveway to the south. Furthermore, it does not negatively impact on any sun exposure to major openings to habitable rooms or outdoor living areas to the southern property.

The carport is a non-habitable structure and abuts a driveway and therefore is not going to result in any overlooking or loss of privacy to the southern property.

Due to the existing house on the lot, a small portion of the carport is located within the front setback area. This density has an R-Code of R60 which requires a 2m primary street setback. 0.5m of the carport length is within the primary street setback area. This setback will ensure that Bedroom 1 at the front of the property will still have a setback to the carport wall and it will also ensure that there is space between the carport and the existing dwelling to allow for a passage along the southern side to access the rear backyard. By moving the carport back 0.5m towards the dwelling, the carport roof would clash with the fascia of the existing dwelling.

Typically, building on boundary is deemed-to-comply behind the front setback area. The minor intrusion of the carport which has a total area of 4m² within the primary street setback area has been compensated for an equal area of open space of >4m² as per the provisions of Clause 5.1.2 – Street Setbacks of the R-Codes. As such, the street setback is deemed-to-comply.

The proposed additions which meet the Design Principles for Clause 5.1.3 – Lot Boundary Setbacks for the above-mentioned reasons are considered to contribute to the prevailing and future development context and streetscape of the locality. The additions are seen to be in keeping with the character of a residential locality and are unlikely to unduly impact the amenity of the area.

The proposal is seen to be complementary to the existing locality which typically displays single residential dwellings. With an increased density of R60 as a result of the gazettal of LPS 3, there will be higher density development within this area and this proposal is seen to be in keeping with the density provisions of an R60 zoning.

Clause 5.3.7 – Site Works:

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p>“P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</p> <p>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.”</p>
Deemed-to-Comply Requirement
<p>Site works are deemed to comply when raised to a maximum of 0.5m above natural ground level.</p>
Proposed
<p>The walkway along the northern lot boundary is raised 0.82m above natural ground level.</p> <p>The decking along the northern lot boundary is raised 0.89m above natural ground level.</p>
Administration Assessment
<p>The proposed site works are considered to successfully meet the Design Principles for Clause 5.3.7 of the R-Codes as the proposed site works are seen to correspond to the natural features of the site. The additional maximum fill of 0.39m above the deemed-to-comply fill of 0.5m is considered to be minimal within the site which slopes downwards from the southern lot boundary to the northern lot boundary.</p> <p>The site works are associated with the walkway and the decking which lead to the swimming pool area. These site works are considered to be appropriate in levelling out the site around the pool for ease of use and practicality. This site work will improve the relationship between the interior and exterior whilst expanding the function and accessibility of the outdoor and pool area.</p> <p>The site works which propose a higher finished level respect the natural ground level at the boundary of the site and do not materially impact the view from the street, with the site works being in excess of 10m from the primary street lot boundary.</p> <p>As such, the site works are considered to be acceptable for this development proposal.</p>

Clause 5.3.8 – Retaining Walls:

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p>“P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.”</p>
Deemed-to-Comply Requirement
<p>Retaining walls on the lot boundary are deemed to comply when the retaining is 0.5m high or less.</p>
Proposed
<p>A 1.33m high retaining wall is proposed on the northern lot boundary due to the sloping nature of the subject property.</p>
Administration Assessment
<p>The proposed retaining wall with a maximum height of 1.33m is proposed due to the sloping nature of the block along the middle of the northern lot boundary. Additionally, the swimming pool proposed along this boundary requires the existing retaining to be removed and replaced with structurally sound retaining to support the proposed works along this boundary.</p>

The retaining is seen to allow the effective use of the land for the benefit of the residents, with a levelled outdoor living area and for the use of the swimming pool. It is considered that this retaining wall is unlikely to detrimentally impact the adjoining properties.

It is noted that the property to the north at No. 43 Portland Street has a swimming pool and an outdoor living area in the north eastern corner of the property in the front setback area. The proposed retaining in this application which is on the northern boundary of 45 Portland Street and the southern boundary of No. 43 Portland Street is unlikely to detrimentally impact on the amenity of the adjoining northern lot.

Furthermore, the retaining wall is considered to meet the Design Principles of Clause 5.3.7 – Site Works as discussed above.

In relation to Clause 5.4.1 – Visual Privacy of the R-Codes, the proposed retaining wall does not result in any overlooking into adjoining properties. In fact, the retaining, with a boundary fence on the retaining will further assist in the screening of the decking and swimming pool area which are proposed in this development application. It is noted that the application is fully compliant with the relevant deemed-to-comply provisions of the R-Codes for Visual Privacy.

As such, the retaining wall is considered to be acceptable for this development proposal.

7.0 Conclusion

As per the Administration assessment provided above, the proposal is unlikely to have a significant adverse impact on the local amenity of the area. The proposed residential additions including the carport addition, outbuilding, decking, swimming pool and associated site works are considered to be compatible within the residential zone with an R60 density and will complement the existing development within the locality.

It is considered that the additions to the single house are unlikely to negatively impact on the streetscape of Portland Street, with the additions of the carport and the fencing along the primary street setback area.

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

Justification Report for

LOT 88 (NO. 45) PORTLAND ST, NEDLANDS

Applicant: Brendan & Alicia Riley

May 2020

After discussions with the planning officer on 1st May 2020, we have prepared a response to the objections received during the recently completed advertisement of the development application at Lot 88 (No. 45) Portland Street, Nedlands.

Please find enclosed relevant copies of the amended plans (Revision 4) dated 20 May 2020 including an updated 3D perspective of the proposed development. We have considered our neighbour's concerns and this submission seeks to justify the proposed development's code variations.

City of Nedlands
Received
11 May 2020

GENERALLY

It has been presumed that the proposed development *does not* protect the amenity or character of the residential area. As the area grapples with change initiated by the recent re-zoning (see Appendix I), we strongly believe that this development is not only considerate but seeks to invest in the local area with a respect for both the existing residence and all of our neighbours.

Over the course of 6 months we have carefully considered the recommendations made by planning officers and objections received during the initial self-advertisement period. In response we made several amendments to our initial development application including the increasing the shed setback and reducing the boundary retaining wall length and height (see 3D perspectives in Appendix II).

We believe that the variations we now seek are modest in both overall scale and bulk - and the height has been dictated by the existing conditions - not by ego. Furthermore, the proposed location of the development seeks to maximise solar access, minimise excavation, and enhance the potential of any future development as shown in our Stage 2 plans (Appendix III).

LOT BOUNDARY SETBACK

The proposed development has been carefully designed and amended to consider the amenity both in character, appearance and overall scale of the proposed development in both the context of the immediate vicinity and higher density zoning (R60).

We believe the scale of the proposed development is not excessive when consideration is given to the higher density coding (see Appendix I) and the similar retaining done by neighbouring properties due to the sloping nature of the lots.

Due to the orientation of the property there is no adverse effect on the neighbouring properties access to direct natural light. Whilst we conceded that there is potential for a retaining and fencing to allow for less ambient solar access to a portion of the southern boundary of the neighbouring

property (43 Portland Street) much of this solar access is already being inhibited by the mature trees and vegetation as shown in Figure 1.1.



Figure 1.1 – Northern neighbour’s existing mature trees and vegetation as viewed from 45 Portland St.

It is noted that the dividing boundary fence behind the street setback area is not being considered by the planning department nor the council.

SITE WORKS

The neighbour has raised an objection to the positioning of the pool and deck within the setback area suggesting the proposed development should better respect the NGL and available space by being relocated.

We have carefully considered the both the orientation and natural features of the lot to reach a solution that considers the following:

- Reduces excavation that will increase construction costs and will adversely affect the surrounding trees.
- The proposed FFL and location of development will maximise solar access to both the pool and Stage 2 development.
- Increase privacy by reducing opportunity for overlooking, reduce glare and improve visual amenity to outdoor living areas that have been adversely affected by the northern neighbour's zincalume clad two-storey development.
- Maximises the potential of the property for our young family long term.
- Investment in the proposed development will minimise the viability of subdivision or high-density development in reducing rear access to the lot.

See attached (Appendix III) our proposed plans for Stage 2 which will be submitted post-approval of Stage 1. It is our goal to invest in a low-density and thoughtful extension of our existing home which will further enrich both the amenity and our young family.

RETAINING WALLS

The northern neighbour's primary concern is that the construction of a boundary retaining wall will adversely impact on trees on adjoining property. During our self-advertisement over the new year blackout period we were proactive in working with the neighbour to better understand what risk was posed to his trees.

The neighbour initiated an impact assessment completed by Rob Bodestaff of Arbor Centre on the 15th January 2020. The initial assessment showed that the existing jacaranda tree roots do not migrate onto the property (45 Portland Street) and given the elevation and overall depth of the proposed pool, excavation and compacting is unlikely to stress the tree.

We then commissioned another on-site assessment also completed by Rob Bodestaff on the 18th February 2020 which provided more detailed assessment on site to eliminate and / or reduce the risk of tree stress, which we are prepared to implement where feasible, adjacent to the two trees on the neighbouring fence line.

CONCLUSION

We have advertised our proposed development twice and, on both occasions, received objections from the neighbour at 43 Portland Street. After the initial self-advertisement and in direct consultation with the planning officers and neighbours we made major design changes including the increasing the shed setback and reducing the boundary retaining wall length, height and fill.

As submitted, we are of the view that the new proposal achieves a satisfactory compromise that is sympathetic and harmonious within the established streetscape of Portland Street (see Appendix II). We believe the proposal has addressed thoughtfully all the issues arising from the physical

constraints of the site and its surroundings whilst delivering an outcome that serves our family's functional needs.

We trust that with due consideration of the above, the overall aesthetics and values of our development will add to the immediate surroundings. We hope for these reasons outlined that our proposal will meet the support and approval of your department.

APPENDIX I

EXAMPLES OF POTENTIAL HIGH-DENSITY DEVELOPMENT

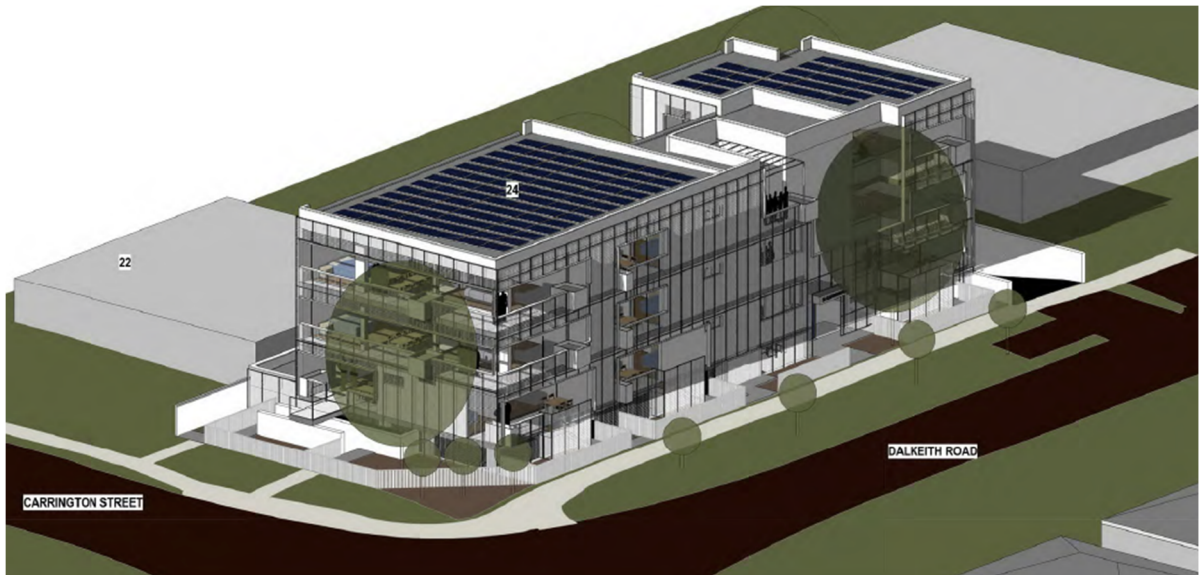


Figure 1.1 - 24 Carrington St (Zoned R60 similar area block)



Figure 1.2 - 14 Webster Street (Zoned R60)



Figure 1.3 - 130 - 132 Waratah Avenue (Zoned R40)



Figure 1.4 - 13 Vincent Street (Zoned R160)

APPENDIX II

PHOTOS OF STREET ELEVATION (Existing and Proposed)



Figure 2.1 - Existing Street (East) Elevation



Figure 2.2 - Initial Proposed Street (East) Elevation (submitted 6 November 2019)



Figure 2.3 - Revision 3 proposed street (East) elevation including trees to be retained



Figure 2.4 - Revision 3 proposed street elevation with the existing tree hidden to show full extent of development.

APPENDIX III

PROPOSED STAGE 2 PLANS (Pending submission)

Justification Report for
LOT 88 (NO. 45) PORTLAND ST, NEDLANDS
Applicant: Brendan & Alicia Riley

May 2020

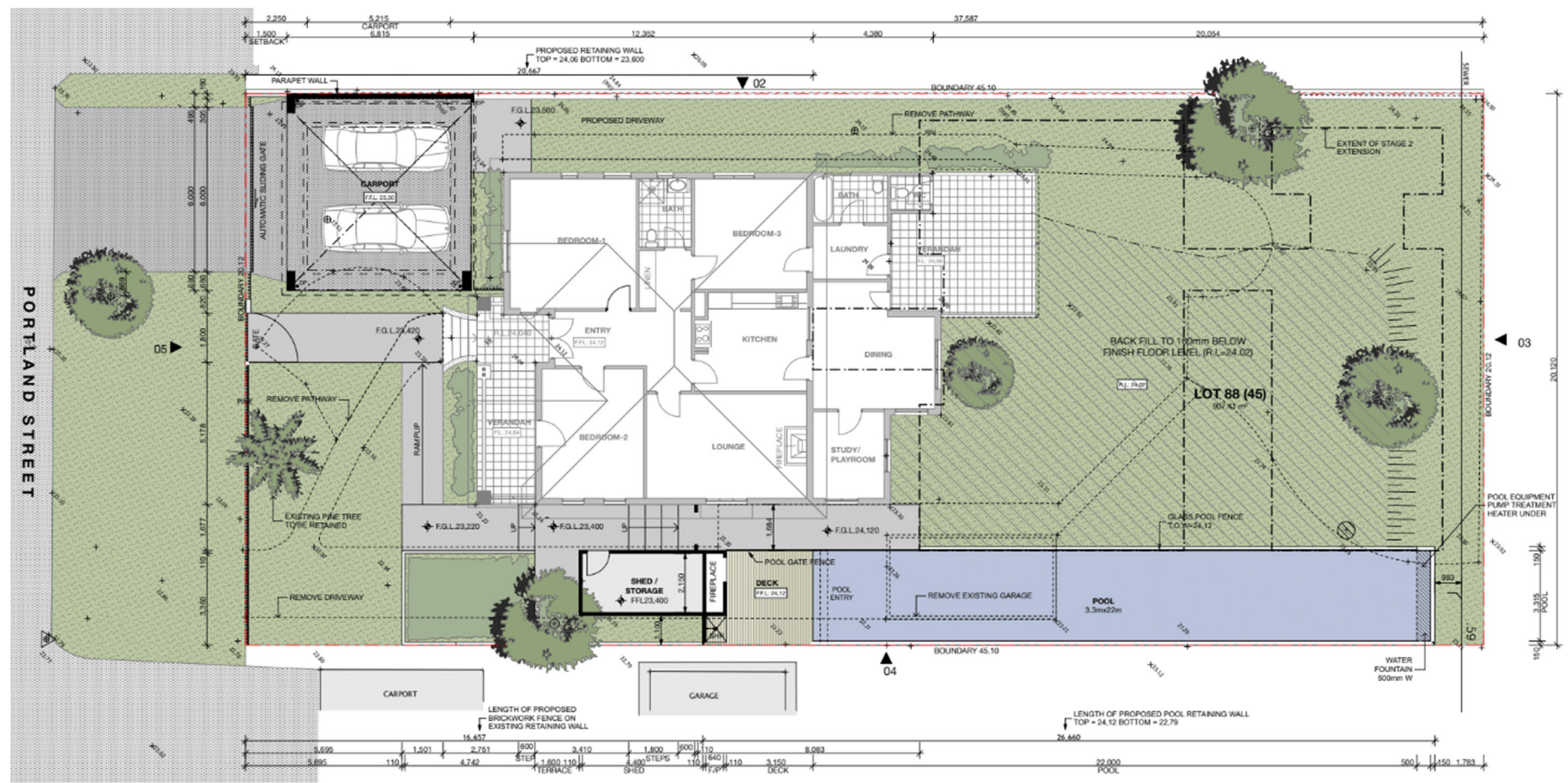


Figure 3.1 - Stage 1 Development Application under consideration with extent of Stage 2 extension shown.

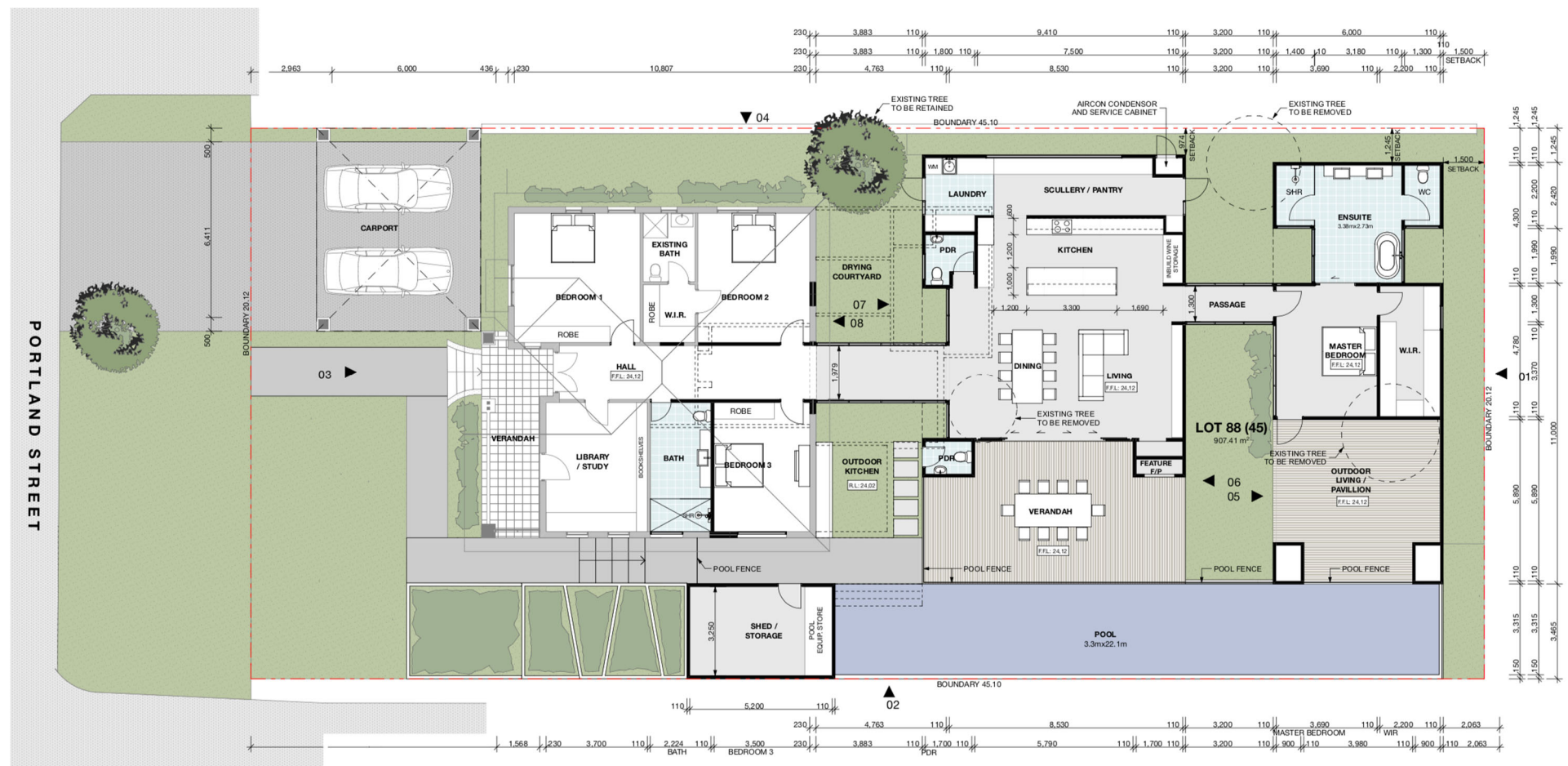


Figure 3.2 – Stage 2 explorations, yet to be finalised.

PD26.20	No. 95 Victoria Ave, Dalkeith - Additions to Single House
Committee	14 June 2020
Council	28 June 2020
Applicant	Dr Rosemary Turner
Landowner	Dr Rosemary Turner & Dr J Harvey Turner
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Report Type	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Quasi-Judicial	
Reference	DA19-35834
Previous Item	Nil
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Applicant letter of support for the development proposal
Confidential Attachments	1. Plans 2. Submissions 3. Assessment

1.0 Executive Summary

The purpose of this report is for Council to determine an application for additions to a single house at 95 Victoria Ave, Dalkeith received from the applicant on 6 June 2019.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. One (one) objection was received during the advertising period.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity and is consistent with the local character of the locality.

2.0 Recommendation to Committee

Council approves the development application dated 6 June 2019 to install a garage and rooftop garden at Lot 6, 95 Victoria Ave, Dalkeith, subject to the following conditions and advice notes:

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. This development approval only pertains to the installation of a garage and rooftop garden as indicated on the plans attached.
3. Revised drawings shall be submitted with the Building Permit application, incorporating the following modifications as shown in red on the approved plans, to the satisfaction of the City:
 - a) Clear 1.5m visual truncation areas are to be provided at the entry to the garage.
 - b) Secondary street fencing is to be reduced in height to a maximum of 1.8m above natural ground level, from the street side of the proposed fence.
4. All footings and structures to retaining walls and fences shall be constructed wholly inside the site boundaries of the property's Certificate of Title.
5. Prior to occupation of the development the northern and western elevations of the roof top garden shall be screened in accordance with the Residential Design Codes by either;
 - a) fixed obscured or translucent glass to a height of 1.60 metres above finished floor level, or
 - b) Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure.
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) an alternative method of screening approved by the City of Nedlands.

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.
6. This approval is limited to the installation of a garage and rooftop garden only and does not relate to any site works, decking or retaining walls 500mm or greater above the approved ground levels.
7. The ground floor structure (garage and potting shed) shall not be utilised for habitable or commercial purposes without further planning approval being obtained.
8. Prior to the occupation of the development, all structures within the 1.5m visual truncation area abutting vehicle access points shall be truncated or reduced to 0.75m height to the satisfaction of the City of Nedlands (see condition 3).

9. **The laneway adjacent to the eastern boundary of the subject property being widened in accordance with the approved plans by the landowner by transferring the land required to the Crown under Clause 32.3 of the City's Local Planning Scheme No. 3. The land to be ceded free of cost and without any payment of compensation by the Crown.**
10. **Prior to occupation of the development, the portion of the laneway adjacent to the subject property and any portion of the subject property required for laneway widening is required to be sealed, drained and paved to the satisfaction of the City.**
11. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite (refer advice note aa)**

Advice Notes specific to this proposal:

1. **This is a Planning Approval only and does not remove the responsibility of the applicant/owner to comply with all relevant building, health and engineering requirements of the City, or the requirements of any other external agency.**
2. **This planning decision is confined to the authority of the *Planning and Development Act 2005*, the City of Nedlands' Local Planning Scheme No. 3 and all subsidiary legislation. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are first obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements, or encumbrances are adhered to.**
3. **This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.**
4. **This planning approval has been issued on the basis of the plans hereby approved. It is the responsibility of the applicant to ensure that the approved plans are accurate and are a true representation of all existing and proposed development on the site, and to ensure that development proceeds in accordance with these plans.**
5. **There may be matters which impact on proceeding with the approved development which are not shown on the approved plans (e.g. verge infrastructure, retaining walls). Such matters may need to be separately addressed before the approved development can proceed. It is the responsibility of the applicant to ensure that these matters are addressed prior to the commencement of the development hereby approved.**
6. **The applicant is advised that all development must comply with this planning approval and approved plans at all times. Any development, whether it be a structure or building, that is not in accordance with the planning approval, including any condition of approval, may be subject to further planning approval by the City.**

7. The applicant is advised that variations to the hereby approved development including variations to wall dimensions, setbacks, height, window dimensions and location, floor levels, floor area and alfresco area, may delay the granting of a Building Permit. Applicants are therefore encouraged to ensure that the Building Permit application is in compliance with this planning approval, including all conditions and approved plans. Where Building Permit applications are not in accordance with the planning approval, a schedule of changes is to be submitted and early liaison with the City's Planning Department is encouraged prior to lodgement.
8. 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 approved ground levels.
9. The applicant is advised that the approved garage and potting shed is not approved for habitation, commercial or industrial purposes. Change to the use of this building may require further development approval.
10. A demolition permit is required to be obtained for the proposed demolition work. The demolition permit must be issued prior to the removal of any structures on site.
11. The swimming pool barrier is to comply with Australian Standard 1926.1. A building permit application for the swimming pool barrier must be submitted and the building permit issued prior to filling the swimming pool with water.
12. 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.

13. All swimming pool wastewater 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.

14. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
15. 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 by the City of Nedlands.
16. The contractor/developer shall protect the City's street trees from any damage that may be caused by the scope of works covered by this contract for the duration of the contract. All work carried out under this contract is to comply with the City's policies, guidelines and Australian Standards relating to the protection of trees on or adjacent to development sites (AS 4870-2009).
17. To prevent stormwater flowing into the property from the laneway, ground levels of garages and outbuildings with car parking are encouraged to have the finished floor level higher than the level in the laneway adjacent to the building or a grated channel strip-drain 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.
18. A new crossover or modification to an existing crossover will require a separate approval from the City of Nedlands prior to construction commencing.
19. All works within the adjacent thoroughfare, i.e. road, kerbs, footpath, verge, crossover or right of way, also require a separate approval from the City of Nedlands prior to construction commencing.
20. Where works are proposed to a building permit shall be applied for prior to works commencing.
21. Where parts of the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.
22. All ramps to the basements/mezzanine and circulation areas are to be constructed in accordance with the Australian Standard AS2890.1 (as amended) to the satisfaction of the City of Nedlands.
23. All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended) to the satisfaction of the City of Nedlands.
24. Prior to occupation, the loading bays, car-parking bays and manoeuvring areas are to be constructed, sealed, kerbed, drained and clearly marked in accordance with AS2890.1 (as amended) and maintained to the satisfaction of the City of Nedlands.

25. In relation to condition 11, the applicant is advised that 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.

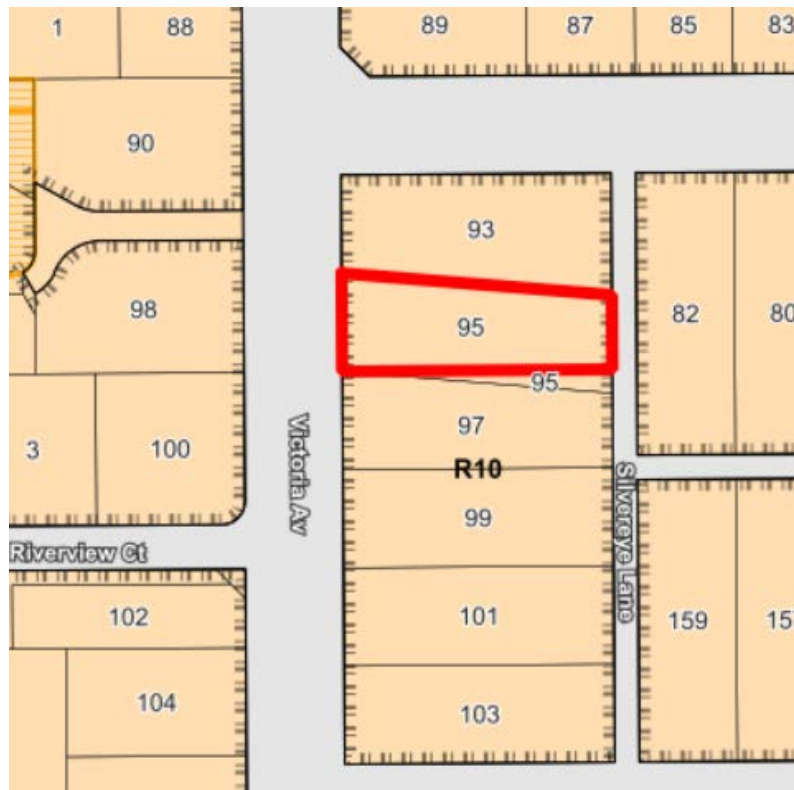
3.0 Background

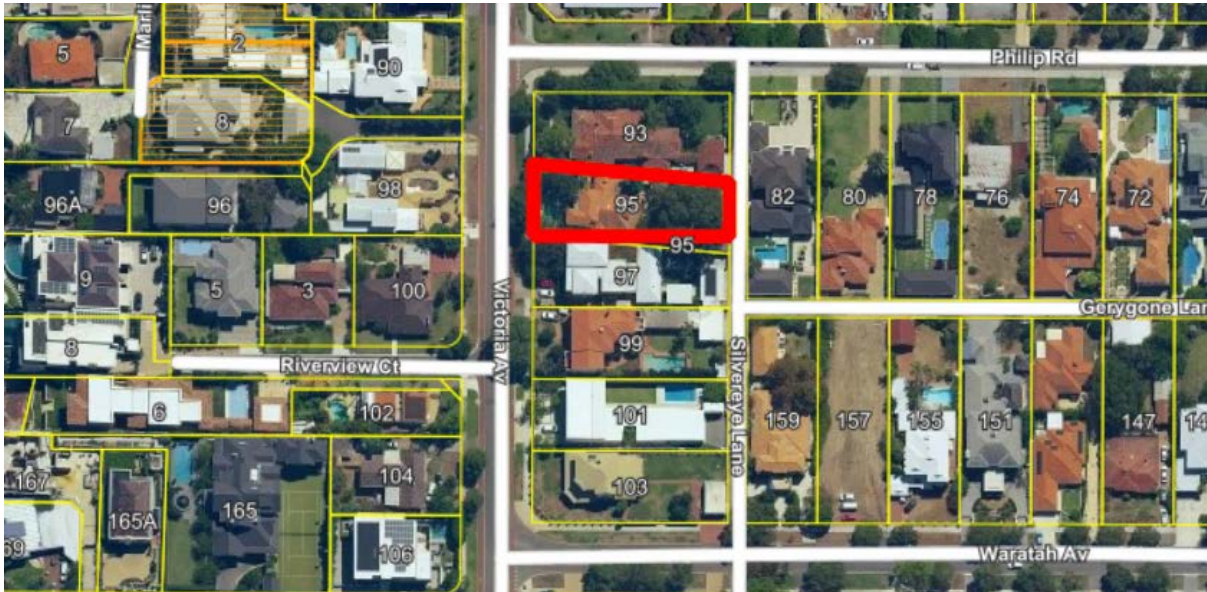
3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R10
Land area	1113m ²
Additional Use	No
Special Use	No
Local Development Plan	No
Structure Plan	No
Land Use	Residential Single Dwelling
Use Class	P

3.2 Locality Plan

The subject property has direct frontage onto Victoria Ave, with a secondary street frontage onto Silvereye Lane. The subject property is zoned R10 and features a single house, being characteristic of the zoning and locality. The proposed development addresses the eastern lot boundary, Silvereye Lane.





4.0 Application Details

The applicant seeks development approval to construct a garage, potting shed and rooftop garden at the rear of the property, addressing Silvereye Lane, details of which are as follows:

- The development proposes a minimum of 1.1m lot boundary setback to all property boundaries.
- The application proposes a minimum 3.0m secondary street setback to Silvereye Lane.

By way of justification in support of the application the applicant has provided supporting materials. These can be found as an attachment to this report.

5.0 Consultation

The applicant is seeking assessment under the Design Principles of the R-Codes for the following:

- Visual Privacy

The development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 3 owners and landowners. Two (2) objections were received during the consultation period.

The following table is a summary of the concerns/comments raised and the City’s response and action taken in relation to each issue:

Submission	No. of times issue raised	Officer Response	Action Taken
The size of the proposed secondary street fence is too tall.	2	Following receipt of amended plans, the secondary street fence height has been reduced to a maximum height of 1.9m.	Recommend condition 3, to reduce secondary street fencing to a maximum height of 1.8m. This height is in accordance with

			the deemed to comply provisions of the City's Residential Development Policy.
The rooftop garden will permit overlooking of neighbouring properties.	2	Amended plans have been received proposing screening of neighbouring properties. One minor overlooking element exists towards the northern lot. The cone of vision overlooks the neighbouring landowner's garage/driveway off Silvereye Lane. These areas are not deemed habitable and are visible from the existing laneway. Considering the additional screening proposed and overlooking of uninhabitable spaces the visual privacy assessment of this application is considered to be an acceptable design outcome.	Recommendation for approval for the development proposal subject to conditions.
The nil lot boundary setback should not be supported as it will dominate the laneway.	1	Amended plans have been received, proposing a minimum 3.0m secondary street setback of the proposed structure. Rear setback has been made compliant.	Recommendation for approval for the development proposal subject to conditions.

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

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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.

6.3 Policy/Local Development Plan Consideration

6.3.1 Residential Design Codes – Volume 1 (State Planning Policy 7.3)

The applicant is seeking assessment under the Design Principles of the R-Codes for Visual Privacy as addressed in the below table:

Visual Privacy

Design Principles	
5.4.1	Visual privacy
P1.1	<p>Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</p> <ul style="list-style-type: none"> • building layout and location; • design of major openings; • landscape screening of outdoor active habitable spaces; and/or • location of screening devices.
P1.2	<p>Maximum visual privacy to side and rear boundaries through measures such as:</p> <ul style="list-style-type: none"> • 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).
Deemed-to-Comply Requirement	
C1.1	<p>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:</p> <p style="margin-left: 40px;">i. set back, in direct line of sight within the cone of vision, from the lot boundary.</p> <p>The deemed to comply visual privacy setback for outdoor living areas which are elevated greater than 0.5m above natural ground level is 7.5m.</p>
Proposed	
<p>The submitted plans propose a minimum 1.43m visual privacy setback of the northern lot in lieu of 7.5m required.</p>	
Administration Assessment	
<p>The proposed visual privacy intrusion overlooks a garage and rear access driveway of Silvereye Lane. Neither structure is considered a ‘habitable space’. The garage features no major openings addressing the southern property (subject site) and the driveway is publicly visible from Silvereye Lane. Considering the above and the extensive use of privacy screening by the applicant, the visual privacy intrusion is considered a technical variation, proposing a negligible impact on the adjoining land owners, with no loss of amenity or privacy envisaged as a result of the proposed development. All visual privacy screening is proposed to be re-enforced as a condition of development approval and subject to full compliance with the requirements of State Planning Policy 7.3 Residential Design Codes Volume 1.</p>	

7.0 Conclusion

Following receipt of amended plans, the applicant has made considerable efforts to facilitate near full compliance with State Planning Policy 7.3 Residential Design Codes Volume 1 and relevant City of Nedlands Local Planning Policy.

The applicant has addressed visual privacy concerns raised by adjoining landowners through the use of visual privacy screening and additional lot boundary setbacks.

Considering the technical nature of the outstanding minor visual privacy setback shortfall, which overlooks a garage roof and driveway of the northern property, the development is considered to be an acceptable outcome and impose a negligible impact on adjoining landowners, being characteristic of the locality and streetscape.

Considering the above and having due regard to relevant planning policy, legislation and possible amenity impacts of adjoining landowners, it is recommended that Council resolves to approval the development application subject to the conditions and advice notes outlined above.

01st July, 2019

City of Nedlands
71 Stirling Hwy
Nedlands WA 6009

ATT: Scott van Ierland - Planning Department

RE: No. 71 BRUCE STREET, NEDLANDS

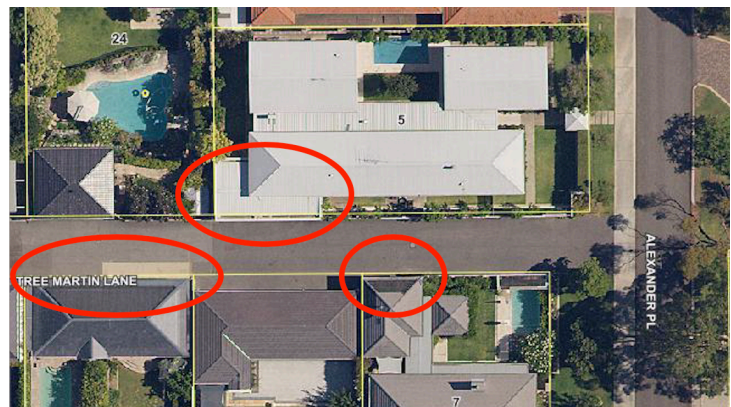
To Scott,

Please find attached the amended Development Application for #95 Victoria Avenue, Dalkeith

Lot boundary setbacks –

We would like to remove the library extension from the application. With the 1m setback required this would reduce the size of the proposed library making the space useable.

For the potting shed, would like to proposed that this be allowed. As you mentioned that the R10 density does not permit a boundary wall we would like to justify that this is against the laneway. We would also like to point out the house behind the laneway (82 Philip Rd) has 2 boundary walls onto the laneway. Boundary walls backing onto a laneway is common throughout the area.

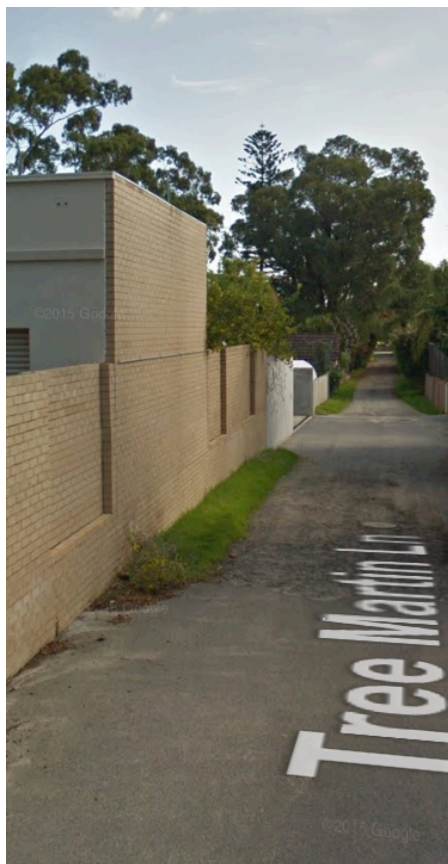


Outbuildings –

In regards to the height of the proposed potting shed we would like for it to remain at the current height and location. The potting shed backs onto the laneway and is setback away from all the neighbouring properties. It doesn't detract from the streetscape or the visual amenity of the residents or neighbouring properties.

Moving the potting shed back the proposed 1m will also have an effect on the trees that have been note to remain. The owner has engaged an arborist and the current setbacks allow for the trees to remain.

It is not uncommon to see larger walls throughout the laneways of Dalkeith larger than what we are proposing.



We trust that the above information will assist the department complete their assessment for this application. We hope it demonstrates that the above items actually enhance and provide for a better end outcome.

Should you require any further information please do not hesitate to contact our office on the above detail.

Yours faithfully,

Steven Butler

PD27.20	No. 18 Odern Crescent, Swanbourne - Two-Storey Single House with Undercroft Basement and Swimming Pool
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Committee	9 June 2020
Council	23 June 2020
Applicant	Mercedes Group Pty Ltd (Zorzi)
Landowner	Janet Di Virgilio
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Report Type Quasi-Judicial	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Reference	DA19-43473
Previous Item	Nil
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to an objection being received
Attachments	1. Applicant's Original Planning Report & Response to Submissions
Confidential Attachments	1. Plans 2. Submissions 3. Assessment

1.0 Executive Summary

The purpose of this report is for Council to determine a Development Application received from the applicant on the 24 December 2019, for proposed two storey single house with undercroft basement

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. At the close of advertising a total of 4 submissions were received; 2 objections, 1 in support and 1 providing comments.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity/consistent with the local character of the locality.

2.0 Recommendation to Committee

Council approves the development application dated 24 December 2019 for a Two-Storey Single House with Undercroft Basement and Swimming Pool at Lot 69 (No.18) Odern Crescent, Swanbourne, subject to the following conditions and advice notes:

- 1. This approval is for a ‘Residential (Single House)’ land use as defined under the City’s Local Planning Scheme No.3 and the subject land may not be used for any other use without prior approval of the City.**
- 2. Prior to the issue of a Building Permit, a detailed landscaping plan and management plan, prepared by a suitable landscape designer, shall be submitted to and approved by the City. Landscaping shall be installed and maintained in accordance with the approved landscaping plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City.**
- 3. Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**
 - Face brick;**
 - Painted render**
 - Painted brickwork; or**
 - Other clean material as specified on the approved plans;**

And maintained thereafter to the satisfaction of the City of Nedlands

- 4. Prior to occupation of the development, the proposed car parking and vehicle access areas shall be sealed, drained, paved and line marked in accordance with the approved plans and are to comply with the requirements of AS2890.1 to the satisfaction of the City.**
- 5. Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners, hot water systems and utilities shall be integrated into the design of the building and not be visible from the primary street or secondary street to the satisfaction of the City.**
- 6. All footings and structures shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
- 7. Prior to the construction or demolition works, a Construction Management Plan shall be submitted to the satisfaction of the City of Nedlands. The approved Construction shall be observed at all times throughout the construction process to the satisfaction of the City.**
- 8. The location of any bin stores shall be behind the street alignment so as not to be visible from the street or public place and constructed in accordance with the City’s Health Local Law 1997.**

9. All stormwater generated from the development shall be contained on site.
10. Prior to the occupation of the development a lighting plan is to be implemented and maintained for the duration of the development to the satisfaction of the City.
11. 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.
12. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.

Advice Notes specific to this proposal:

1. The applicant is advised that in relation to Condition 7 the Construction Management Plan is to address but is not limited to the following matters
 - a) Construction operating hours;
 - b) Contact details of essential site personnel;
 - c) Noise control and vibration management;
 - d) Dust, sand and sediment management;
 - e) Stormwater and sediment control;
 - f) Traffic and access management;
 - g) Protection of infrastructure and street trees within the road reserve and adjoining properties;
 - h) Dilapidation report of adjoining properties;
 - i) Security fencing around construction sites;
 - j) Site deliveries;
 - k) Waste management and materials re-use
 - l) Parking arrangements for contractors and subcontractors;
 - m) Consultation plan with nearby properties; and
 - n) Complaint procedure.
2. Any development in the nature-strip (verge), including footpaths, will require a Nature Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to commencing construction.
3. Where parts of the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.
4. 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 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.

3.0 Background

3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R12.5
Land area	825m2
Additional Use	No
Special Use	No
Local Development Plan	No
Structure Plan	No
Land Use	Residential (Single House)
Use Class	Residential (Single House) – ‘P’ use

3.2 Locality Plan

The subject lot is located at the corner of Odern Crescent and Walba Way in the suburb of Swanbourne. The proposed lot configuration is irregular and contains an existing single dwelling. To the north of the site is The Shorehouse restaurant and the Nedlands Surf Lifesaving Club and west is the Indian Ocean. The site directly abuts two residential properties south of the site; 20A & 20B Odern Crescent and 3 Walba Way.



4.0 Application Details

The applicant seeks development approval for the development of a two-storey single house with undercroft parking at No.18 Odern Crescent, Swanbourne details of which are as follows:

- A basement level which provides for parking of vehicles, a fitness room, wine cellar and storage facilities. Access to the basement level is via Odern Crescent with an additional onsite parking bay proposed on Walba Way;
- A swimming pool, sundeck and terrace are located within the primary setback area on Odern Crescent and forms its entrance to the ground floor level which includes informal and formal living, dining room, kitchen and guest bedroom;
- The first storey includes a large balcony which is directed towards the Indian Ocean and 3 bedrooms and bathrooms; and
- 32 solar panels are proposed on the roof with additional landscaping proposed on Odern Crescent and Walba Way inclusive of a vertical garden on the façade facing the secondary street.

5.0 Consultation

The applicant is seeking assessment under the Design Principles of the R-Codes for the following:

- Street Setbacks
- Lot Boundary Setbacks
- Sight Lines
- Site Works
- Retaining Walls
- Visual Privacy

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to nine occupiers and landowners between the 11 March 2020 to 25 March 2020. At the close of advertising 4 submissions were received: 2 objections, 1 in support and 1 providing comments.

A summary of the submissions is provided below:

Concern raised	City Comments
<p>The overall building height is 639-519mm over height for a two-storey development based on the existing ground levels. Impacts to views and visual bulk of the building</p> <p>#1 submission received</p>	<p>Clause 4.5.1 of the City’s Residential Development Local Planning Policy replaces clause 5.1.6(C6) of the R-Codes which allows for the maximum building height for a concealed roof to be 8.5m building height, in lieu of 7m. As the maximum wall height is 8.4m it complies.</p> <p>The design of the building provides for articulated walls which breaks up the building bulk whilst also providing view corridors of the Indian Ocean and Swanbourne Beach. As the development meets the prescribed building heights and open space provisions it is considered acceptable and compliant.</p>
<p>Impacts on overshadowing to the adjoining southern property</p> <p>#1 submission received</p>	<p>Clause 5.4.2 (C2.1) of the R-Codes requires buildings to be designated so that its shadow cast at midday, 21 June does not exceed 25 per cent of the adjoining southern property. As the cast of the shadow is at a maximum of 12.7 per cent it complies.</p>

Impacts on lot boundary setbacks due to the bulk and limited wall articulation #1 submission received	This is discussed in the content of the report under 5.2.2 – Residential Design Codes – Volume 1 (State Planning Policy 7.3).
Safety impacts to pedestrians due to the location of the designated visitor parking bay #1 submission received	This is discussed in the content of the report under 5.2.2 – Residential Design Codes – Volume 1 (State Planning Policy 7.3).
The development does not comply with the primary street setback requirements as the dwelling is incorrectly orientated to Odern Crescent not Walba Way #1 submission received	The property is located at No.18 Odern Crescent, Swanbourne with Odern Crescent being classified as the primary street, which is also where the major entry (front door) is proposed to be located. As such, the City considers this entirely compliant.
The subject lot is located within a Bushfire Prone Area and therefore development should be constructed in accordance with the relevant standards #1 submission received	In accordance with Schedule 2, Part 10A, Clause 78B of the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> , as the subject site is less than 1,100m ² (825m ²) this Part does not apply for assessment under a development application process and therefore construction standards cannot be applied.
The crossover location of Odern Crescent is immediately adjacent to a one-way treatment. Concerns with sight lines with on-coming traffic. #1 submission received	The application has been referred to the Technical Services Department. No objections were received regarding its location.
The City should remove the one-way treatment and re-design the exits from the upper car park to improve safety and permeability for vehicles searching for parking. #1 submission received	Not subject to this application. However, these comments have been forwarded onto the Technical Services Department who have advised there are no issues.
Landowners should be restricted from complaining about the Swanbourne Nedlands Surf Life traffic and parking. #1 submission received	Not a valid objection.

It is noted that a variation to the planter box and eave overhang (street setbacks), sight lines to the secondary car bay (sight lines) 0.2m² visual privacy intrusions (visual privacy setbacks) were not advertised due to the nature and scale of this variation proposed and therefore the exercise of discretion not to advertised was applied.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.2 Policy Consideration

Design of the Built Environment (State Planning Policy 7.0)

The City considers that the proposed development adequately responds to the 10 Design Principles in summary –

Design Principle	Officer Comment
1. Context and Character	A number of surrounding properties, particularly on Odern Crescent/ Marine Parade exhibits similar design features and materials and therefore is considered sympathetic to the local area
2. Landscape Quality	Over provision of landscaping (28% in lieu of 20%) has been provided which includes a mix of vegetation types and design (including a vertical garden to the secondary street facade) as well as additional landscaping proposed on the nature strip (verge) of both Odern Crescent and Walba Way
3. Built form and scale	The two-storey single dwelling is a respectful and characteristic of the existing dwellings within the locality and does not negatively impact the surrounding properties by way of overshadowing, under provision of open space or is over height
4. Functionality and build quality	The level of finish of the build proposed is of a high standard. A mix of materials, wall articulation and design features add visual interest whilst providing for well-designed living spaces
5. Sustainability	32 solar panels are proposed providing for a reduction in greenhouse gases as well as the design of outdoor living areas maximise the northern aspect of the site
6. Amenity	The design, landscaping quality and scale provide for an improved built form to that of the existing dwelling that is respectful to the amenity of the locality
7. Legibility	The design provides for a combination of pedestrian and vehicle entrances which is clearly defined and provides for a clear delineation of spaces from the public and private realm. A combination of lifts, stairs and entrances have been provided
8. Safety	Major openings are provided to the public realm. The open aspect of the fencing on the primary street are designed to offer secure locations for passive surveillance if the street
9. Community	This principle is not considered applicable
10. Aesthetics	Contrasting renders and materials, extensive vertical garden, multiple openings, varying roof height and curved walls add visual interest to the design which is complementary to the locality

Residential Design Codes – Volume 1 (State Planning Policy 7.3)

The applicant is seeking assessment under the Design Principles of the R-Codes for Street Setbacks, Lot Boundary Setbacks, Sight Lines, Site Works, Retaining Walls and Visual Privacy as addressed in the below tables:

By way of justification in support of the development application the applicant has provided a design principles assessment provided as an attachment to this report as well as addressed the submissions received as part of the advertising period (Attachment 1).

5.1.2 - Street Setbacks

Design Principles	
P2.1	Buildings set back from street boundaries an appropriate distance to ensure they: <ul style="list-style-type: none"> • contribute to, and are consistent with, an established streetscape; • provide adequate privacy and open space for dwellings; • accommodate site planning requirements such as parking, landscape and utilities; and • allow safety clearances for easements for essential service corridors.
P2.2	Buildings mass and form that: <ul style="list-style-type: none"> • uses design features to affect the size and scale of the building; • uses appropriate minor projections that do not detract from the character of the streetscape; • minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.
Deemed-to-Comply Requirement	
C2.4 (i) - A minor incursion such as a porch, balcony, verandah, architectural feature or the equivalent may project not more than 1m into the street setback area provided that the total of such projects does not exceed 50% of the building façade as viewed from the street.	
Proposed	
The application seeks assessment under the design principles which are as follows: <ul style="list-style-type: none"> • The planter box and eaves on the first storey protrudes 0.75m within the primary street setback area and comprises of 79% of the building façade • The eaves on the first storey protrudes 0.75m within the secondary street setback area and comprise of 100% of the building facade 	
Administration Assessment	
Administration consider that the proposed development meets Design Principles as – <ul style="list-style-type: none"> • Although the building façade has eaves and a planter box which protrude within the front setback area, it is considered to be designed and integrated into the building design as an architectural feature and is not considered to detrimentally impact the size or scale of the building as it does not increase the building footprint and is further compliant with open space and landscaping provisions; • With particular reference to the primary street façade, the planter box provides for visual interest whilst softening the built form and is not considered incongruous with its setting or would detract from the character of the locality; • Additional landscaping is further provided within the primary and secondary street setbacks, which is integrated within the building design and on the verge within Walba Way and Odern Crescent. <p>Accordingly, it is concluded, that the eave overhang meets the relevant Design Principles</p>	

5.1.3 – Lot Boundary Setbacks

Design Principles	
The application seeks assessment under the design principles which are as follows:	
P3.1	Buildings set back from lot boundaries or adjacent buildings on the same lot so as to: <ul style="list-style-type: none"> • reduce impacts of building bulk on adjoining properties;

<ul style="list-style-type: none"> • 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.
Deemed-to-Comply Requirement
C3.1 (i) – buildings set back from lot boundaries in accordance with Table 1 which requires a minimum 6m from the rear (southern) boundary at 3 Walba Way.
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • The entire length of the ground floor level is setback at varying distances with the closest set back at 2.3m from the southern boundary, in lieu of 6m. These are annotated on the plans as 'lounge' and 'kitchen/laundry'
Administration Assessment
<p>The adjoining lot to the south of the subject land, have objected to the setback siting concerns regarding the buildings bulk and overshadowing. Administration consider that the proposed setback meets the Design Principles as -</p> <ul style="list-style-type: none"> • Due to the irregular configuration of the subject property, the walls on the ground level are off angled and diagonal, thereby reducing the appearance of building bulk on adjoining properties and providing for varying setbacks. Furthermore, the proposal provides for additional open space and landscaping than the minimum requirement under the R-Codes; • The ground floor setbacks are considered sufficient to ensure adequate light and ventilation to the proposed building and its associated outdoor living areas, given overshadowing is compliant at 12.7% (maximum 25%) and that overshadowing itself is not contributed by this setback. Notwithstanding, only a portion of the swimming is overshadowed with the remaining outdoor area accessible to direct sunlight. • The major openings to rooms are obscured by a diving wall of at least 1.8m in height and will not result in privacy concerns as it is compliant; and • There are examples of similar variations within the locality. It is further noted that the setbacks of the existing house at No.18 Odern Crescent at ground level, are not dissimilar to the proposed development. <p>Accordingly, it is concluded that the proposed setback meets the relevant Design Principles for lot boundary setbacks.</p>

5.2.5 – Sight Lines

Design Principles
P5 – Unobstructed sight lines provided at vehicle access points to ensure safety and visibility along vehicle access ways, streets, right-of-ways, communal streets, crossover and footpaths
Deemed-to-Comply Requirement
C5 – Walls, fences and other structures, truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences, other structures adjoin vehicle access points where a driveway meets a public street and where two streets intersect
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • A solid 1.8m high wall is within 1.5m of the vehicle access way on Walba Way.

Administration Assessment
<p>The adjoining landowner to the south at 3 Walba Way submitted an objection to the proposed sight lines due to the concerns with pedestrian safety. Administration consider that the proposed development meets Design Principles as –</p> <ul style="list-style-type: none"> • The pedestrian path is located east of Walba Way, on the opposite side of the road. As such, it is not considered to prejudice this aspect of the Design Principles. • Technical Services have not raised any issues in relation to the visitor bay location given the low volume of traffic and pedestrian activity directed to the footpath on the opposite side of the road. Particularly given this is a visitor bay, its frequency of use would also be low; and • Albeit that the closest part of the bay is 800mm to the southern boundary, there is also a minimum 6m wide verge which provides a direct view onto Walba Way for oncoming traffic. <p>Accordingly, it is concluded to meet the relevant Design Principles for sight lines.</p>

5.3.7 – Site Works & 5.3.8 – Retaining Walls

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p>Site Works P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</p> <p>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.</p> <p>Retaining Walls P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having regard to clauses 5.3.7</p>
Deemed-to-Comply Requirement
<p>Site Works C7.1 - Excavation and filling between the street and building, or within 3m of the street alignment, whichever is the lesser, shall not exceed 0.5m, except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling</p> <p>Retaining Walls C8 – Retaining walls greater than 0.5m in height set back from lot boundaries in accordance with the setback provisions of Table 1. Retaining walls 0.5m or less in height may be located up to the lot boundary</p>
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • The proposal features site fill and retaining wall 1.87m along the Odern Crescent street boundary at a height of 0.8m; and • Excavation of 1.75m – 3.55m for the basement level
Administration Assessment
<p>Administration consider that the proposed site works meets the Design Principles as –</p> <ul style="list-style-type: none"> • The fill/retaining is necessary due to the sloping topography of the site. The fill/retaining can be effectively used for the benefit of residents as it maximises the northern aspect of the site to be used for the main outdoor living area. The materials, design and landscaping treatments have been used to appropriately respond to the site context

- With respect to the excavation, the development has been designed to appropriately respond to the topography and respects the natural ground level at the boundary when viewed from the street. The basement level has been predominately designed for the purpose of a garage and is not considered visually obtrusive when viewed from the street and this design is common within the locality. As this property is on the 'lower side' its impact to adjoining landowners is minimal.

Accordingly, it is concluded to meet these Design Principles.

5.4.1 – Visual Privacy

Design Principles
<p>P1.2 – Maximum visual privacy to side and rear boundaries through measures such as:</p> <ul style="list-style-type: none"> • 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).
Deemed-to-Comply Requirement
<p>C1.1 – Major openings an unenclosed active habitable space, 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:</p> <p>i. Set back in direct line of sight within the cone of vision from the lot boundary at a minimum of 7.5m</p>
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • A portion of the first storey balcony (facing west at 20 Odern Crescent) is set back at a 7.48m within the cone of vision
Administration Assessment
<p>Administration consider that the proposed development meets Design Principles as –</p> <ul style="list-style-type: none"> • The variation occurs from a 1.9m portion of the upper floor balcony, in which out of the 7.5m cone of vision, 0.2m² is directed to the adjoining western lot and is considered minor, particularly given there is boundary fencing which assists in reducing any overlooking; • The 0.2m² portion does not impact on any active habitable spaces or outdoor living areas of the adjacent property; • The balcony has been designed to orientate towards to the view of the Indian Ocean not south-west to the adjoining property; • With the exception of this portion of the balcony, all windows from habitable rooms are appropriately designed to be set back from the lot boundaries to be compliant and without reliance on screening.
<p>Accordingly, it is concluded to meet the relevant Design Principles</p>

7.0 Conclusion

This application is for proposed Two-Storey Single House with Undercroft Basement and Swimming Pool located at No. 18 Odern Crescent, Swanbourne which is coded R12.5.

The development application is fully compliant with the Residential Design Codes (R-Codes) 'deemed-to-comply' provisions with the exception of the design principles assessment items relating to lot boundary setbacks, street setbacks, vehicles access, site works, retaining and visual privacy.

The application was advertised to surrounding residents and at the close of advertising 4 submissions were received including 2 objections, 1 in support and 1 providing comments. Issues raised included the building size and appearance, height, setbacks, overshadowing and concerns with sight lines.

The application has been referred to Council for a decision by virtue of objections being received. Administration consider that the development satisfies the design principles of the Residential Design Codes and is unlikely to have a significant adverse impact on the local amenity

It is recommended that Council approve the application, subject to standard conditions.

Friday 3 April 2020

City of Nedlands
PO Box 9
NEDLANDS WA 6909

To Whom It May Concern,

Lot 69 (No. 18) Odern Crescent, Swanbourne

**RE: Response to Advertising Submission for Development Application –
Proposed Two Storey Dwelling with Basement**

This letter has been produced in support of the abovementioned proposal with response to neighbour advertising comments regarding the proposed two storey dwelling with a basement at the above listed property – herein referred to as the 'subject site'. FORMSCAPE has prepared this response on behalf of the landowners of the subject property.

Neighbour Submission

During the advertising period for the abovementioned development proposal, the City received three submissions in response. One of these submissions provided general comment and was considered irrelevant by the assigned planning officer. The remaining two submissions objected to the development proposal, and require a response to the matters raised. These submissions, as provided by the assigned planning officer via email dated 27th March 2020, are outlined as follows:

- 3 Walba Way (submission attached)

- 4 Walba Way - have appointed Craig Steere and Associates - who note that the overall building height is 639-519mm overheight for a 2 storey development (basement not included) and based on the existing natural ground levels. Adverse impacts in terms of impacting views and increases the overall visual bulk of the building - this development has no houses in front over it and the overheight request is not necessary.

Response to Submissions

The City has provided the applicant and landowners to opportunity to provide a comment in response to the neighbour submission. Response to the arguments presented within the submission are provided below, in reference to the Residential Design Codes of Western Australia (R-Codes) and its explanatory guidelines.

...the overall building height is 639-519mm overheight for a 2 storey development (basement not included) and based on the existing natural ground levels...

The 4 Walba Way advertising submission does not specify how the proposed building height has been calculated, and how a 639-519mm building height had been detected. Regardless of whether the alleged variation is true, the proposal adequately addresses the design principles of R-Codes Clause 5.1.6 – Building Height, and states:

P6 *Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:*

- *adequate access to direct sun into buildings and appurtenant open spaces;*
- *adequate daylight to major openings into habitable rooms; and*
- *access to views of significance.*

The R-Codes Clause 5.1.6 – Building Height design principles are addressed as follows to demonstrate compliance:

P6 Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:

Adequate access to direct sun into buildings and appurtenant open spaces;

The proposed dwelling complies with R-Codes Clause 5.4.2 – Solar Access for Adjoining Sites, and does not overshadow the neighbouring property to the east along the opposite side of Walba Way, to any extent at midday 21st of June. Meanwhile, the western adjoining property will only experience a minor extent of overshadowing at midday along its eastern rear boundary, primarily due to boundary fencing.

With regards to overshadowing from the subject site onto No. 3 Walba Way to the south, the extent of overshadowing at midday 21st of June accounts for just 6.48% of the entire area of that property (58m² out of 895m²). Such overshadowing primarily impacts a narrow side setback area to the north of the existing dwelling within that property, and a portion of a garden bed and footpath along the northern side of a pool. Nonetheless, these areas would experience some overshadowing regardless as a result of boundary fencing. Moreover, the proposed rear setback variation would not contribute to any additional overshadowing as this occurs regardless from the upper floor, which is set back the deemed to comply 6m from the 'rear' boundary. Ultimately, most of the outdoor living area and rear open space within that property will not experience overshadowing, and retain access to direct northern sunlight.

Due to the aforementioned factors, the proposal is considered to maintain adequate access to direct sunlight into buildings and appurtenant open spaces of neighbouring properties. Please refer to the following figures for reference in this regard.

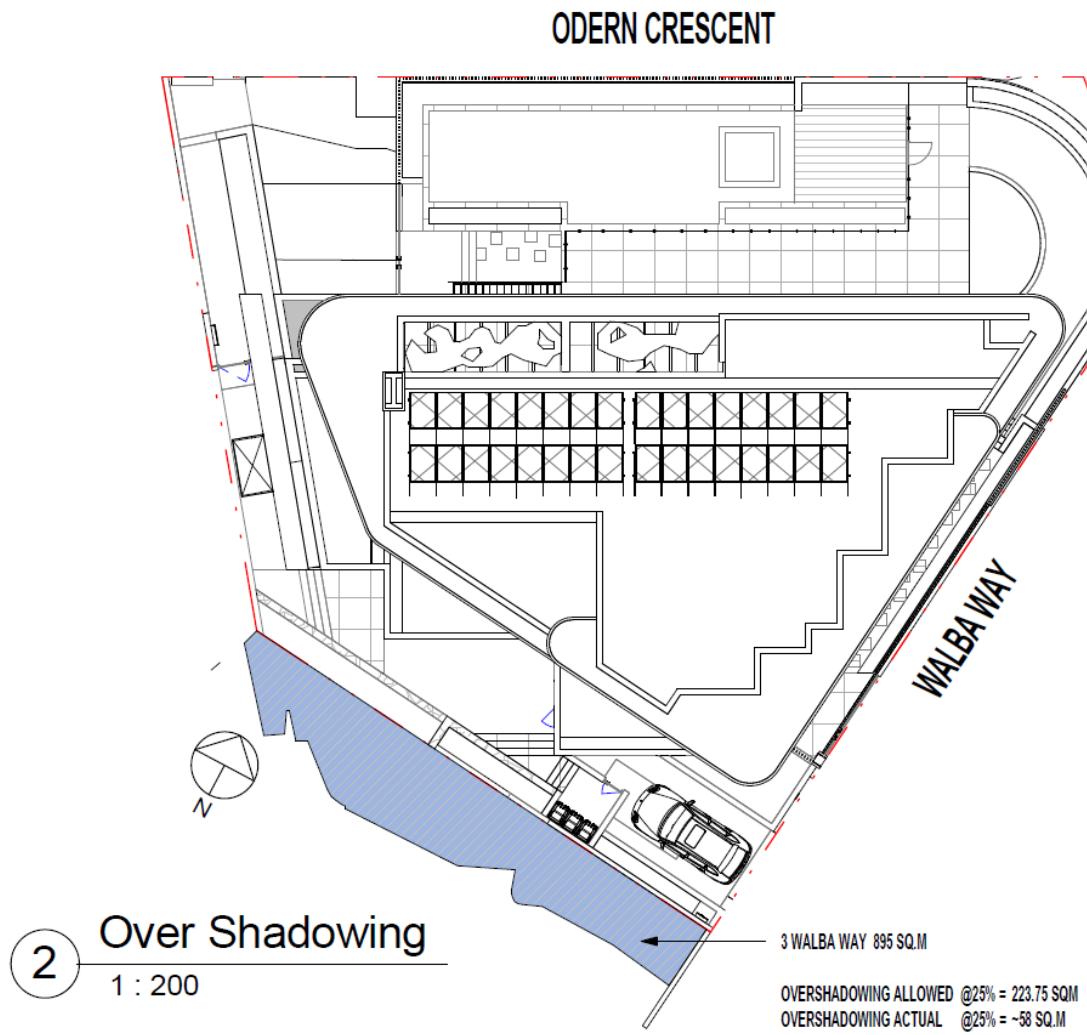


Figure 1: Extract of overshadowing diagram prepared by Zorzi Builders depicting extent of overshadowing proposed at midday 21st of June.

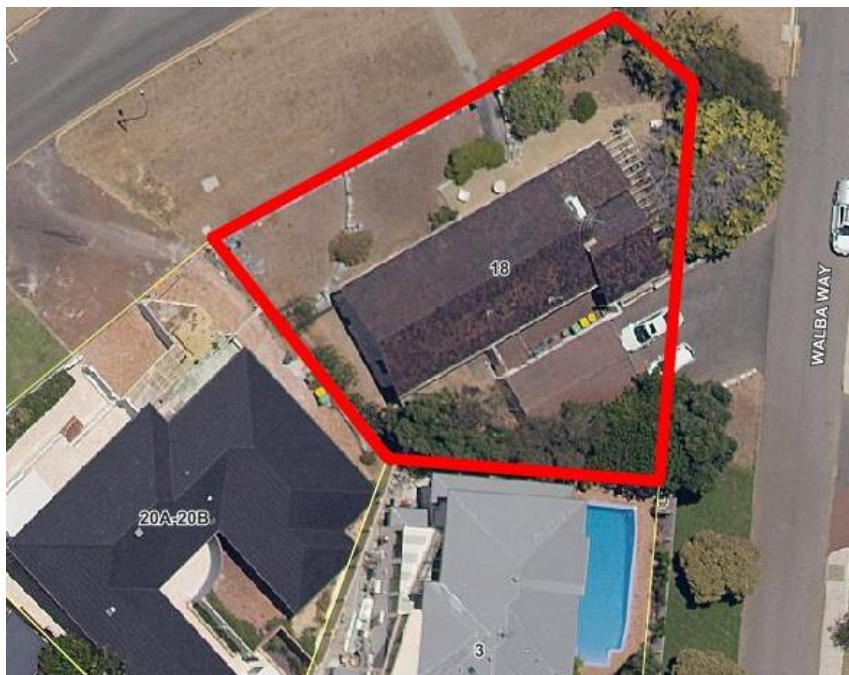


Figure 2: Aerial image of subject site (outlined in red) in relation to 3 Walba Way to the south.

Adequate daylight to major openings into habitable rooms; and

As depicted in Figure 1, the extent of overshadowing proposed from the subject site onto No. 3 Walba Way to south is limited, and would only impact the ground floor of the dwelling within that property. Meanwhile, as depicted in the following figures, No. 3 Walba Way does not feature any upper floor major openings which would be overshadowed by the proposal.



Figure 3: View of the northern and western elevations of the dwelling within No. 3 Walba Way, as seen from in front of No. 20 Odern Crescent, Swanbourne.



Figure 4: Close up of street view of No. 3 Walba Way, Swanbourne, with part of the street facing elevation featured to the left, and the northern side elevation to the right.

Moreover, the many eastern (street) and western facing major openings of No. 3 Walba Way will enjoy unrestricted access to northern sunlight from the north east and the north west. With regards to the ground floor of the northern elevation of that property, it is noted that it is already overshadowed by existing vegetation. As for No. 4 Walba Way, Swanbourne, none of its major openings will be overshadowed by the proposed dwelling during the day in any meaningful way.

Overall, the proposal ensures that adequate daylight to major openings into habitable rooms of adjoining dwellings is maintained.

Access to views of significance.

It is inevitable that any new development within the subject site can have some sort of perceived impact on existing views from some nearby properties, considering it is a two storey development replacing an existing single storey house, and since single storey development has no meaningful impact on views from neighbouring upper floors.

Notwithstanding, the proposed street setback to Odern Crescent, as well as the upper floor rear set back, will mean that the existing dwelling of No. 4 Walba Way, Swanbourne will be provided corridors of view of the Indian Ocean and Swanbourne Beach Reserve on either side of the proposed dwelling. Please see the following figures for reference in this regard.

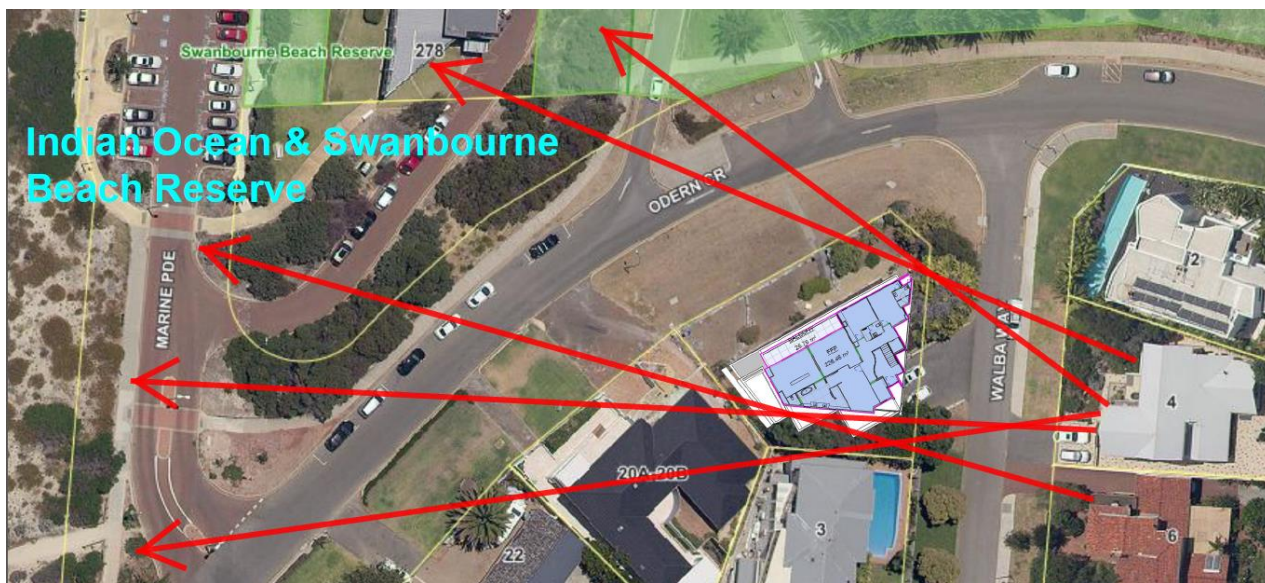


Figure 5: Diagram depicting the proposed upper floor plan (superimposed on subject site). Viewing corridors of the Indian Ocean and Swanbourne Beach Reserve accessible around the proposed upper floor from No's 4 and 6 Walba Way are indicated by red arrows.

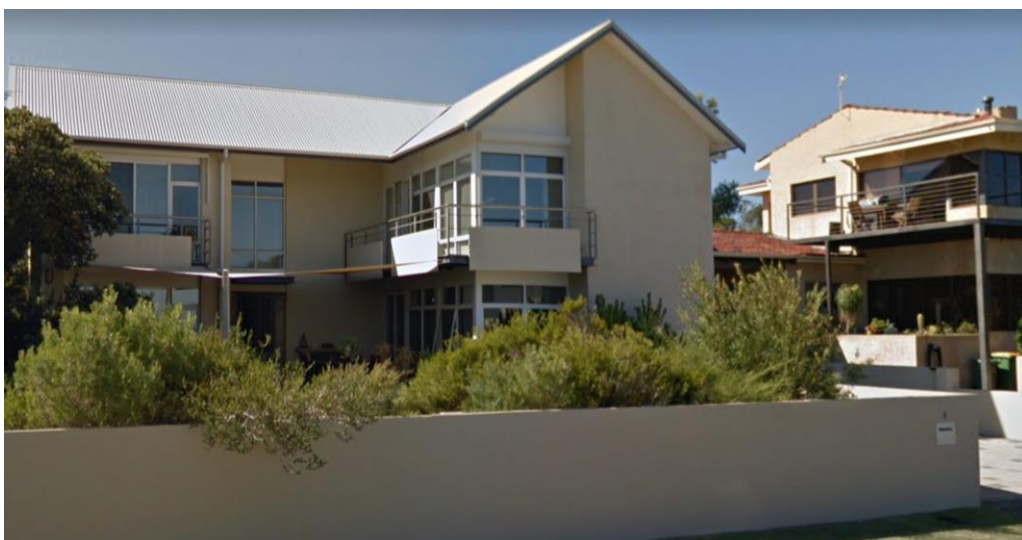


Figure 6: Street view of No. 4 Walba Way (left, centre), and No. 6 Walba Way, Swanbourne (right).

Meanwhile, as depicted previously in Figure 3, the dwelling of No. 3 Walba Way, Swanbourne, will continue to have significant access to views of the Indian Ocean to the west. Even the north western corner opening of that dwelling’s upper floor will not have its view of the Indian ocean restricted as a result of the proposed dwelling.

In any case, as depicted in the following diagrams, the vast majority of the dwelling features external wall heights (including parapets) not more than 7m above the natural ground level. Moreover, no part of the dwelling is above 8.5m above the natural ground level (excluding perhaps the chimney according to ground levels taken from the City’s Intramaps system).

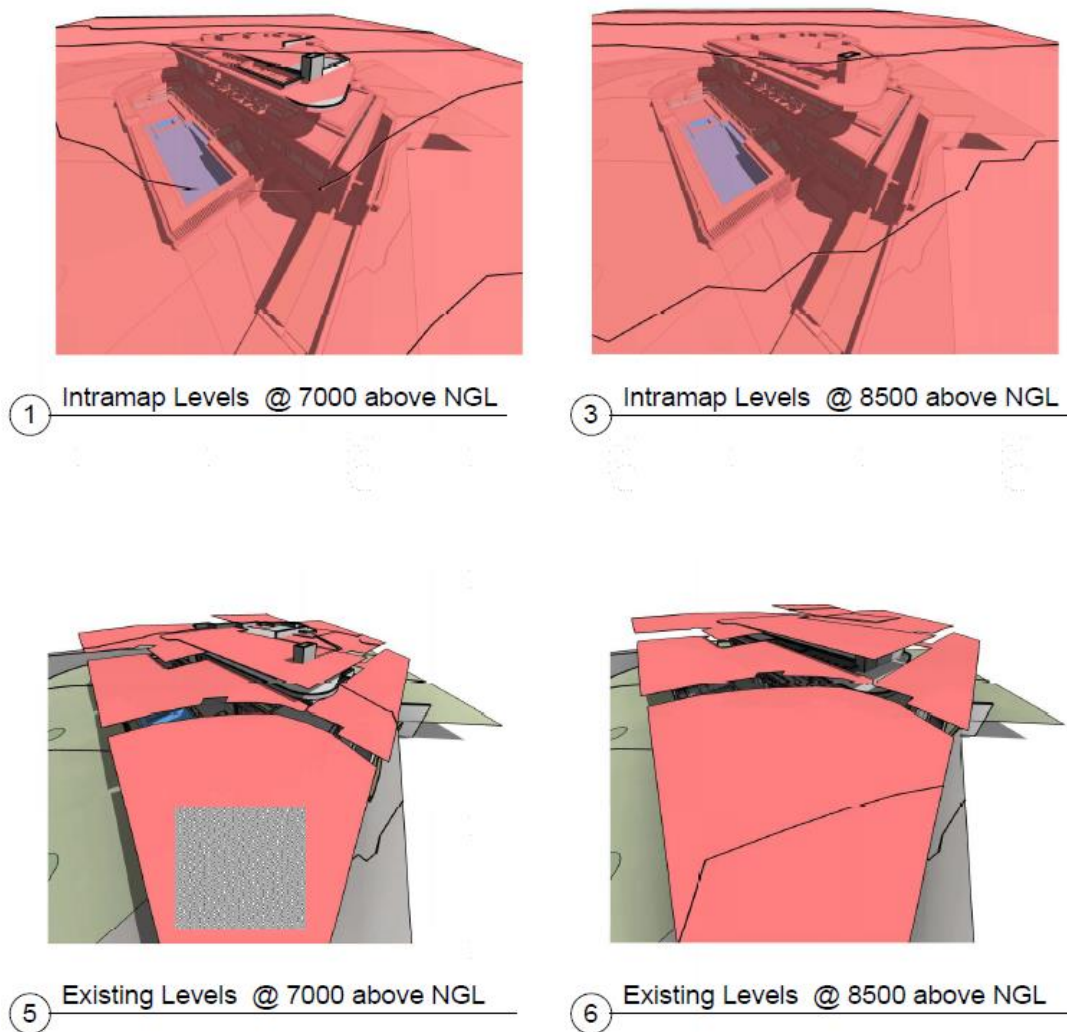


Figure 7: Diagrams prepared by Zorzi Builders depicting building heights relative to both the surveyed natural ground level measurements, and the measurements from the City of Nedland’s Intramaps system.

These factors are particularly relevant as dwellings are permitted to have a maximum roof ridge height (for pitched roofs) of 9m. Therefore, the proposal provides for more visibility compared to a deemed to comply two storey dwelling with pitched roofing and built to maximum specifications.

Due to the aforementioned reasons, the proposal allows for significant views of the Indian Ocean and Swanbourne beach Reserve to be accessed by neighbouring dwellings.

Adverse impacts in terms of impacting views...

As discussed previously, the proposal would not adversely impact upon significant views of the Indian Ocean for neighbouring properties any more so compared to any other two storey dwelling proposed within the property. Please refer to previous comment with regards to R-Codes Clause 5.1.6 - Building Height for further information in this regard.

...and increases the overall visual bulk of the building

The proposed dwelling will not appear visually bulky as it features a high degree of articulation and aesthetical features which break up the perceived mass of the structure, and maximise visual interest. For instance, the proposed elevation facing Walba Way incorporates the following design features:

- Contrasting renders and materials;
- Varying setbacks;
- 3 'off-angled' diagonal buttresses;
- Extensive vertical garden walls;
- Multiple openings;
- Varying wall and roof heights;
- Visually permeable fencing;
- Curved wall and roof elements; and
- Overhanging eaves.



Figure 8: 3D Visualisation of proposed elevation facing Walba Way, Swanbourne.

With regards to No. 3 Walba Way, while it is acknowledged that there is a rear boundary setback variation, this will result in little adverse impact. As discussed previously, the impact of overshadowing to No. 3 Walba Way is limited, and does not overshadow any upper floor major openings at midday. Moreover, the ground floor development within the 6m rear setback area will not result in any significant impact upon views of the Indian Ocean to the west for neighbouring lots. In reality, the ground floor level to the proposed residence is well below that of the adjoining outdoor area of No. 3 Walba Way. The lower level means that it will have far less impact in terms of bulk and scale compared to a typical single storey wall.

Other factors to consider include the proposed extent of overshadowing being substantially less than the maximum R-Codes deemed to comply requirement (6.48% in lieu of 25%), and is almost entirely derived from the proposed upper floor, which meets the 6m 'rear' setback requirement.

Due to these factors, the overall visual bulk of the proposal will respect the amenity of neighbouring properties. Ultimately, the proposal will be congruent with the existing and anticipated streetscape character, which already features numerous two storey dwellings.

- this development has no houses in front over[sic] it...

There is an adjoining property to the west of the subject site, which features the potential for development with two storeys. This could have some impact upon the subject site, depending the nature of such development.

In any case the, height of the building primarily reflects on the topography of the site, and allowing for the basement garage located beneath the dwelling. The basement garage particularly makes efficient use of land, which is ideal due to the constrained nature of the site. Moreover, the basement garage also minimises the visual prominence of the garage doors, resulting in a more desirable streetscape.

...and the overheight request is not necessary.

The proposed building height is necessary due to the significantly sloping nature of the site, and the need to optimise the limited developable area within the property. Please see following figure for reference to the subject site and R-Codes deemed to comply lot boundary setback requirements.

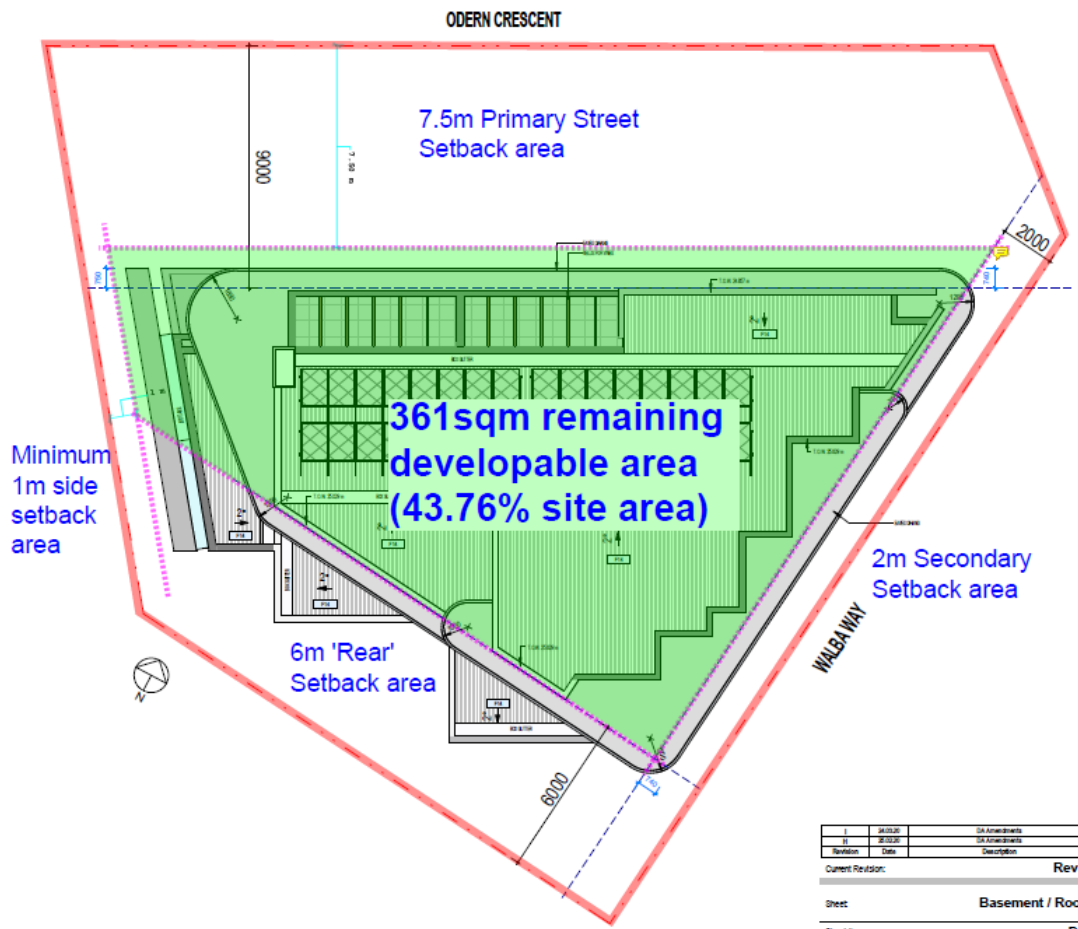


Figure 9: Diagram depicting setback requirements and the remaining 'deemed to comply' developable area (shaded green).

As depicted in the previous figure, only 43.76% of the site area lies outside the specified primary, and secondary street setback areas, and the 6m rear and minimum 1m side setback areas. This area is less than the maximum deemed to comply 'non-open space' area of 45%, as specified in the R-Codes for R12.5 coded sites. In addition, the remaining 'building envelope' is of an irregular shape, and is subject to sloping topography. This makes being able to host a functional rectilinear floor plan, and hosting even finished floor levels, difficult. As a result, the need to maximise the available space within the site, is paramount.

In this instance, the entire upper floor is contained within the setback areas, while the majority of the basement level is not visible from the public realm. Moreover, the proposed development still provides more open space than required according to Table 1 of the R-Codes for R12.5 coded sites.

Due to the aforementioned constraints, and since more open space is provided on-site than required, constructing the dwelling as proposed, with two storeys and a basement, is considered to be reasonable.

Additional Observations

- The ground floor level for the proposed dwelling is much lower compared to the higher side of the site. This means the impact of the building on the south-east facing adjoining lots is lessened significantly as the building is effectively sunken from street level.
- The southern portion of the subject site features a large degree of landscaped areas, which may otherwise be paved or covered in a vergola / pergola structure.
- The existing dwelling within No. 3 Walba Way overlooks the subject site, whereas the dwelling proposed has been designed in manner which does not overlook No. 3 Walba Way.

Conclusion

Replacing an existing single storey residence with a two storey residence at the subject site would inevitably raise concerns for neighbours in relation to perceived impacts on views, building bulk, and scale. However, the proposal has been designed in response to the both the significant constraints of the site, and to potential neighbour concerns.

Despite this, it should be recognised that the landowner also has a reasonable right to develop a home that best utilises the site and the significant views available. It would be unreasonable to assume that any other two storey dwelling proposal within the subject site would not raise the same concerns. Nonetheless, as discussed within this document, and within the previous justification letter provided as part of the Development Application package, the proposal has been designed to ensuring that the external impact of the development is kept to a minimum.

Considering the lack of relevance of the neighbour submissions within the context of the relevant R-Codes design principles, and the site and its local context, the proposal is worthy of the City's approval in its current form.

Please do not hesitate to contact the undersigned, if you wish to discuss any aspects of the proposal further.

Yours faithfully,



David D'Orazio

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BAppSc (Architectural Science) (Curtin)

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Monday 16 December 2019

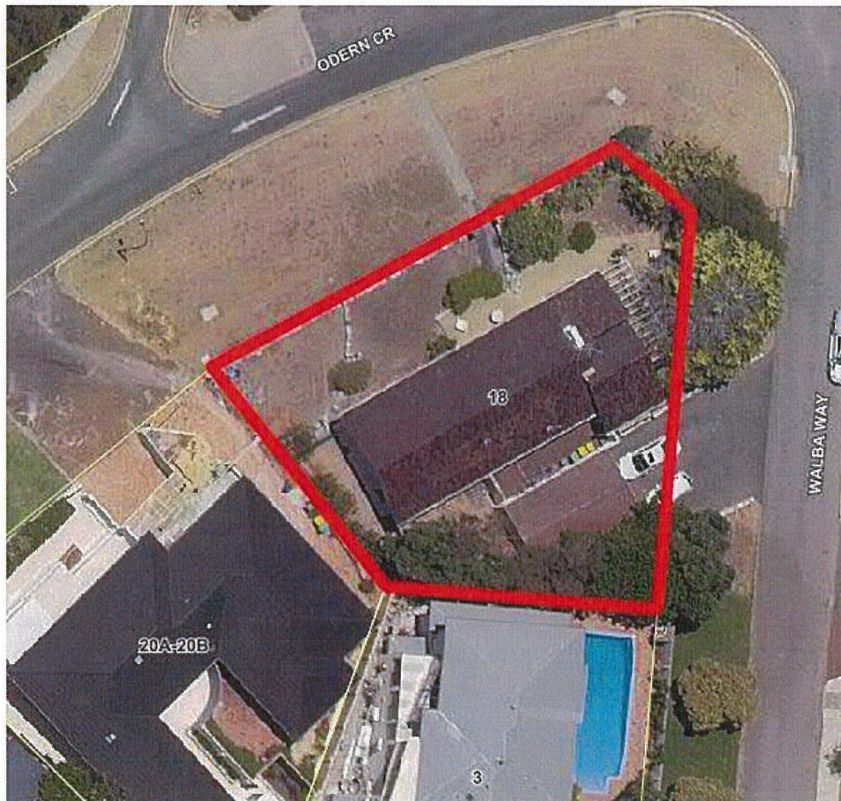
City of Nedlands
PO Box 9
NEDLANDS WA 6909

To Whom It May Concern,

**Lot 69 (No. 18) Odern Crescent, Swanbourne
Proposed Two Storey Dwelling with Basement**

This letter has been produced in support of the abovementioned proposal with respect to variations to the deemed-to-comply provisions of the Western Australian Residential Design Codes (R-Codes) and the City's Fill and Fencing Policy (FFP) for:

- R-Codes Clause 5.1.3 – Lot boundary setback C3.1;
- R-Codes Clause 5.3.5 – Vehicular Access;
- R-Codes Clause 5.3.7 – Site Works;
- R-Codes Clause 5.3.8 – Retaining walls;
- R-Codes Clause 5.4.1 – Visual Privacy;
- FFP Clause 4.3 – Fencing Height Requirements; &
- FFP Clause 5.2 – Cut, Fill and Retaining Requirements.



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Figure 1: Subject site aerial.

Background

1. The subject site is zoned 'Residential' and designated a density coding of R12.5 under the provisions of the City of Nedlands Local Planning Scheme No. 3.
2. The subject site is 825m² in area, and is a corner lot of an irregular shape.
3. The subject site has an effective lot frontage of 35.04m to Odern Crescent, and 30.48m to Walba Way.
4. The lot has views of the Indian Ocean to the west, and public open space to the north.
5. The lot features significant topographical variation which influences development on the site.
6. The subject site is opposite a licenced venue (The Shorehouse), the Swanbourne Nedlands Surf Lifesaving Club, and a large public carpark to the north. The existing route of the carpark faces directly towards the subject site.

Proposed Variations

R-Codes Clause 5.1.3 Lot Boundary Setback

R-Codes Clause 5.1.3 deemed to comply requirements recognise compliance where;

- C3.1** *Buildings which are setback in accordance with the following provisions, subject to any additional measures in other elements of the R-Codes*
- i. *Buildings set back from lot boundaries in accordance with Table 1, Tables 2a and 2b (refer to Figure Series 3 and 4);*

Due to the irregular shape of the site, and the acute angle of the street corner, the proposal features single storey development within the minimum deemed to comply rear setback area. Although these variations allow for a deemed to comply street setback above ground, and are mitigated by the deemed to comply rear setback of the upper floor, they are nevertheless considered variations require justification such as that provided within the latter section of this document.

The characteristics of the proposed rear lot boundary setback variations are outlined in the following table.

Element	Lot Boundary	Required setback distance	Proposed setback distance	Major Opening? (y/n)	Setback variation
Ground floor – Winter Room	Southern -side/rear	6m	2.566m	y	3.444m
Ground floor – Lounge	Southern -side/rear	6m	3.494m	y	2.506m
Ground floor - Kitchen/Laundry/Larder	Southern -side/rear	6m	2.3m	y	3.7m

R-Codes Clause 5.1.3 provides the following Design Principles which can be addressed to achieve compliance;

- P3.1** *Buildings set back from lot boundaries or adjacent buildings on the same lot 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.*

R-Codes Clause 5.3.5 Vehicular Access

R-Codes Clause 5.3.5 Vehicular access deemed-to-comply provisions recognise compliance where;

C5.1 *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.*

In order to and orientate the dwelling in a way which takes advantage of the significant views afforded to the site, the designers have nominated Odern Crescent as the primary street. However, the designers have also taken advantage of the sloping topography of the site to provide vehicle access to a basement garage from towards the lowest point of the site's street boundaries. As such vehicular access occurs from Odern Crescent, this is understood to constitute to a variation, which is proposed accordingly.

R-Codes Clause 5.3.5 provides the following Design Principles which can be addressed to achieve compliance:

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.*

R-Codes Clauses 5.3.7 – Site Works & 5.3.8 – Retaining walls

R-Codes Clause 5.3.7 deemed-to-comply requirements recognise compliance where;

C7.3 *Subject to subclause C7.2 above, all 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.*

R-Codes Clause 5.3.8 deemed-to-comply requirements recognise compliance where;

C8 *Retaining walls greater than 0.5m in height set back from lot boundaries in accordance with the setback provisions of Table 1. Retaining walls 0.5m or less in height may be located up to the lot boundary*

In order for the desired development to be functional with even finished floor levels, cut and fill in excess of 500mm must be provided across the site in some areas. The proposal features site fill and retaining walling 1.87m along the Odern Crescent street boundary which exceeds 500mm in height. Such site fill occurs adjacent to the proposed pool, and reaches a maximum height of 0.86m above the natural ground level. In this manner, site works and retaining wall height variations are proposed.

R-Codes Clause 5.3.7 recognises compliance for the proposed cut and fill of the proposal where the following design principles are met:

- 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.

The R-Codes Clause 5.3.8 – Retaining walls design principles recognises compliance where:

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

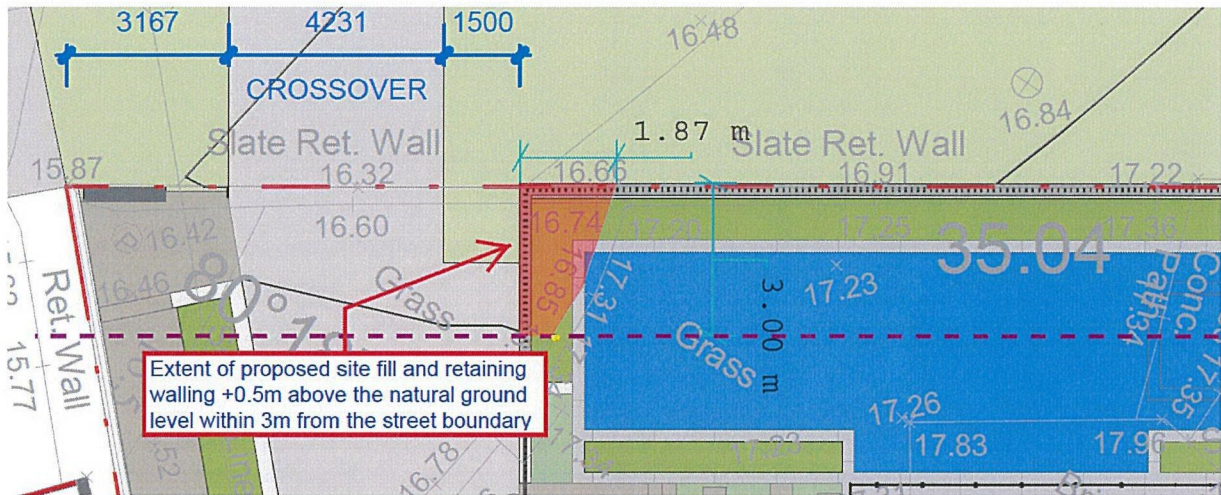


Figure 2: Extent of proposed site works and retaining wall height variations within 3m of the Odern Crescent street boundary.

R-Codes Clause 5.4.1 Visual Privacy

R-Codes Clause 5.4.1 deemed to comply requirements recognise compliance where;

- C1.1** 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:
 - i. set back, in direct line of sight within the cone of vision, from the lot boundary, a minimum distance as prescribed in the table below (refer Figure Series 10):

Types of habitable rooms/ active habitable spaces	Location	
	Setback for areas coded R50 or lower	Setback for areas coded higher than R50
Major openings to bedrooms and studies	4.5m	3m
Major openings to habitable rooms other than bedrooms and studies	6m	4.5m
Unenclosed outdoor active habitable spaces	7.5m	6m

or;

- ii. are provided with permanent screening to restrict views within the cone of vision from any major opening or an unenclosed outdoor active habitable space.



FFP Clause 4.3 Fencing Height Requirements

FFP Clause 4.3 supersedes R-Codes Clause 5.2.4 Street Walls and Fences, and states:

- 4.3 *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.*

The proposal features some street fencing within the primary street setback area which is not visually permeable above 1.2m of the natural ground level. The instances of such variations are outlined in the following table;

Primary Street Setback Area Street Fencing	Maximum Height		Length of Height Variation*	
	Total	Non-Visually Permeable	Total	Non-Visually Permeable
Adjacent to Pool Deck	1.97m	1.97m	1.54m	6.58m
Curved wall with Feature Stone Cladding	2.03m	2.03m	3.6m	7.11m
Curved wall with Acrylic Render	1.59m	1.59m	-	3.4m

*Measured as a straight line from opposite sides, and not including wall returns.

R-Codes Clause 5.2.5 – Street Fencing provides the following Design Principles which can be addressed to achieve compliance;

- P5** *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.*

FFP Clause 5.2 Cut, Fill and Retaining Requirements

FFP Clause 5.2 deemed-to-comply requirements states the following;

- 6.2 *In order to achieve a balanced streetscape and prevent a site from adversely affecting the amenity of neighbouring properties, where fill and/or retaining is proposed to exceed 0.5m above natural ground level, the following is required to be complied with:*

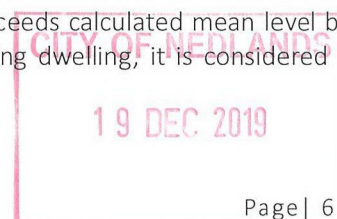
...

- d) *does not exceed the mean level of the lot boundary at the primary street frontage; and*
- e) *the finish floor level of any building does not exceed 0.1m above the mean level of the lot boundary at the primary street frontage.*

The mean level of the Odern Crescent street boundary has been calculated to be 17.07, based upon evenly spaced spot heights of the site feature survey as follows:

$$(15.87 + 16.32 + 16.66 + 16.91 + 17.22 + 17.58 + 17.78 + 18.19) / 8 = 17.07$$

In this the proposed site fill along the Odern Crescent street boundary exceeds mean level at street boundary by 0.23m. In addition, the finished floor level (FFL) of dwelling of 18.02 exceeds calculated mean level by 0.95m. Although the proposed FFL is 0.02m lower than that of the existing dwelling, it is considered a



variation nevertheless. In this manner, the aforementioned variations to FFP Clause 5.2 d) and e) are proposed.

The aforementioned design principles of R-Codes Clauses 5.3.7 and 5.3.8 are addressed within the following section of this document to demonstrate the appropriateness of the site works and FFL proposed.

Justification

The following justification is provided in line with the design principles of the R-Codes to demonstrate proposal's compliance.

R-Codes Clause 5.1.3 – Lot Boundary Setback

P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:

Reduce impacts of building bulk on adjoining properties;

The perceived impact of building bulk from the neighbouring lots will be kept to a minimum given that the overall dwelling design compensates for the ground floor incursion into the 6m rear setback area. For instance, the upper floor is set back 6m from the rear boundary as deemed to comply, while the Bed1-Ensuite wall of the First Floor is set back 5.455m to 6.397m from the western side boundary. This far exceeds the minimum required setback distance of 1.5m of the Bed1-Ensuite wall.

Furthermore, the portions of the dwelling within the rear setback area are broken up so as to break up the mass of the dwelling, provide visual interest, and thereby reduce the perception of building bulk.

Due to the combination of the aforementioned factors, the proposal is considered to minimise the impact of building bulk to adjoining residential properties, whilst allowing for a functional floor plan within a constrained site.

Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and

The proposal is compliant with R-Codes Clause 5.4.2 - Solar access for adjoining sites and would contribute to negligible, if any additional overshadowing as a result of the proposed reduced rear lot boundary setbacks. Only approximately 58m² of the southern adjoining property's 895m² area is overshadowed, equating to just 6.48% of its total area. This is well below the maximum deemed to comply amount of 25% for sides coded R25 or less. In any case, the overshadowing proposed will mostly impact a narrow setback area of the southern adjoining property (as indicated in Figure 1).

With regards to ventilation, the 6m upper floor setback and the lack of boundary walling means that adequate air flow will be provided along the site's southern lot boundary. Natural ventilation will especially be provided given the site and adjoining lot's proximity to the Indian Ocean, which is a source of cool afternoon breezes.

Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.

The proposal southern rear elevation of the dwelling does not feature any major openings which would overlook the neighbouring property to the south. Windows from habitable rooms are appropriately designed so that they are either appropriately set back, have a sill height of at least 1.6m from the floor level, or have obscure glazing. In this manner, overlooking is minimised and privacy is ensured for all adjoining properties.

Although one variation to R-Codes Clause 5.4.1 – Visual Privacy is proposed, this is unrelated to the proposed rear lot boundary setback variations, is negligible, and does not threaten the privacy of the neighbouring lot. Please refer to justification provided within the latter section of this document for further information in this regard.

R-Codes Clause 5.2.4 – Street Walls and Fences

P5 Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3)

The proposed street fencing within the Odern Crescent primary street setback area will respect the requirement of the R-Codes to maintain adequate street surveillance between the dwelling and the street, and between common areas and the street to minimise the opportunity for concealment and entrapment. The street fencing does not affect the dwellings' ability to survey vehicular and pedestrian approaches since the major of the fencing will be visually permeable, and since four habitable areas with extensive glazing faces Odern Crescent (Winter Room, Lounge (north western), Dining (north western), Guest/Bed4). The outdoor living area too will provide a significant amount of surveillance to Odern Crescent.

In any case, the double storey nature of the dwelling means that a high degree of passive surveillance would be achieved from an elevated view point, such as the upper floor balcony and four habitable rooms (Bed 1, Sitting/TV room, Bed 2, Bed 3). As a result, sufficient passive surveillance from the dwelling will be provided for despite the street fencing variations towards the street corner of the lot.

and enhance streetscape (as per clause 5.1.2),

The variation proposed will not negatively affect the streetscape of Odern Crescent or Walba Way, nor will it interrupt the character of the area. Contrasting renders and materials have been used to maximise the visual interest of the street fencing, and to break up the perception of building bulk. Meanwhile, the heights of the street fencing reflect upon the sloping topography of the site, while the overlapping design of the fences different materials create a horizontal emphasis of fencing towards the street corner. This serves to draw attention towards the main dwelling facades which face the street boundaries.

The street facing facades of the dwelling provide considerable visual interest to the public realm, which is further exacerbated by visually permeable street fencing. Visually permeable street fencing is provided both the primary street (Odern Crescent) and the secondary street (Walba Way), despite the visual permeability requirements of R-Codes Clause 5.1.2 and FFP being limited to the primary street setback area.

The combination of the aforementioned factors means that the character of the streetscape will be enhanced by the proposal and its street fencing.





Di Virgilio
18 Odern Crescent, Swanbourne

Figure 4: 3D Visualisations of the proposed dwelling as viewed from Odern Crescent (top) and Walba Way (bottom).

with appropriate consideration to the need:

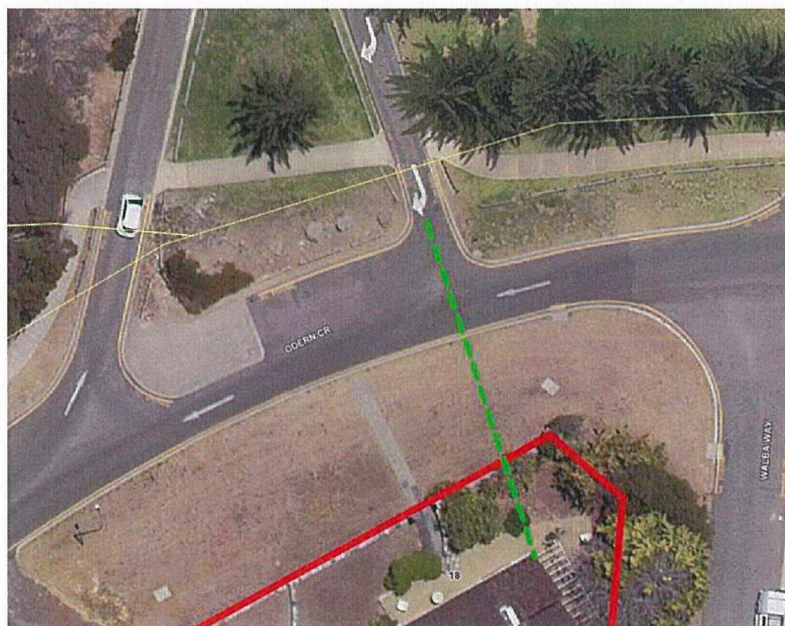
for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and

The occupants are concerned about glare from a restaurant and licenced venue opposite the subject site (The Shorehouse), and the adjacent car park, which features an exiting lane directly opposite the Guest/Bed 4 room (as depicted in the following Figures).

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Figure 5: Aerial image of subject site (outlined in red) in relation to the licenced venue (The Shorehouse), the Swanbourne Nedlands Surf Lifesaving Club, the large carpark to the north. The alignment of the car park's sole exiting lane in relation to the subject site is indicated in green).



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Figure 6: Close up aerial image of subject site (outlined in red) in relation to the exiting lane of the public carpark to the north, and the visual alignment of vehicle headlights (indicated in green).

The size of the carpark to the north of the subject site, and the fact that the sole existing lane faces directly towards Guest/Bed 4 means that alternative efforts such as curtains and blinds) would be insufficient to block vehicle headlight glare during the night, and would therefore disturb the sleeping pattern of the occupant/s of that room. As a result, it is considered appropriate in this instance to allow for the proposed impermeable street fencing within the primary street setback area to counteract the primary source of vehicle headlight glare directed to the subject site and a bedroom.

for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial.

As noted previously, the subject site is opposite and proximity to a licenced venue (The Shorehouse), a public carpark, the Swanbourne Nedlands Surf Lifesaving Club, and public open space. These facilities facilitate noise generating activities on-site, and traffic to and from the carpark directly opposite the subject lot. As a result, the allowance of some street fencing within the primary street setback area which is not visually permeable is considered to be warranted in order to help limit the noise impact.

The location of the visually impermeable street fencing towards the street corner has been chosen in a tactical manner as it alleviates the worst impacts of noise and visual privacy intrusion impacting the site - vehicles leaving the public carpark facing directly towards the Guest/Bed 4 room. The fencing would allow for privacy to both Guest/Bed 4, and part of the outdoor living area.

The overall result of the proposal is that sufficient passive surveillances will be provided from the site to the public realm (as described previously), while the impacts of nearby non-residential land uses and associated traffic will be assuaged.

R-Codes Clause 5.3.5 – Vehicular Access

P5.1 Vehicular access provided for each development site to provide:

Vehicular access safety

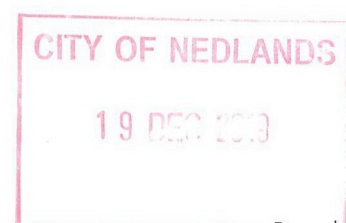
In reality, the location of the garage and visitor car parking bay afford a significant amount of safety to both drivers of vehicles and pedestrians. The placement of the garage and visitor bay do not impact on the visibility afforded to pedestrians nor does it impact on the sight lines of vehicle drivers. If a comparison between the current proposal and a technically compliant design were to be undertaken, there would be no tangible difference in terms of vehicular access safety.

Reduced impact of access points on the streetscape;

The proposed positioning of the crossover/vehicular access to Odern Crescent will serve to minimise the impact of access points on the streetscape as it allows for a basement garage and a garage door mostly below the natural ground level. Rather, upon viewing the site from the street, the focus will be drawn to the dwelling and the landscaping provided.

In addition, the combined width of the driveways to Odern Crescent and Walba Way will be 7.238m, which is less than the maximum total deemed to comply amount of 9m along any one street boundary.

Due to the aforementioned factors, the streetscape is not considered to be adversely impacted by the proposal.



Legible access;

The vehicle crossover is in line with the expectations of the established streetscape of Odern Way, which already has a number of crossovers fronting it. Additionally, the proposed garage location helps to achieve a consistent streetscape, as it is congruent with nearby dwellings which also feature crossovers and driveways to undercroft garages. Please refer to the following street view images for reference.



Figure 7: Street view of No. 20 Odern Crescent, Swanbourne.



Figure 8: Street view of No. 22 Odern Crescent, Swanbourne.



Figure 9: Street view of No. 24 Odern Crescent, Swanbourne.

Pedestrian safety;

As mentioned previously, the proposal is not considered to unduly impact pedestrian safety. Adequate sightlines have been provided to driveways and crossovers to both adjoining streets. Moreover, none of the driveways and crossovers proposed will intersect any public footpaths, as these are located in the street verses of Odern Crescent and Walba Way opposite the subject site. Please refer to Figure 1 aerial image for reference.

Given these factors, and since cars will be able to both enter and exit the proposed garage in forward gear, sufficient safety is provided for both drivers and pedestrians.

Minimal crossovers; and

The proposed crossovers to Odern Crescent and Walba Way do not adversely impact the streetscape aesthetics in any way. Unless observing the site from the street intersection, no more than one crossover would be visible at any one time from the street. In addition, none of the crossovers exceed 6m in width, nor do they cumulatively exceed 9m in width.

High quality landscaping features.

The proposal does not impact on the ability of the street setback area and /or verge to be landscaped to a high quality. Numerous garden beds have been provided within the Odern Crescent street setback area, while a mixture of tiled and grassed landscaping is provided along the Walba Way street boundary to allow for both landscaping and the ability to traverse around the dwelling. Garden beds are also provided along both sides of the visitor bay.

R-Codes Clauses 5.3.7 – Site Works & 5.3.8 – Retaining Walls

P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.

The proposal has been designed according to the need to establish a level pad site for the dwelling and useable open spaces. In order to accommodate these aspects, it is considered necessary to retain the site and, in some areas, this means that over 500mm of fill is required from the natural ground level. The proposed site works variations are not considered to represent a dramatic change to the natural topographical features of the site as viewed from Odern Crescent as they coincide with the natural slope, and merely represent a formalisation of the existing topography. As indicated on the site plan, site feature survey, and Figure 2, the extent of the site fill variation occurs within a minor portion of the front setback area which had not been retained by the existing retaining wall on-site. The impact of this is effectively offset by the excavation proposed for the basement garage and sloping driveway.

As discussed previously, the entry to the basement garage has been chosen to limit the amount of site works required, since the crossover to the garage is towards the lowest portion of the site.

Due to the aforementioned factors, the site works in correspondence with the proposed retaining walls are not considered to be excessive in terms of height but rather form a necessary part of the development.

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.

The proposed variations to site fill occur at a point that is not able to be readily appreciated from the street given that only a 1.87m wide portion of retaining wall along the 35.04m long Odern Crescent street boundary



is subject to the variations. This is contrasted by the excavation for the driveway leading to the basement garage, meaning that the overall slope along the street will be maintained.

The site fill variation's within 3m of Odern Crescent also avoid the site lot boundaries and the corner truncation, meaning that variation will have no impact upon neighbouring lots and their street frontages.

Due to these factors, and since the area subject to the site fill variations facilitate garden beds, they will ultimately respect and enhance the streetscape character of Odern Crescent.

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

The retaining walls have been designed, engineered, and landscaped to have due regard for the amenity and visual privacy afforded to the adjoining properties. The retaining walls essentially formalise and reflect the required topography and allow the dwelling and its primary outdoor living area to be functional. The proposed retaining walls allow for the dwelling to be established at a level congruent with the finished floor level of the existing dwelling on-site, and maintain the overall aslope of the site along Odern Crescent.

There will not be any overlooking issues according to R-Codes Clause 5.4.1 from the areas subject to the site works/retaining wall height variations as they feature 0.81m wide garden beds located between the pool and fencing, and therefore not suitable for access or habitable use.

In line with previous discussion, the retaining walling mostly corresponds with the existing site works and retaining walling of the site, but merely formalising the areas for more efficient use of land. This is critical due to the site constraints resulting from the combination of sloping topography, irregular shape, and frontages to two streets.

R-Codes Clause 5.4.1 – Visual Privacy

P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:

Building layout and location;

The dwelling is situated in a manner which is primarily orientated to face Odern Crescent to the north west. This allows for the occupants to simultaneously enjoy significant views of public open space to the north, and the Indian Ocean towards the west. The layout and location of the dwelling is such that the only instance of overlooking (according to the R-Codes Clause 5.4.1 provisions) occurs from a 1.9m wide portion of the upper floor balcony. Out of the 7.5m long deemed to comply cone of vision allowed by R-Codes Clause 5.4.1, the view from the south western side of the balcony extends a maximum of just 0.2m into the adjoining property behind its street setback line.

Not only is the aforementioned instance minor, it also avoids any major openings and outdoor living areas. In this sense, the privacy of the adjoining lot is respected.

Design of major openings;

The proposed major openings of the dwelling are designed and positioned in such a manner as to not overlook onto any adjoining properties. The south western side of the front balcony presents the only instance of overlooking. However, this overlooking does not impact any active habitable spaces or outdoor living areas of adjacent dwellings.

Landscape screening of outdoor active habitable spaces; and/or

The instance of overlooking does not impact any outdoor active habitable spaces.

Location of screening devices.

Windows of habitable rooms have been designed as minor openings (minimum sill height 1.6m above the finished floor level, maximum surface area of 1m², and/or obscured glazing) where appropriate to maintain the visual privacy of neighbouring residential properties.

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;***

The overlooking from the balcony is both oblique and offset, and limited to a small area to the side of the neighbouring dwelling. The vertical angle of overlooking also mean that boundary fencing will effectively screen the maximum 0.2m wide area along the shared lot boundary within 7.5m of the balcony (as depicted in Figure 3).

Building to the boundary where appropriate;

Boundary walling is not deemed to comply for the subject site as it is coded below R20. In any case, boundary walling would not be necessary as the instance of overlooking is negligible and inconsequential.

Setting back the first floor from the side boundary;

The First Floor Balcony/Bed1/Ensuite façade is setback a minimum of 5.455m, and a maximum of 7.55m, from the south western side boundary. This is considerably greater than the minimum deemed to comply requirements stipulated in Table 2b of the R-Codes. Given this, and the negligible nature of the variation, the first floor is considered to be sufficiently set back.

Providing higher or opaque and fixed windows; and/or

Higher, opaque, and/or fixed windows have been provided in many instances in order to provide natural lighting to the dwelling whilst maximising visual privacy to neighbouring lots.

Screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).

As mentioned previously, boundary fencing will provide sufficient screening in this instance due to the angle of view from the balcony to the south western adjoining lot. In any case, no major openings or active habitable areas are overlooked by the balcony.

To mandate screening would be of major detriment to the amenity of the proposed dwelling as it would deny future occupants of the ability to capitalise on the significant views of the Indian Ocean afforded to the subject site, while providing no tangible benefits for the adjoining lot.



Conclusion

The client has chosen this design to maximise their use and function of the property. The designer has been instructed to create a functionality sized home which has been thoughtfully designed by walking a fine line between achieving the most out of the constrained site, and maintaining the external amenity of the dwelling. Applying the R-Codes design principles against the proposal demonstrates that this development proposal has been able to suitably address the relevant criteria. Accordingly, the above justification is tendered for the City's approval.

Please do not hesitate to contact the undersigned, should you wish to discuss any aspects of the proposal further.

Yours faithfully,



David D'Orazio

MA Urban & Regional Planning (Curtin)

BAppSc (Architectural Science) (Curtin)

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PD28.20	No.64 Gallop Road, Dalkeith – 6 x Two Storey Grouped Dwellings with Basement Car Parking
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Committee	9 June 2020
Council	23 June 2020
Applicant	MW Investments Number 10 Pty Ltd
Landowner	MW Investments Number 10 Pty Ltd
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Report Type Quasi-Judicial	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Reference	DA20-45492
Previous Item	Nil
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to the number of dwellings and an objection being received
Attachments	1. Applicant's Justification and Assessment Against State Planning Policy 7.0
Confidential Attachments	1. Plans 2. Waste Management Plan 3. Acoustic Report 4. Submissions 5. Assessment

1.0 Executive Summary

The purpose of this report is for Council to determine a Development Application received from the applicant on the 3 March 2020, for proposed development of six two-storey grouped dwellings located at No.64 Gallop Road, Dalkeith.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. At the close of the advertising period 2 submissions were received; 1 supporting to the development and 1 objection.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity/consistent with the local character of the locality.

2.0 Recommendation to Committee

Council approves the development application dated 3 March 2020 and revised plans received on the 2 April 2020 for six Grouped Dwellings at Lot 680 (No.64) Gallop Road, Dalkeith, subject to the following conditions and advice notes:

- 1. This approval is for a 'Residential (Grouped Dwelling)' land use as defined under the City's Local Planning Scheme No.3 and the subject land may not be used for any other use without prior approval of the City.**
- 2. Prior to the issue of a Building Permit, a detailed landscaping plan and management plan, prepared by a suitable landscape designer, shall be submitted to and approved by the City. Landscaping shall be installed and maintained in accordance with the approved landscaping plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City.**
- 3. Prior to the occupation of the development the responsible entity (strata/corporate body) shall provide detailed specification on the confirmed waste compactor for 240L bins and written service agreement.**
- 4. Waste management for the development shall comply with the approved Waste Management Plan (prepared by Talis – Revision A) to the satisfaction of the City of Nedlands.**
- 5. The responsible entity (strata/corporate) shall be liable for all bin replacement costs and/or repair costs relating to any damage which may occur as a result of the bin compaction process.**
- 6. The location of any bin stores shall be behind the street alignment so as not to be visible from the street or public place and constructed in accordance with the City's Health Local Law 1997.**
- 7. All stormwater generated from the development shall be contained on site.**
- 8. All footings and structures shall be constructed wholly inside the site boundaries of the property's Certificate of Title.**
- 9. Prior to occupation of the development all fencing/visual privacy screens and obscure glass panels to major openings and unenclosed active habitable areas as annotated on the approved plans shall be screened in accordance with the Residential Design Codes by either;**
 - a) fixed obscured or translucent glass to a height of 1.60 metres above finished floor level, or**
 - b) Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure.**
 - c) A minimum sill height of 1.60 metres as determined from the internal floor level; or**
 - d) an alternative method of screening approved by the City of Nedlands.**

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.

10. Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:
 - a) Face brick;
 - b) Painted render
 - c) Painted brickwork; or
 - d) Other clean material as specified on the approved plans;

And maintained thereafter to the satisfaction of the City of Nedlands

11. Prior to occupation of the development, the proposed car parking and vehicle access areas shall be sealed, drained, paved and line marked in accordance with the approved plans and are to comply with the requirements of AS2890.1 to the satisfaction of the City.
12. Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners, hot water systems and utilities shall be integrated into the design of the building and not be visible from the primary street or secondary street to the satisfaction of the City.
13. Prior to the construction or demolition works, a Construction Management Plan shall be submitted to the satisfaction of the City of Nedlands. The approved Construction shall be observed at all times throughout the construction process to the satisfaction of the City.
14. Prior to the occupation of the development a lighting plan is to be implemented and maintained for the duration of the development to the satisfaction of the City.
15. 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.
16. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.

Advice Notes specific to this proposal:

1. The applicant is advised that in relation to Condition 2, the landscaping plan shall detail the following:
 - a) Species and maturity of landscaping within the front setback areas which have a minimum pot size of 100L;
 - b) Species and maturity of landscaping proposed on the nature strip (verge) which have a minimum pot size of 200L;
 - c) Species and maturity of landscaping within each lot;

- d) **Maintenance plan for all proposed landscaping on site and contingencies for replacement of dead and diseased plants**
2. **The applicant is advised that in relation to Condition 13 the Construction Management Plan is to address but is not limited to the following matters**
 - a) **Construction operating hours;**
 - b) **Contact details of essential site personnel;**
 - c) **Noise control and vibration management;**
 - d) **Dust, sand and sediment management;**
 - e) **Stormwater and sediment control;**
 - f) **Traffic and access management;**
 - g) **Protection of infrastructure and street trees within the road reserve and adjoining properties;**
 - h) **Dilapidation report of adjoining properties;**
 - i) **Security fencing around construction sites;**
 - j) **Site deliveries;**
 - k) **Waste management and materials re-use**
 - l) **Parking arrangements for contractors and subcontractors;**
 - m) **Consultation plan with nearby properties;**
 - n) **Complaint procedure;**
 3. **The responsible entity (strata/corporate body) is responsible for the maintenance of the common property (including roads) within the development.**
 4. **Any development in the nature-strip (verge), including footpaths, will require a Nature Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to commencing construction.**
 5. **Where parts of the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.**
 6. **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 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.**

3.0 Background

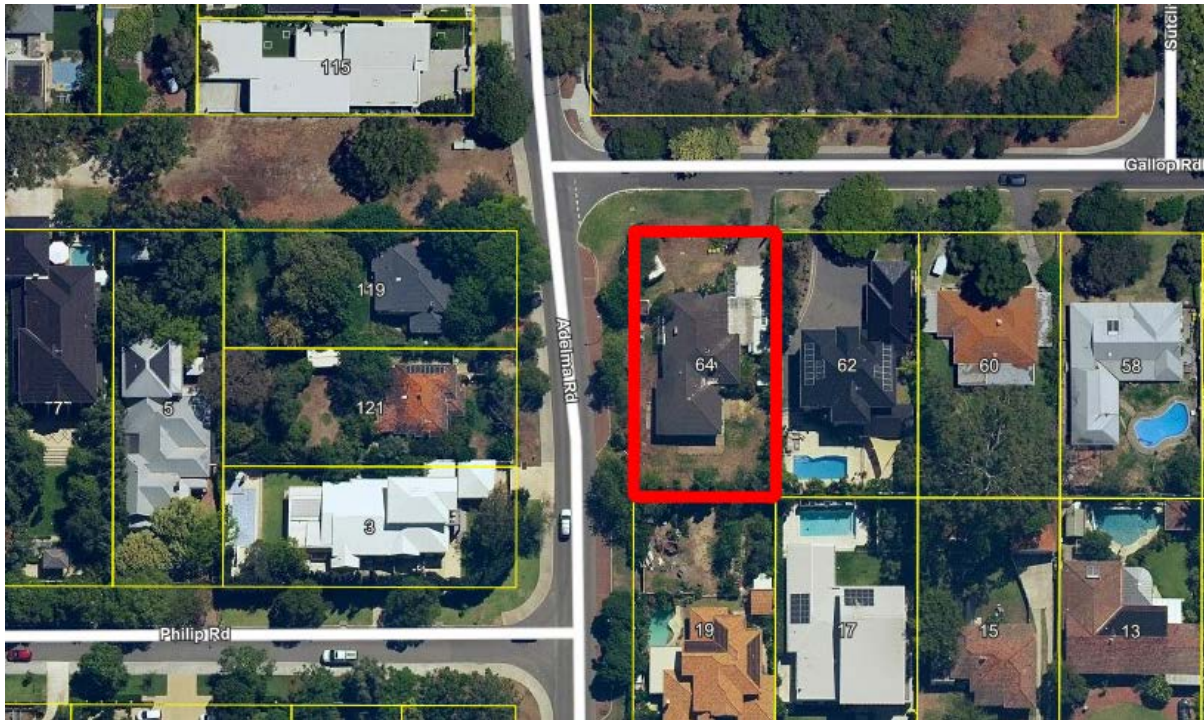
3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R60
Land area	1,103m ²
Additional Use	No
Special Use	No
Local Development Plan	No

Structure Plan	No
Land Use	Residential (Single House)
Use Class	Residential (Single House) – ‘P’ use

3.2 Locality Plan

The subject lot is located at the corner of Adelma Road to the west and Gallop Road to the north in the suburb of Dalkeith. To the north is the Carmelite Monastery and further south is Waratah Avenue. There is existing embayment parking located directly to the west and south-west of the development site.



4.0 Application Details

The applicant seeks development approval, following the demolition of the existing single dwelling, for the development of six, two storey (6) grouped dwellings, including basement car parking located at No.64 Gallop Road, Dalkeith, details of which are as follows:

- Two-storeys terraced styled dwellings which face directly onto Adelma Road to the west. A new pedestrian pathway to the dwellings are proposed which delineate the entry to each dwelling.
- A basement level is proposed which provides for car parking and storage facilities. Access to the basement level is via maintained via the existing crossover located on Gallop Road. 2 parking bays are provided for each dwelling;
- Each unit comprises of a ground floor with open plan living (kitchen, dining & living) with either a study or guest bedroom, as well as an outdoor alfresco area. The upper floor provides for an additional three bedrooms and a family lounge area; and
- The bin storage is located south of the site

By way of justification in support of the development application the applicant has provided a design principles assessment provided as an attachment to this report as well as addressed the submissions received provided as an attachment to this report.

5.0 Consultation

The applicant is seeking assessment under the Design Principles of the R-Codes for the following:

- Lot Boundary Setbacks
- Landscaping
- Visitor Parking
- Site Works & Retaining Walls

The development application was advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to eight occupiers and landowners between the 30 April 2020 to the 14 May 2020. It is noted that at the close of advertising 2 submissions were received; 1 in support and 1 objecting. No submissions were received from surrounding landowners.

Submission	City's Response
Support the development as it is an example of the type of development needed within the locality #1 Submission	Noted
Whether the road is designed to accommodate the projected number of vehicles and concerns with the projected traffic within the area #1 Submission	Not Supported In accordance with the Transport Impact Assessment Guidelines (Volume 4), due to the type of use and number of dwellings proposed it is classified as a 'low impact' and no further transport information is required. The application has further been referred to the City's Technical Services Department which have no objection to this development, thereby, Adelma Road can reasonably accommodate the number of vehicles as part of this development.
Whether local schools have the capacity to cater for additional students #1 Submission	Not a valid objection to this proposal Overall, a schools' capacity is governed by the Department of Education
Whether sewerage and water systems can cater for the increased dwellings at these locations #1 Submission	Not a valid objection to this proposal However, it is noted for this specific application, the applicant would require consulting with the Water Corporation. The overall strategic approach to catering with the increased demand is also managed by the Water Corporation, in consultation with the City's Technical Service Department
How the number and types of these dwellings provide benefits to current residents within the locality #1 Submission	Comments The increased density is required by the State as per Directions 2031 to cater for the projected number of future residents within the Perth

	Metropolitan Area. The density provides housing opportunities for downsizes, students and families.
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6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.2 Policy Consideration

6.2.1 Design of the Built Environment (State Planning Policy 7.0)

The applicant has prepared a submission in response to State Planning Policy 7.0 (Attachment 1). Administration has undertaken an assessment on this Policy and on balance considers that the proposed development adequately responds to the variations proposed and on balance is considered appropriate in its context.

Design Principle	Officer Comment
1. Context and Character	The built form is considered to be sympathetic to its surrounding development. A combination of materials and existing style is present within the locality
2. Landscape Quality	Whilst the landscaping is below the 20% as per the City's Policy, Administration consider that there is a mix of species, design as well as additional landscaping proposed on both Adelma and Gallop Road. A revised landscaping plan is recommended as a condition of planning approval which include the planting of mature species within the front setback area of the verge in order to maintain the established streetscape
3. Built form and scale	The two-storey single dwelling is a respectful and characteristics of the existing dwellings within the locality and does not negatively impact the surrounding properties by way of overshadowing, under provision of open space or is over height. It is considered acceptable in its context.
4. Functionality and build quality	The level of finish of the build proposed is of a high standard which is exhibited within the locality. A mix of materials provide a well detailed build and well-designed living spaces.
5. Sustainability	Partially north facing outdoor living areas and design is supported as it maximises the northern aspect of the site.
6. Amenity	Architecturally designed building which provide for generous active outdoor habitable spaces. Based on the design elements, the landscaping quality-built form and scale providing for an improved built

	form to that of the existing dwelling and is not considered to negatively impact the public realm.
7. Legibility	The design provides for a clear and definable pedestrian and vehicle entrances which provides for a clear delineation of spaces from the public and private realm. A combination of lifts and stairs have been provided to the site
8. Safety	Major openings are provided to the public realm and designed to offer for passive surveillance if the street.
9. Community	This principle is not considered applicable.
10. Aesthetics	Contrasting renders and materials, multiple openings facing the street, varying roof height and cured walls add visual interest to the design which is complementary to the locality.

6.2.2 Residential Design Codes – Volume 1 (State Planning Policy 7.3)

The applicant is seeking assessment under the Design Principles of the R-Codes for Street Setbacks, Landscaping and Car Parking as addressed in the below table/s:

5.1.2 - Street Setbacks

Design Principles
<p>P2.1 - Buildings set back from street boundaries an appropriate distance to ensure they:</p> <ul style="list-style-type: none"> • contribute to, and are consistent with, an established streetscape; • provide adequate privacy and open space for dwellings; • accommodate site planning requirements such as parking, landscape and utilities; and • allow safety clearances for easements for essential service corridors. <p>P2.2 Buildings mass and form that:</p> <ul style="list-style-type: none"> • uses design features to affect the size and scale of the building; • uses appropriate minor projections that do not detract from the character of the streetscape; • minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.
Deemed-to-Comply Requirement
<p>C2.2: Buildings set back from the secondary street boundary in accordance with Table 1.</p> <p>C2.4 (i) - A minor incursion such as a porch, balcony, verandah, architectural feature or the equivalent may project not more than 1m into the street setback area provided that the total of such projects does not exceed 50% of the building façade as viewed from the street.</p>

Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • The planter box wall to Unit 1 is setback at 0.57m in lieu of 1m from the secondary street • The eaves to Unit 1 on the first storey overhang at 1.06m into the secondary street boundary and covers 100% of the building façade
Administration Assessment
<p>Administration consider that the proposed development meets the Design Principles as -</p> <ul style="list-style-type: none"> • The planter box to Unit 1 relates to a portion of wall at a length of 3.15m which represents a minor portion of the existing wall length. In accordance with the landscaping plan the planter box will be obscured by hedging and as such is considered appropriate not to detract from the character of the streetscape. It is further used for additional landscaping within the property boundary; • The eave overhang to Unit 1 proposes a variation of 0.31m. This is considered a minor portion of the façade which is not considered to detrimentally impact the streetscape of the locality. The eave uses design features which reflect the size and scale of the building and is not used as a means to increase the building footprint. It is further screened by trees and landscaping proposed within the verge and underneath the eaves at ground level. <p>Accordingly, it is considered that this variation meets the Design Principles.</p>

5.3.3 – Parking

Design Principles
<p>P3.1 Adequate car parking is to be provided on-site in accordance with projected need related to:</p> <ul style="list-style-type: none"> • the type, number and size of dwellings; • the available of on-street and other off-street parking; and • the proximity of the proposed development to public transport and other facilities <p>P3.2 Consideration may be given to a reduction in the minimum number of on-site car parking spaces for grouped and multiple dwellings provided:</p> <ul style="list-style-type: none"> • available street parking in the vicinity is controlled by the local government; and • the decision maker is of the opinion that a sufficient equivalent number of on-street spaces are available near the development
Deemed-to-Comply Requirement
<p>C3.2 – On-site visitor car parking spaces for grouped and multiple dwelling developments provided at a rate of one space for each four dwellings, or part thereof in excess of four dwellings served by a common access.</p>
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • No visitor bays have been provided.
Administration Assessment
<p>Administration note that there is a total of four (4) on street parking bays directly in front of the site and an additional six (6) located directly south-west of the site.</p> <p>Administration consider that the proposed development meets the Design Principles as -</p> <ul style="list-style-type: none"> • Aerial photography at various months and within a 10-year period indicate a minimal reliance of these bays by surrounding residents or business operations;

- No objections have been received by residents within the locality or by the City’s Technical Service Department; and
- As the proposal involves a variation of one (1) bay, on the merits of this application, it is considered that there is sufficient number of on street spaces available in order to satisfy the design principles

5.3.7 – Site Works & 5.3.8 Retaining Walls

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p>Site Works P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</p> <p>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.</p> <p>Retaining Walls P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having regard to clauses 5.3.7</p>
Deemed-to-Comply Requirement
<p>Site Works C7.1 - Excavation and filling between the street and building, or within 3m of the street alignment, whichever is the lesser, shall not exceed 0.5m, except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling.</p> <p>Retaining Walls C8 – Retaining walls greater than 0.5m in height set back from lot boundaries in accordance with the setback provisions of Table 1 at 2m from the primary street boundary.</p>
Proposed
<p>The application seeks assessment under the design principles which are as follows:</p> <ul style="list-style-type: none"> • Excavation of up 2.5m to accommodate basement parking level • Retaining walls proposed on the primary street boundary of Units 4-6 which range from a height between 0.51m – 1.10m
Administration Assessment
<p>Administration consider that the proposed site works meets the Design Principles as –</p> <ul style="list-style-type: none"> • With respect to the excavation, the development has been designed to appropriately respond to the topography and respects the natural ground level at the boundary when viewed from the street. The land slopes approximately 1.30m from the north-east (16.68 AHD) to the south-east boundary (15.90 AHD) which is where the vehicle access and ramp to the basement is proposed. The remaining car parking area is not visible to the public realm as it is concealed from view (16.89 AHD); • The basement level is situated on the secondary street on Gallop Road and is not considered visually obstructive when viewed from the street, given it proposes a singular access point. It has been specifically designed to accommodate the parking of 12 parking bays within the basement level, rather than constructing 6 separate crossovers for each dwelling. This is considered a preferred design approach and is supported by Administration given it appropriately maintains and protects the amenity of the streetscape and sets a desirable precedent to the locality;

- The retaining walls have designed to appropriately respond to the minor slope of the site. The retaining walls and fill have been designed to provide for additional landscaping which is considered to benefit both internal residents and the public realm.

Accordingly, the excavation, fill and retaining is considered minor in its context and appropriately responds to the site context. As such the Design Principles are considered to be satisfactorily met

Local Planning Policy – Residential Development

Policy Objective
<p>R-Codes P2 Landscaping of grouped and multiple dwelling common property and communal open spaces that:</p> <ul style="list-style-type: none"> • contribute to the appearance and amenity of the development for the residents; • contribute to the streetscape; • enhances security and safety for residents; • provide for microclimate; and • retain existing trees to maintain a local sense of place
<p>Policy Objective</p> <ul style="list-style-type: none"> • 3.1 To enhance the amenity and aesthetics of areas within the City. • 3.2 To provide for residential development that is consistent with established or desired streetscapes. • 3.3 To reduce the dominance (scale, mass and bulk) of buildings as viewed from the street. • 3.4 To provide for building heights which are consistent with the character of the area and the topography of the site. • 3.5 To prevent inappropriate buildings within rear setback areas in order to protect the amenity of surrounding properties and maintain the spacious green character of the City.
Policy Requirement
<p>4.8.1 Clause 5.3.2 of the R-Codes is modified to include the following additional deemed-to comply requirement:</p> <ul style="list-style-type: none"> • C3 Single and grouped dwelling developments require a minimum of 20% of the site area as landscaping, measured in accordance with clause 7.2 of this policy.
Proposed
<ul style="list-style-type: none"> • Unit 1 proposes 19.29% landscaping • Unit 2 proposes 7.78% landscaping • Unit 3 proposes 9.74% landscaping • Unit 4 proposes 8.50% landscaping • Unit 5 proposes 8.57% landscaping • Unit 6 proposes 10.63% landscaping
Administration Assessment
<p>The Residential Development Policy represents a Council adopted policy position. This clause does not apply as a deemed-to-comply provision under the Residential Design Codes (Volume 1) until the Western Australian Planning Commission (WAPC) have granted approval. The City is giving due regard to this document but at present contains limited weighting due to the status of this document as the decision maker is the WAPC not the City.</p> <p>“‘Landscaping’ relates to land developed with garden beds, shrubs and trees, or by the planning of lawns, and includes such features as rockeries, ornamental ponds, swimming pools, barbeque areas or playgrounds and any other such area approved by the decision-maker as landscaped area.”</p>

It is noted that the intent of this provision, included as an amendment to Administrations recommendation to Council is to ensure that the leafy green neighbourhood is maintained as this represents a sense of place to residents within the locality. Whilst the physical area has not been provided, which is representative of the percentage, it is Administration's view that the siting, selection and design of plant species still maintains the objective and intent of this provision.

Particularly within the front setback area the type of vegetation proposed includes a feature tree and low hedging to ensure that passive surveillance is still maintained in order to enhance the security and safety for residents. The types of trees proposed require limited maintenance which satisfies providing for a microclimate.

Due to the design, there is the inability to retain existing trees on site. Notwithstanding, it is pertinent to note that there no local law which prohibits the removal of these trees within the subject site. The applicant has provided additional landscaping that is mostly reflective or complementary of the local character to maintain a local sense of place which is supported.

The landscaping proposed, albeit of a variation, contributes to the appearance and amenity of the development for internal residents due to the soft landscaping and plant palette proposed and is therefore supported.

The development contributes to the streetscape as the proposal includes:

- four (4) additional trees (Callistemon species) proposed to be planted within verge of Gallop Road;
- hedging and a mix of plants on the periphery of Unit 1 and at the entrance of each dwelling;

Although Callistemon species have been proposed which grow to a height of 8 metres, Administration considers that a condition could be imposed to necessitate a species that is more mature and reflective of the local landscaped character including for example, Water Gum, Ornamental Pear or Western Coolabah which could grow at a mature height of 8-10m. These species could assist in softening the building façade giving the illusion of a larger setback and would improve the pedestrian experience along Gallop Road and Adelma Road. As such, this has been included as a condition of planning approval.

Local Planning Policy – Waste Management Guidelines

A Waste Management Plan has been prepared by Talis (Revision A), dated 13 February 2020 which proposes a bin storage area to be located south of the subject site and is incorporated within the building design. A total of 8 x 240L bins comprising of 2 waste bins (with compaction 2:1) and 6 recycling bins are proposed.

Clause 3.1.5 of the Waste Management Guidelines recommends a maximum of 4 x 240L waste bins and 4 x 240L recycle bins to be placed on the verge for kerbside collection in which more than 8 bins would require internal service arrangements. Although the proposal includes 2 waste bins and 6 recycling, on aggregate, it does not exceed a total of 8 bins and is therefore considered consistent with the intent of the Policy and has been supported by Technical Services. It is further noted that there is sufficient capacity on the verge to accommodate the maximum number of bins and on alternative weeks, there will be just 2 waste bins on Adelma Road.

Technical Services support to the proposed Waste Management Plan, with the exception of a manual waste compactor being proposed due to the possible damage to the bins. Administration consider that this can be adequately dealt with via a

planning condition requiring an alternative bin compactor and specification to be provided prior to occupation. This is reflected in recommended Condition 3.

7.0 Conclusion

This application is for proposed six two-storey grouped dwellings located at No.64 Gallop Road, Dalkeith which is coded R60.

The application has been referred to Council for a decision by virtue of the number of grouped dwellings proposed (being greater than five) and one (1) objection being received. The development proposes minor variations to street setbacks, site works and retaining, landscaping and visitor parking bays. The application was advertised to surrounding residents and at the close of advertising two (2) submissions were received; one objection and one in support.

Administration consider that the development satisfies the design principles of the Residential Design Codes and is unlikely to have a significant adverse impact on the local amenity. Approval, with conditions is recommended.



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11/05/2020

Aviva Micevski
City of Nedlands
**71 Stirling Hwy,
NEDLANDS
WESTERN AUSTRALIA 6009**

Dear Aviva,

**RE: LOT 680 (NO. 64) GALLOP ROAD, DALKEITH
APPLICATION (LG REF: DA20-45492)**

Momentum Wealth acts on behalf of the landowners at Lot 680 (No. 64) Gallop Road, Dalkeith (herein referred to as the 'subject site'). On behalf of our Clients, we have prepared the enclosed additional justification requested in the email received 6 May 2020 in relation to the proposed six (6) grouped dwellings on the subject site.

Response to State Planning Policy 7.0

This policy 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. Please find below information on how the proposal responds to this Policy.

10 Design Principles

1. Context and Character
2. Landscape Quality
3. Built Form and Scale
4. Functionality and Build Quality
5. Sustainability
6. Amenity
7. Legibility
8. Safety
9. Community
10. Aesthetics

1. Context and Character

Good design responds to and enhances the distinctive characteristics of a local area, contributing to a sense of place.

The built form of the proposed development has been refined to fit with the high quality residential dwellings of the immediate surrounds. The tiled pitched rooves and the use of glass, feature stone, feature tile and rendered brick in the front facades contribute to the established streetscape of both Gallop and Adelma Roads. Many surrounding properties including the immediately adjoining property to the east of the site at 62 Gallop Road exhibits similar design features. The significant landscaping to the front of the dwellings (trees, hedging and planter boxes) contribute to the leafy green feel that Dalkeith is well known for.

2. Landscape Quality

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, within a broader ecological context.

The design proposes a significant investment into landscaping for future residents, visitors and passers-by to enjoy. The landscaping attempts to draw from and emulate the established greenery that is evident as you move throughout Dalkeith. Trees, groundcover, feature planting and hedging has been focussed at the entrance of the dwellings and where the dwellings meet the street, softening the transition to the built form.

3. Built Form and Scale

Good design ensures that the massing and height of development is appropriate to its setting and successfully negotiates between existing built form and the intended future character of the local area.

The two storey town homes are appropriate and respectful to the current character of the area and do not negatively impact the amenity of surrounding properties or the public realm by way of overshadowing or light pollution etc. With the recent rezoning of the site to R60, a significantly larger/bulkier multiple dwelling development on the site is possible under the planning framework however we believe the modest grouped dwelling development proposed fits the context of the site more appropriately. With basement parking incorporated the site has just one crossover, eliminating the need for bulky double garages and multiple crossovers along Adelma Road and allowing for more interesting front facades.

4. Functionality and Build Quality

Good design meets the needs of users efficiently and effectively, balancing functional requirements to perform well and deliver optimum benefit over the full life-cycle.

The level of finish and quality of build of the proposed development meets or exceeds the high standard exhibited throughout the suburb of Dalkeith. High quality materials such as feature stone, glass, feature tiling, roof tiling and rendered brickwork provide a well-detailed build which will be durable and easy to maintain over time. The development is functional with services well integrated, in terms of waste this is proven in the waste management plan provided by Talis. Clearly defined entries, minimal crossovers and well-designed living spaces ensure ease of use for residents and visitors alike.

5. Sustainability

Good design optimises the sustainability of the built environment, delivering positive environmental, social and economic outcomes.

The retention of significant verge trees combined with the addition of new landscaping at the street front of the dwellings puts green infrastructure at the forefront of this development. Good waste management practices are also proposed, with six recycling bins strongly encouraging residents to recycle waste effectively. The large, north-facing courtyards leading into open plan living/kitchen/dining areas ensure optimal orientation and thermal performance in the most frequently used spaces of the dwellings. Lifts have been incorporated into every dwelling, allowing for aging in place for local downsizers. The homes have been designed with this target buyer in mind, allowing them to sell their large family homes to a new generation of younger families who will regenerate the economic and social aspects of the suburb.

6. Amenity

Good design provides successful places that offer a variety of uses and activities while optimising internal and external amenity for occupants, visitors and neighbours, providing environments that are comfortable, productive and healthy.

The six town homes have all been individually, architecturally designed to offer bespoke planning and detailing throughout. Private outdoor courtyard/barbeque areas are generous and north-facing offering excellent outdoor amenity to compliment the high quality and well-designed interiors. Considered design elements discussed above such as landscaping quality and built form and scale ensure the amenity of neighbours and passers-by is not negatively impacted.

7. Legibility

Good design results in buildings and places that are legible, with clear connections and easily identifiable elements to help people find their way around.

The design is easy to navigate with both pedestrian and vehicle entrances clearly defined. Entrances incorporate a high level of landscaping detail and articulation to ease the transition from the street to the built form. Sightlines from the dwelling to the street are heightened with the use of glass windows providing street surveillance. There is clear delineation of spaces public and private, common and residential throughout the design. This is achieved whilst maintaining reference to the local site, situation, streetscape and materiality.

8. Safety

Good design optimises safety and security, minimising the risk of personal harm and supporting safe behaviour and use.

The proposed scheme has been designed to offer safe surrounds for the residents and visitors while improving the overall safety and security to this section of Adelma Road. With just a single crossover on Gallop Road proposed, the major traffic safety issue of multiple crossovers along Adelma Road has been avoided. The open aspect and sightlines of the design offer secure locations for passive surveillance of the street and is reflected back on to the development.

9. Community

Good design responds to local community needs as well as the wider social context, providing environments that support a diverse range of people and facilitate social interaction.

The design responds to community by way of providing a desirable accommodation type which will provide much needed housing diversity in the suburb. A few recently approved examples have shown townhouse product is in demand within this precinct and the wider local area. The homes have been designed with local downsizers in mind, allowing them to sell their long owned large family homes to a new generation of younger families, who will regenerate the economic and social aspects of the suburb.

10. Aesthetics

Good design is the product of a skilled, judicious design process that results in attractive and inviting buildings and places that engage the senses.

The six town homes have all been individually, architecturally designed to offer bespoke planning and detailing throughout. The tiled pitched rooves and the use of glass, feature stone, feature tile and rendered brick in the front facades contribute to a pleasing aesthetic which fits seamlessly into the established grain on Dalkeith.

Response to Advertised Variation – Landscaping

The City's Residential Development Policy clause 4.8 – Landscaping states that "20% landscaping shall be provided on each grouped dwelling site". This landscaping provision amends the deemed-to-comply requirements of Part 5.3.2 of the R-Codes. Under Clause 7.3.2 of the R-Codes, approval of the Western Australian Planning Commission (WAPC) is required to vary this clause and while the City has advised that the Policy has been referred to the WAPC for approval, it has not yet been considered by the WAPC. As such we feel the weight given to this provision in the assessment of a proposal should be limited (if any).

The City's landscaping calculations have resulted in a shortfall of landscaping to each unit with respects to the above policy, however the City's Residential Policy does not define landscaping under section 6.0 Definitions. Clause 6.2 states that "a word or expression that is not defined in the Policy has the same meaning as it has in the R-Codes". The R-Codes definition is noted below:

"'Landscaping' relates to land developed with garden beds, shrubs and trees, or by the planning of lawns, and includes such features as rockeries, ornamental ponds, swimming pools, barbeque areas or playgrounds and any other such area approved by the decision-maker as landscaped area."

The Courtyard areas to the rear of each unit contain barbeques, shrubs and trees. As noted on the Landscaping plan provided, we propose 100lt trees (Pyrus 'Capital' and Plumeria 'Hot Pink') as well as 200mm shrubs (Camelia sasanqua) as soft landscaping to compliment the hard landscaping brick pavers. These barbeque areas a significant feature of the dwellings and they provide a significant level of outdoor living amenity, comparable to the amenity soft landscaping provides.

Response to Advertised Variation – Parking

Clause 5.3.3 of the R-Codes outlines a deemed-to-comply provision for visitor parking to be provided at a rate of one space for each four dwellings, or part thereof in excess of four dwellings, served by a common access.

The proposed development provides no on site visitor parking. We request a minor variation (1.5 bays required) to the above deemed-to-comply provision as there is ample available street parking available in close vicinity of the site. In addition to the embayed street parking bays adjacent to the site along Adelma Road, there is also ample street parking available along Gallop Road and verge parking available on the boundary of the monastery.

Should you have any questions or concerns, or require any additional information please do not hesitate to contact the undersigned.

Kind Regards,



Michael Hart
Acquisition and Planning Analyst

PD29.20	Local Planning Scheme 3 – Local Planning Policy: Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements
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Committee	9 June 2020
Council	23 June 2020
Applicant	City of Nedlands
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Reference	Nil
Previous Item	SCM 5 March 2020 – Item 7
Attachments	<ol style="list-style-type: none"> 1. Tracked Changes Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements Local Planning Policy (LPP) 2. Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements Local Planning Policy (LPP) 3. Summary of Submissions
Confidential Attachments	<ol style="list-style-type: none"> 1. Original Submissions 2. DA Plans – 92 Smyth Road, Nedlands

1.0 Executive Summary

The purpose of this report is for Council to finally adopt the draft Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements Local Planning Policy required under Local Planning Scheme 3 (LPS 3).

This Policy details the requirements relating to the ceding of private land and creation of an east-west laneway between the properties at 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands, located parallel to Gordon Street. It also outlines the built form requirements for properties abutting the proposed laneway.

This Policy has been created as a mechanism to enable the ceding of land and construction of a laneway abutting the abovementioned properties. It responds to future development and subdivision under the new density code, which may otherwise result in the undesirable development of maximum width crossovers to Smyth Road, Langham Street and Gordon Street.

The aim of the Policy is to protect and maintain the existing landscaped and tree lined streetscapes whilst minimising the extent of crossovers, driveways and hardstands along Smyth Road, Gordon Street and Langham Street.

2.0 Recommendation to Council

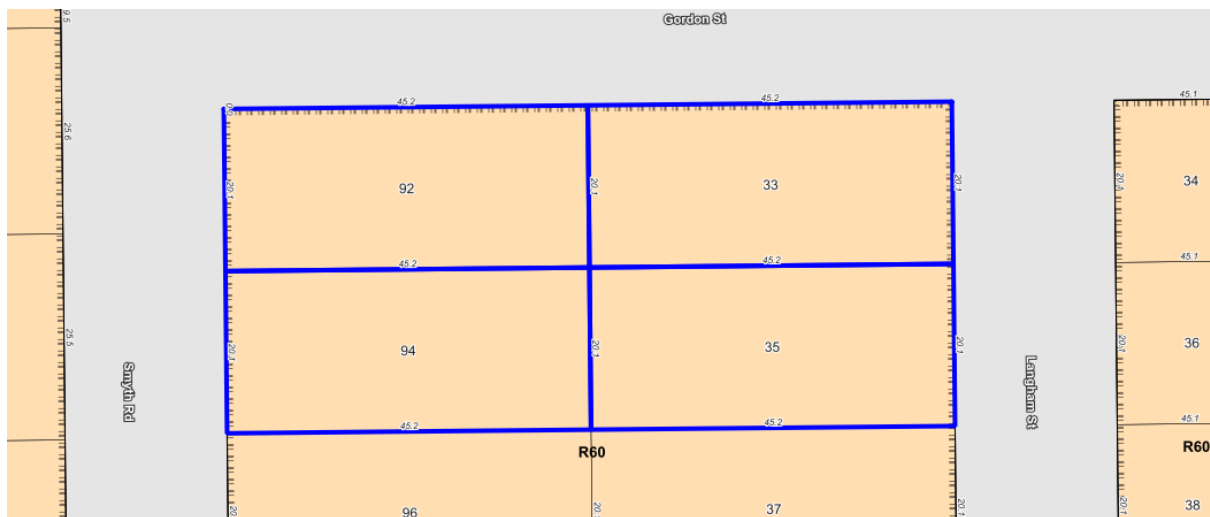
Council:

1. **proceeds to adopt the Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements Local Planning Policy with modifications as set out in Attachment 2, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4(3)(b)(ii); and**
2. **refers the Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements Local Planning Policy to the Western Australian Planning Commission for final approval in accordance with State Planning Policy SPP7.3, Residential Design Codes Volume 1 2019 Clause 7.3.2.**

3.0 Background

The properties at 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands (shown below) were up-coded to R60 under the City’s recently adopted Local Planning Scheme No. 3 (LPS3). This allows the properties to develop up to 5 grouped dwellings (townhouses) at 2 storey height limits or approximately 6-10 multiple dwellings (apartments) with height guided by Clause 2.2 of the R Codes Volume 2 with a 3 storey acceptable outcome provision.

The properties at 92 Smyth Road and 33 Langham Street are located on the southern side of Gordon Street. They are in a transitional density area and interface with lower coded (R12.5) residential properties located on the northern side of Gordon Street.



Pursuant to clause 32.3, subclause 1, of LPS3, the owner of land affected by a right-of-way or laneway identified by the scheme or, a structure plan, local development plan, activity centre plan or local planning policy is to, at the time of developing or subdividing the land:

- a) Cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and
- b) Construct the relevant section of the right-of-way or laneway to the satisfaction of the local government.

Therefore, if the City chooses to adopt this Policy, the City will have the head of power under clause 32.3 (1) to acquire the land and require developers to construct the laneway to the City's specifications at the time of subdivision or significant (i.e. Multiple of Grouped Dwellings) redevelopment.

The City received a development application in February 2020 for four (4) Grouped Dwellings at 92 Smyth Road, Nedlands which indicated four individual crossovers to Gordon Street. Significant concerns were raised by Administration at lodgement as the application would pose an undesirable streetscape outcome on Gordon Street. It is Administration's view that garages and crossovers should be located to the rear of the property with access from a new laneway. This proposed laneway will seek to connect Smyth Road and Langham Street.

The application has since been amended to provide for five (5) grouped dwellings and rear vehicle access via the construction of a future laneway. Note: A full copy of plans and relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

This Policy has been put forward to aid the City in identifying the required land between these lots to create and construct the laneway. The laneway created will result in one entry point on Smyth Road and Langham Street respectively, therefore avoiding up to 10 direct vehicle crossovers along Gordon Street. The proposal also opens up development opportunity for the properties to the south of the laneway (94 Smyth Road and 35 Langham Street) which will benefit from a newly created laneway frontage if and when they are subject to future Multiple and Grouped Dwelling development or subdivision.

4.0 Detail

This Policy details the requirements for the proposed laneway between Smyth Road and Langham Street. It sets out the land identified to be ceded for the creation of a laneway and the requirements for the ceding and subsequent construction.

The Policy requires a 3.5m wide strip of land to be ceded by each of the affected properties, measured from the centre boundary line in order to create a 7m wide laneway. Each affected lot will cede its 3.5m wide contribution to create the laneway as a condition of future subdivision or development approval for Grouped or Multiple Dwelling development. This policy also applies to subdivision and development applications proposing the creation of a green title lot or Single House on a green title lot oriented to or accessible from the laneway. The ceded land will become a public road to be maintained by the City of Nedlands. The 7.0m wide laneway will be created and constructed to the City's specifications including being sealed, drained, and provided with lighting and landscaping.



In a scenario where each of the affected lots are simultaneously subdivided or developed with either Grouped or Multiple Dwellings, or a Single House on a green title lot oriented to or accessible from the laneway, there is capacity for the laneway to be designed and constructed with a services core located under the laneway carriageway. This core will provide a direct servicing connection to future lots proposed at 92 and 94 Smyth Road and 33 and 35 Langham Road, enabling these lots to be subdivided as green titles.

Under this scenario, it is intended that the laneway will be developed as a 6m wide carriageway and 0.5m landscape and services strip on either side. The laneway will provide for central drainage, trees to be located at the common boundary of each created lot, 4.5m high light posts and crossovers. Each dwelling is also to be provided with a pedestrian access point to the laneway. Refer to Figure 1 below.

However, under a more likely interim scenario where each of the parent lots are incrementally subdivided or developed, the ceded 3.5m wide laneway parcel will provide one-way access to future dwellings, akin to a battle-axe driveway.

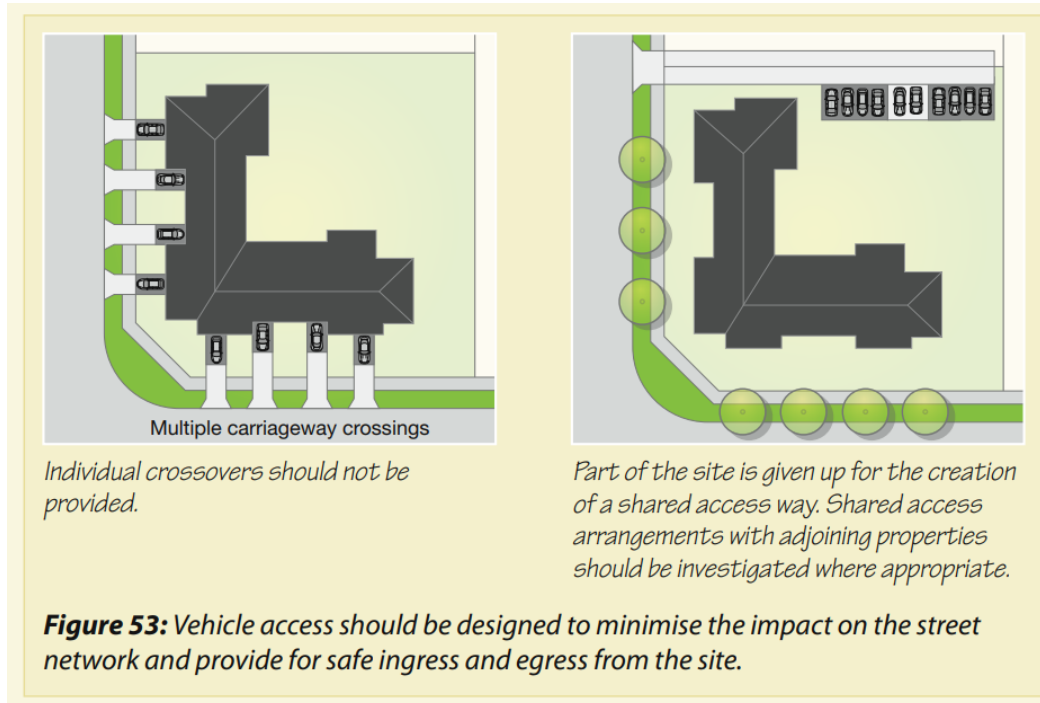
As the 3.5m wide laneway parcel is to be ceded to the City, it will be officially classified as a public road. Therefore, future development will need to demonstrate safe and efficient egress for members of the public (other than occupants of the dwellings) who travel down the laneway, to the satisfaction of the City.

Under the interim scenario, lots with a direct road frontage may be created as green title lots, or survey strata lots leveraging from the existing services network in the surrounding streets via a servicing easement. Unless the laneway is fully constructed between Smyth Road and Langham Street, the future lots created over 94 Smyth Road and 35 Langham Street are likely to be survey strata title lots serviced from Smyth Road or Langham Street via an easement.

The proposed laneway achieves two positive built form outcomes. Firstly, it will minimise the number of crossovers to Gordon Street.

The explanatory guidelines of the Residential Design Codes Volume 1 Clause 6.5 Vehicular Access Figure 53, reproduced below, encourages consolidated street access in lieu of individual crossovers, which are discouraged. This figure identifies the detrimental impact caused by multiple crossovers on the amenity and

streetscape, noting too many crossovers cause loss of kerbside parking space, lack of space for street trees and furniture, interruption to pedestrian use of footpaths and increased hazards for cyclists. The method encouraged by Figure 53 is consistent with the proposed Policy, ensuring vehicle access is located to the rear of properties where possible, and encouraging shared access by utilising an aggregate vehicle access solution for future lots.



Secondly, the laneway will help unlock the future redevelopment potential for the south lying properties at 94 Smyth Road and 35 Langham Street. If all parent lots were developed simultaneously, these parent lots could be subdivided as green title lots. Under an interim and incremental development scenario, these lots will benefit from direct street frontage to the laneway. This provides an alternative to the creation of two green title lots oriented to Langham Street/Smyth Road or avoids the need to otherwise provide a hardstand area (common driveway) necessary to service dwellings in a battle-axe configuration. Clause 5.3.5 in the Residential Design Codes Volume 1 requires a driveway serving 4 or less dwellings to be no less than 3m wide. In the case of a driveway serving 5 or more dwellings, the driveway must accommodate two-way access. Therefore, the laneway will ultimately require 6m or the ability to manoeuvre to allow for vehicles to enter and exit in forward gear.

The built form controls in the policy seek to encourage activated frontages. The laneway is not intended to present as a solid wall of garages but instead maintain a street-like appearance with pedestrian access and amenity, and visual surveillance opportunities to and from the laneway and adjacent dwellings.

The development or subdivision of properties at 94 Smyth Road and 35 Langham Street will create opportunities for some lots/dwellings to have their primary frontage to the laneway. For these properties, the laneway will be developed with the appearance of a minor street including landscaping, pedestrian friendly access-ways and major openings from buildings overlooking the laneway. This will mean that although its primary purpose is providing vehicle access to dwellings, the laneway will avoid potential multiple crossovers to Gordon Street, as well as maintaining the character of Nedlands' traditional streetscape, being pedestrian friendly, green, landscaped and a tree lined.

The Policy, through its built form controls, aims to encourage a pedestrian friendly, landscaped street appearance along the laneway. This is done by mandating that fencing to the laneway (for 94 Smyth Road and 35 Langham Street) remains consistent with primary street fencing requirements, being open in style to allow for passive surveillance. A clear definable pedestrian entry way is to be provided from the laneway for each lot. This is to encourage legibility and ease of access as well as reducing vehicle domination along the laneway and encouraging passive visual surveillance of the laneway from the dwellings.

Without this Policy in place, the City lacks the ability to apply LPS3 clause 32.3 to mandate the ceding of land for the creation of a laneway. If the properties were subdivided first, as has been the case on similar lots such as at 18 Doonan Road, the application would be determined by the West Australian Planning Commission (WAPC).

In the case of 18 Doonan Road, the subdivision application was approved by WAPC despite Administration's concerns regarding the subsequent streetscape impact. The Department of Planning Lands and Heritage (DPLH) directed Administration to further flesh out the need and nexus for laneways and as such, a Laneway Strategy and Scheme Amendment are being prepared to add more power to Clause 32.3 of LPS3. Whilst the subdivision has already been approved in respect of 18 Doonan Road, clause 32.3 of LPS3 allows for a development application to also trigger the ceding of land for the purpose of a laneway.

The current local planning framework is evolving and unresolved. Any purchase of properties within the density transition areas cannot solely rely on LPS3 as a guaranteed development pathway. The City is currently formulating localised planning policy responses to better augment the R-Codes to suit City of Nedlands, its localised streetscape, desired future character, and best practice urban design for this area.

The application of this Policy will seek to avoid the construction of up to 10 double crossovers to Gordon Street if 92 Smyth Road and 33 Langham Street were redeveloped in accordance with the newly adopted and higher R60 coding.

The majority of submissions received during the advertising period of LPS3 raised concerns in relation to increased crossovers and hardstand to the street, reduction of trees and the degradation of the Nedlands green leafy suburban character due to inappropriate development and subdivision within the up-coded areas. Without a local planning policy mandating a laneway in this location, future development and subdivision proposals will likely result in a poor redevelopment precedent for the minimisation of crossovers. The significant increase in crossovers will also compromise the orderly and proper planning for this precinct and would reinforce the community's concerns over increased crossovers and hardstand, reduction of trees and the degradation of the Nedlands green leafy suburban character.

It is envisaged that this process will be repeated for other corner redevelopment lots within the density transition up-coded areas applicable under LPS 3. Through future precinct planning processes, a series of new laneways will be identified and established through local planning policies. A future goal for the City would also be to investigate the possibility of these laneways being used for waste and other services to remove vehicle movements from the main streets.

WAPC Approval

If Council adopts this LPP, the standards in relation to Vehicle Access, Outdoor Living Areas and Landscaping will not be enforceable until such time as the Western Australian Planning Commission (WAPC) approves the LPP. This is because under Part 7.3 of the Residential Design Codes Volume 1, these areas can only be amended when approval from the WAPC is granted.

Accordingly, once a final version of the policy is adopted by Council, the LPP will be referred to the WAPC to seek its approval for provisions related to Vehicle Access, Outdoor Living Areas and Landscaping. This report, together with Council's resolution, will also be referred to the WAPC.

5.0 Modifications to the Policy

The following modifications to Policy provisions are recommended:

- Correction regarding finished levels to clause 4.1.5 'The longitudinal gradient of the road design will be determined in accordance with detailed design. It will generally match the centreline levels to the natural ground and create an optimum longitudinal profile linking Smyth Road and Langham Street, to the satisfaction of the City of Nedlands.

This modification is recommended consistent with advice from Technical Services.

- Inclusion of additional confirmation regarding the construction of the laneway at clause 4.1.5 'As the land is incrementally developed or subdivided, landowners will be required to contribute proportionally to the cost of the laneway design which will be managed by the City of Nedlands.'
- Correction to clause 4.1.7 to remove the reference to 'bollard' lighting to allow more flexibility around the ultimate lighting design.
- Confirmation that trees are to be planted by the landowner and inclusion of addition of tree replacement requirements at clause 4.1.6 'Where a tree dies within the two-year establishment period, the tree shall be replaced at the relevant landowner's cost.'
- Correction to the expression of Clause 4.2.4 'Where a lot has a frontage to both Gordon Street and the proposed laneway, a clearly defined pedestrian entry is to be provided and maintained from both street frontages.'
Note: Pedestrian entries (e.g. path and gate) must be separate to a garage door or vehicle access point.
- Addition of 4.3 'Variation to this Policy' which outlines the requirements of applicants and the City in considering variations to the Policy.

6.0 Consultation

In line with Council's March 2020 resolution, the Policy was advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 4 of the *Planning and Development (Local Planning Scheme) Regulations 2015 (P&D Regs.2015)* and the City's Consultation LPP from 15 February 2020 till 11 April 2020. A notice was

published in the newspaper, and details were included on the City's website and the Your Voice engagement portal. The four affected landowners were notified of the Council report prior to the Special Council Meeting of 5 March. Due to the receipt of only one submission during public consultation, the affected landowners were specifically invited to comment on the proposed policy over an additional two-week period between 16 April and 30 April.

Overall a total of 4 submissions were received through public consultation, all of these from affected owners. Three submissions are from one affected property. The submissions have been summarised and provided a response in the Summary of Submissions included at Attachment 3. Council has also been provided with full copies of all original submissions as Attachment 5.

Conditional support for the policy was expressed in three of the four submissions, pending resolution of the laneway finished levels and concessions relating to the landscape requirements applicable to future Grouped Dwelling development under the R-Codes Vol. 1. The fourth submission opposed the policy on the incorrect basis that it would require the existing dwelling to be demolished and rebuilt.

Administration has advised the respective submitters that:

- Under the policy future laneway levels are to be determined through detailed design, to generally match the centreline levels to the natural ground and create an optimum longitudinal profile linking Smyth Road and Langham Street as per amended clause 4.1.5 of the LPP.
- The policy does not require the demolition and rebuilding of the existing dwelling. Land will not be required to be ceded other than as triggered by future a subdivision or development application for Grouped or Multiple Dwellings.

In relation to the submissions expressing conditional support for the policy subject to landscape requirement concessions, it is noted that:

- The landscape requirement pursuant to clause 4.8.1 of the LPP – Residential Development: Single and Grouped Dwellings acts an additional provision to the 'Deemed-to-comply' provisions of clause C2 of Element 5.3.2 Landscaping under the R-Codes Vol.1.
- Future development may be assessed against either Deemed-to-comply provision C2 or Design Principle P2.
- The references made in the submission to a separate application are incorrect.
- It is not appropriate for this Policy to provide concessions specific to a future development or subdivision application. Any future development or subdivision application will be assessed against the planning framework and on its merits, as applicable at the time of assessment.

7.0 Statutory Provisions

Planning and Development (Local Planning Schemes) Regulations 2015

Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations) Schedule 2, Part 2, Clause 4(3), sets out that after the expiry of the 21-day advertising period, the local government must review the proposed Policy in light of any submissions made and resolve to:

- a) Proceed with the Policy without modification; or
- b) Proceed with the Policy with modification; or
- c) Not to proceed with the Policy.

Administration recommends that Council resolves to proceed with the Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements LPP with modifications as shown in Attachment 2.

The modifications proposed to the draft LPP, which the public have not had the opportunity to comment on, are considered minor in nature and are not considered to warrant further advertising of the draft LPP.

City of Nedlands Local Planning Scheme No. 3

Under clause 32.3 of the City of Nedlands Local Planning Scheme No. 3 the City requires the ceding of land for laneways identified through a Local Planning Policy. This Policy will give effect to this clause and require developers to cede land identified for a laneway before development or subdivision approval will be granted. Clause 32.3 is shown below.

Clause 32.3

Ceding of rights-of-way and laneway widening.

1. The owner of land affected by a right-of-way or laneway identified by the scheme, structure plan, local development plan, activity centre plan or local planning policy is to, at the time of developing or subdividing the land:
 - a) Cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and
 - b) Construct the relevant section of the right-of-way or laneway to the satisfaction of the local government.
2. The intention expressed in sub-clause (1) may be reinforced by a condition of subdivision or development approval.

A proposed 'Standard' amendment to LPS3 known as Scheme Amendment 6, is being considered by Council for consent to advertise (initiate) at the Ordinary Council Meeting on 26 May 2020. The amendment seeks to amend the wording of Clause 32.3 sub-clause (1) as follows:

'32.3(1) Where land is affected by and gains benefit from the provision of a right-of-way or laneway identified by the scheme, a structure plan, a local development plan, an activity centre plan or a local planning policy, the owner is to, at the time of developing or subdividing the land: a) cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and b) construct the relevant section of the right-of-way or laneway to the satisfaction of the local government.'

A new sub-clause (3) is also proposed:

'32.3(3) Where part of a lot has been transferred free of cost to the Crown for the purpose of widening a road or right-of-way or for the purpose of ceding the land for a new right-of-way or laneway, the area ceded shall be included for the purpose of calculating the minimum and average site area and plot ratio in determining development potential.'

Additional modifications to Clause 26 of LPS3 are also proposed, as follows:

‘(4) In relation to land coded R20 or greater:

(a) Clause 5.3.5 (Vehicular Access) of the R-Codes is modified by including the following modifications to C5.1 and additional deemed-to-comply requirements of C5.8, C5.9 and C5.10:

- C5.1** 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;
 - From a primary street frontage where no secondary street, **communal street** or right-of-way exists; or
 - **Where a laneway (secondary street) is identified in accordance with Clause 32.3 (1) of the Scheme, access to on site car parking spaces is to be provided from the ceded and constructed section of the laneway where it is connected to the local road network.**
- C5.8** **Vehicle access points to be designed and located to provide safe access and egress for vehicles and to avoid conflict with pedestrians, cyclists, and other vehicles.**
- C5.9** **Vehicle circulation areas designed to avoid headlights shining into habitable rooms within the development and adjoining properties.**
- C5.10** **Vehicle access points are to be designed and located to reduce visual impact on the streetscape.’**
- C5.10** **Vehicle access points are to be designed and located to reduce visual impact on the streetscape.’**

Proposed Scheme Amendment 6 is informed by legal advice and reinforces the City’s desire to consolidate access where the land identified by the scheme, structure plan, local development plan, activity centre plan or local planning policy is affected by and benefits from the provision of a right-of-way or laneway. The modified wording provides more clarity and consistency to the existing scheme provision. It seeks to strengthen the connection between the requirement for the ceding of land free of cost to create a laneway and the public benefit derived from the laneway in a fair and reasonable manner.

The proposed amendment will also enable the City to protect and maintain tree lined streetscapes, while minimising the extent of crossovers, driveways and hardstands on properties identified by the scheme, structure plan, local development plan, activity centre plan or local planning policy.

8.0 Conclusion

The Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements LPP is the preferred mechanism to enable the enforcement of clause 32.3 in the City’s Local Planning Scheme No. 3 to create a laneway through the properties at 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands.

The primary purposes of the policy are to minimise the number of crossovers to the street and to encourage built form provisions that will provide for a laneway which has the appearance of a Nedlands local street rather than a blank wall of garages.

Without a local planning policy, the City will lack the mechanism to require the provision of a laneway to service the subject sites, and or limit the approval of multiple crossovers in the event of an application for Grouped dwellings or Multiple dwellings, or where a subdivision approval is applied for first. The City has already received a development application for 92 Smyth Road. Therefore, this Policy has been prepared for imminent adoption in order to avoid a sub-optimal development and built form outcome.

As such, it is recommended that Council endorses Administration's recommendation to adopt the Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements LPP.



LOCAL PLANNING POLICY – SMYTH ROAD, GORDON STREET AND LANGHAM STREET LANEWAY AND BUILT FORM REQUIREMENTS

1.0 PURPOSE

- 1.1 This policy provides laneway requirements for the establishment of an east-west laneway between 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to subdivision applications and development applications for Grouped and Multiple Dwellings on 92 and 94 Smyth Road and 33 and 35 Langham Street Smyth Road which is shown in Figure 1, located south of Gordon Street and orientated east-west. [This policy also applies to subdivision and development applications proposing the creation of a green title lot or Single House on a green title lot oriented to or accessible from the laneway.](#)
- 2.2 Where this policy is inconsistent with the provisions of a Local Planning Policy or Local Development Plan that applies to a specific site or area, the provisions of that policy shall prevail.

3.0 OBJECTIVES

- 3.1 To provide for the ceding of land in order to create the Smyth Road and Langham Street Laneway.
- 3.2 To promote and facilitate high quality urban design outcomes for the redevelopment of 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands.
- 3.3 To consolidate and conceal vehicle access from Gordon Street, Smyth Road and Langham Street.
- 3.4 To promote and facilitate a sustainable and attractive streetscape design which mitigates conflict between primary and secondary street access principles.
- 3.5 To ensure that vehicle crossover locations do not detract from the safety and visual amenity of the public realm.
- 3.6 To provide opportunities for passive surveillance of the public realm, whilst also ensuring privacy and security.
- 3.7 To ensure that fencing contributes positively to the character of the area.
- [3.8](#) To achieve a high-quality landscape outcome that enhances the character of the streetscape and contributes to a sense of place.



4.0 POLICY MEASURES

4.1 Laneway Requirements

4.1.1 A laneway shall be provided where identified on Figure 2.

4.1.2 Where a laneway is identified on a site, the land must be ceded by the landowner free of cost and as a condition of subdivision or development approval granted pursuant to the provisions of Clause 32.3 of Local Planning Scheme No. 3.

4.1.3 ~~Where a laneway is required, Each landowner is required to construct the portion of the laneway that is ceded from the parent lot. The laneway# shall~~ be constructed and drained to the specifications and satisfaction of the City of Nedlands prior to the creation of new titles (as a result of subdivision) or to occupation of the new development (as a result of development approval).

4.1.4 Laneways shall have a width of 7m, including a 0.5m infrastructure and landscaping strip either side of the 6m wide carriageway (see Figure 2).

~~4.1.5~~ The longitudinal gradient of the road design will be determined in accordance with detailed design. It will generally match the centreline levels to the natural ground and create an optimum longitudinal profile linking Smyth Road and Langham Street, to the satisfaction of the City of Nedlands. As the land is incrementally developed or subdivided, landowners will be required to contribute proportionally to the cost of the laneway design which will be managed by the City of Nedlands.

~~4.1.5~~ Finished levels of the laneway shall be 150mm less the adjoining properties.

4.1.6 Prior to the occupation of development, semi-mature trees (with a minimum height of 2.4m and species and pot size to be specified by the City) will be planted by the landowner at 3m intervals within the infrastructure and landscaping strips to be maintained by the landowner for a minimum of 2 years from occupation, to the satisfaction of the City. Where a tree dies within the two-year establishment period, the tree shall be replaced at the relevant landowner's cost.

4.1.7 The laneway shall include ~~bellard~~ lighting infrastructure installed within the infrastructure and landscaping strip at the cost of the developer to the specification and satisfaction of the City.

4.2 Built Form Requirements

4.2.1 Vehicle access shall not be permitted from Gordon Street. Vehicle access is to be obtained from the Laneway, unless otherwise agreed to by the City.

4.2.2 Only one (1) crossover is permitted per lot.

- 4.2.3 For lots with dual street frontages, all fencing addressing secondary streets is to be visually permeable above 1.2m. Fencing requirements for primary streets including the Laneway where this is the primary street frontage, are as per the applicable requirements under SPP 7.3 Residential Design Codes Volume 1 or 2.
- 4.2.4 Where a lot has a frontage to both Gordon Street and the proposed laneway, a clearly defined pedestrian entry is to be provided and maintained from both street frontages. A clearly defined pedestrian entry is to be provided and maintained from both the Gordon Street lot frontage (where applicable) and the Laneway.
- Note: Pedestrian entries (e.g. path and gate) must be separate to cannot be via a garage door or vehicle access point.*
- 4.2.5 Passive surveillance of the Laneway must be provided from at least one single or upper storey major opening to a habitable room.
- 4.2.6 An outdoor living area abutting the rear laneway is to be provided for all dwellings, generally in accordance with Figure 1 below and to the satisfaction of the City.
- 4.2.7 In order to support the planting of a small sized tree (4-6m at maturity), a deep root planting zone shall be provided within the lot boundary setback adjacent to the Laneway, or elsewhere on site to the satisfaction of the City. This deep root planting zone shall comprise a 9m² Deep Soil Area (DSA) with a minimum width of 2 metres with indicative tree planting pot size of 100 litres, to the satisfaction of the City (see Figure 3).

Figure 1: Built Form Block Diagram

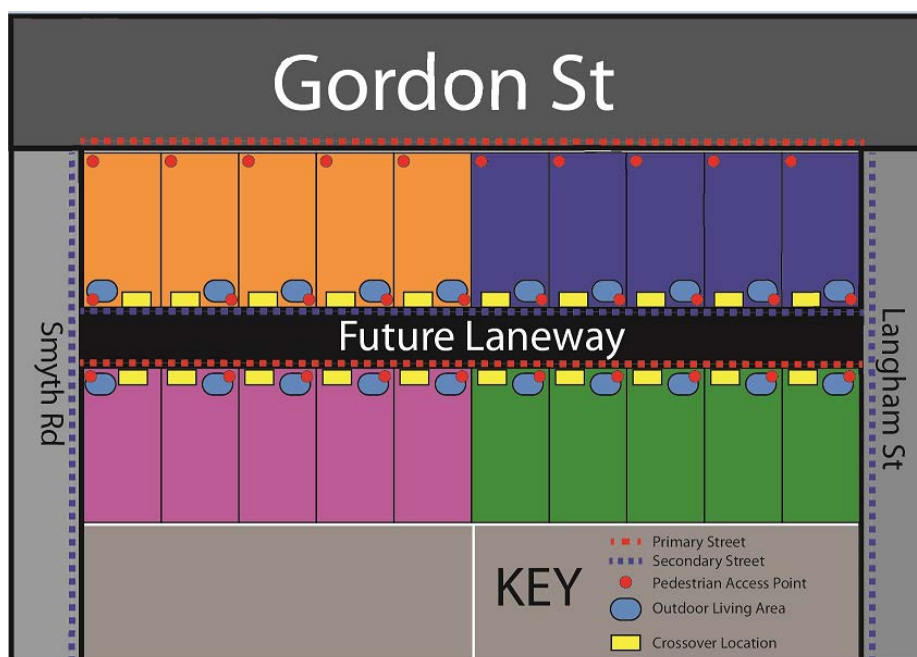




Figure 2 – Laneway Location

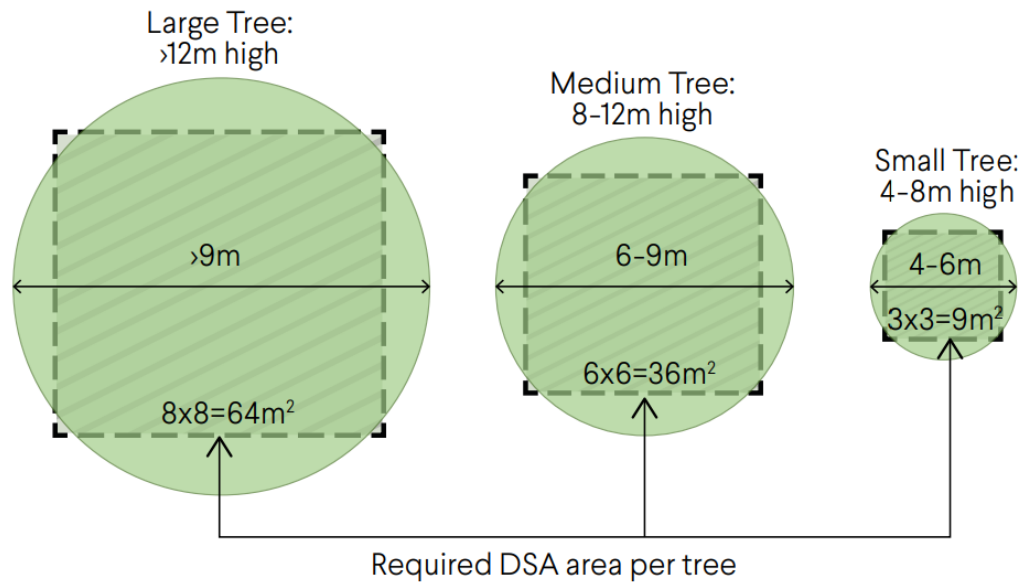


City of Nedlands





Figure 3: Tree size definitions when mature for deep soil areas



4.3 Variations to this Policy

The City may consider a variation to this Policy through the lodgement of a development application. Any proposed variation to the requirements of this Policy are to be assessed against the Policy's purpose and objectives. Should applicants wish to vary any part of this Policy, applicants are to submit a statement of justification outlining why the City should consider the proposed variations, having regard to the Policy's purpose and objectives. In addition, applicants are to provide a design statement addressing the requirements of State Planning Policy 7.0. Applications will be assessed on an individual basis, having regard to the proposed development's typology, streetscape interface and broader regional context/implications.



5.0 ADDITIONAL DEVELOPMENT APPLICATION REQUIREMENTS

5.1 All development applications are to be accompanied by a landscape plan for assessment and endorsement. The landscape plan must address the required information stated in either *Part 3 – Accompanying information 2(o)* of the *State Planning Policy 7.3: Residential Design Codes Volume 1* or *Appendix 5 – Development application guidance of State Planning Policy 7.3: Residential Design Codes Volume 2*, whichever applies.

6.0 DEFINITIONS

6.1 For this policy the following definitions apply:

Definition	Meaning
Primary Street	As defined in Figure 1.
Secondary Street	As defined in Figure 1.
Pedestrian Access	An independent access point to the dwelling/lot which is not associated/integrated with vehicle access.
Habitable Room	As defined in the <i>State Planning Policy 7.3: Residential Design Codes Volume 1</i>
Major Opening	As defined in the <i>State Planning Policy 7.3: Residential Design Codes Volume 1</i>

7.0 RELATED LEGISLATION

7.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

7.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- State Planning Policy 7.3 – Residential Design Codes Volume 1
- State Planning Policy 7.3 – Residential Design Codes Volume 2 – Apartments
- Local Planning Scheme No. 3

Council Resolution Number	PDX.XX
Implementation Date	Date and Item Number of Council Meeting
Date Reviewed/Modified	DD MM YYYY



LOCAL PLANNING POLICY – SMYTH ROAD, GORDON STREET AND LANGHAM STREET LANEWAY AND BUILT FORM REQUIREMENTS

1.0 PURPOSE

- 1.1 This policy provides laneway requirements for the establishment of an east-west laneway between 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to subdivision applications and development applications for Grouped and Multiple Dwellings on 92 and 94 Smyth Road and 33 and 35 Langham Street Smyth Road which is shown in Figure 1, located south of Gordon Street and orientated east-west. This policy also applies to subdivision and development applications proposing the creation of a green title lot or Single House on a green title lot oriented to or accessible from the laneway.
- 2.2 Where this policy is inconsistent with the provisions of a Local Planning Policy or Local Development Plan that applies to a specific site or area, the provisions of that policy shall prevail.

3.0 OBJECTIVES

- 3.1 To provide for the ceding of land in order to create the Smyth Road and Langham Street Laneway.
- 3.2 To promote and facilitate high quality urban design outcomes for the redevelopment of 92 and 94 Smyth Road, Nedlands and 33 and 35 Langham Street, Nedlands.
- 3.3 To consolidate and conceal vehicle access from Gordon Street, Smyth Road and Langham Street.
- 3.4 To promote and facilitate a sustainable and attractive streetscape design which mitigates conflict between primary and secondary street access principles.
- 3.5 To ensure that vehicle crossover locations do not detract from the safety and visual amenity of the public realm.
- 3.6 To provide opportunities for passive surveillance of the public realm, whilst also ensuring privacy and security.
- 3.7 To ensure that fencing contributes positively to the character of the area.
- 3.8 To achieve a high-quality landscape outcome that enhances the character of the streetscape and contributes to a sense of place.



4.0 POLICY MEASURES

4.1 Laneway Requirements

- 4.1.1 A laneway shall be provided where identified on Figure 2.
- 4.1.2 Where a laneway is identified on a site, the land must be ceded by the landowner free of cost and as a condition of subdivision or development approval granted pursuant to the provisions of Clause 32.3 of Local Planning Scheme No. 3.
- 4.1.3 Each landowner is required to construct the portion of the laneway that is ceded from the parent lot. The laneway shall be constructed and drained to the specifications and satisfaction of the City of Nedlands prior to the creation of new titles (as a result of subdivision) or to occupation of the new development (as a result of development approval).
- 4.1.4 Laneways shall have a width of 7m, including a 0.5m infrastructure and landscaping strip either side of the 6m wide carriageway (see Figure 2).
- 4.1.5 The longitudinal gradient of the road design will be determined in accordance with detailed design. It will generally match the centreline levels to the natural ground and create an optimum longitudinal profile linking Smyth Road and Langham Street, to the satisfaction of the City of Nedlands. As the land is incrementally developed or subdivided, landowners will be required to contribute proportionally to the cost of the laneway design which will be managed by the City of Nedlands.
- 4.1.6 Prior to the occupation of development, semi-mature trees (with a minimum height of 2.4m and species and pot size to be specified by the City) will be planted by the landowner at 3m intervals within the infrastructure and landscaping strips to be maintained by the landowner for a minimum of 2 years from occupation, to the satisfaction of the City. Where a tree dies within the two-year establishment period, the tree shall be replaced at the relevant landowner's cost.
- 4.1.7 The laneway shall include lighting infrastructure installed within the infrastructure and landscaping strip at the cost of the developer to the specification and satisfaction of the City.

4.2 Built Form Requirements

- 4.2.1 Vehicle access shall not be permitted from Gordon Street. Vehicle access is to be obtained from the Laneway, unless otherwise agreed to by the City.
- 4.2.2 Only one (1) crossover is permitted per lot.
- 4.2.3 For lots with dual street frontages, all fencing addressing secondary streets is to be visually permeable above 1.2m. Fencing requirements for primary streets including the Laneway where this is the primary street frontage, are



- as per the applicable requirements under SPP 7.3 Residential Design Codes Volume 1 or 2.
- 4.2.4 Where a lot has a frontage to both Gordon Street and the proposed laneway, a clearly defined pedestrian entry is to be provided and maintained from both street frontages.
- Note: Pedestrian entries (e.g. path and gate) must be separate to a garage door or vehicle access point.*
- 4.2.5 Passive surveillance of the Laneway must be provided from at least one single or upper storey major opening to a habitable room.
- 4.2.6 An outdoor living area abutting the rear laneway is to be provided for all dwellings, generally in accordance with Figure 1 below and to the satisfaction of the City.
- 4.2.7 In order to support the planting of a small sized tree (4-6m at maturity), a deep root planting zone shall be provided within the lot boundary setback adjacent to the Laneway, or elsewhere on site to the satisfaction of the City. This deep root planting zone shall comprise a 9m² Deep Soil Area (DSA) with a minimum width of 2 metres with indicative tree planting pot size of 100 litres, to the satisfaction of the City (see Figure 3).

Figure 1: Built Form Block Diagram

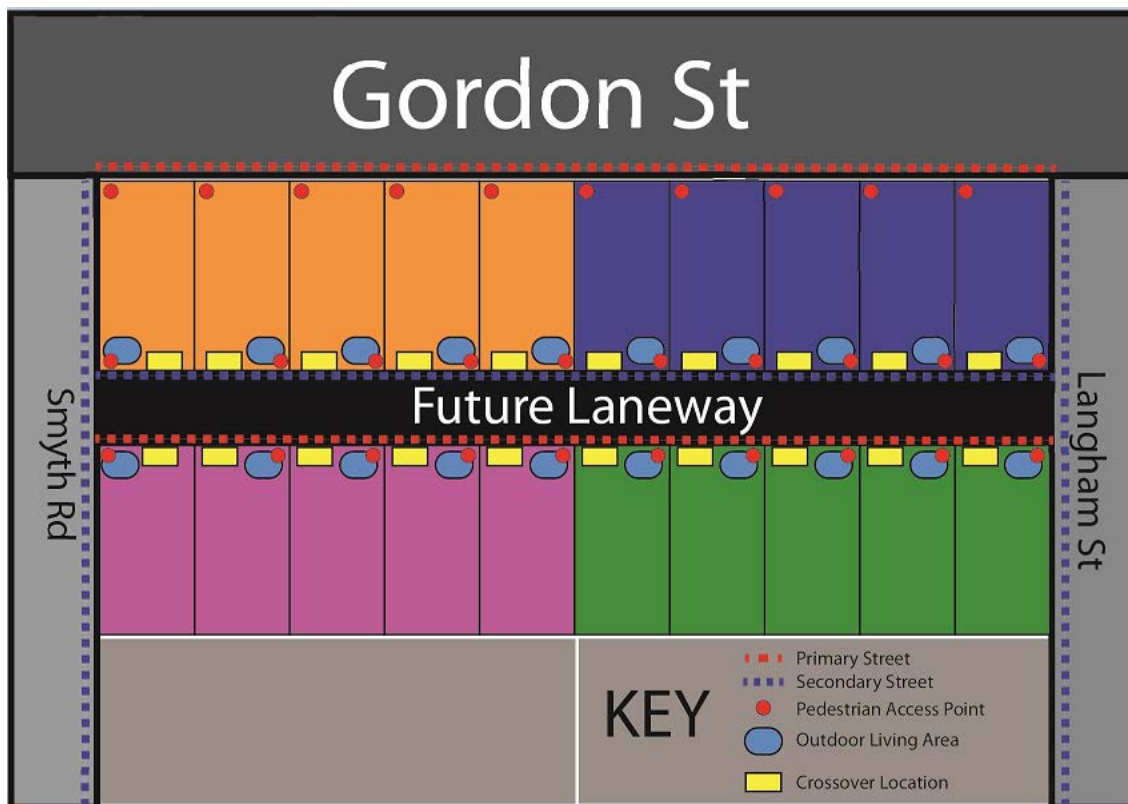
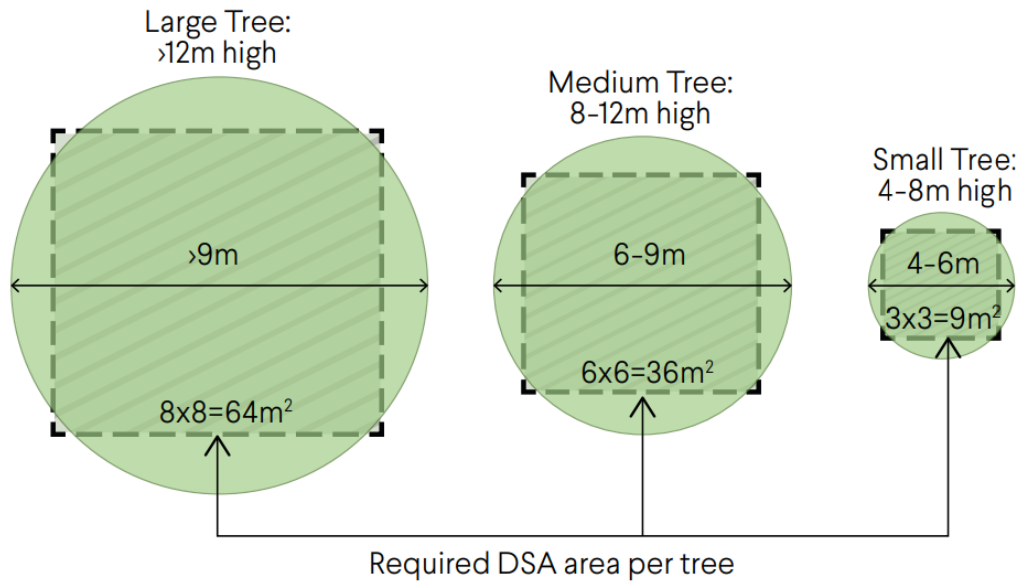


Figure 2 – Laneway Location





Figure 3: Tree size definitions when mature for deep soil areas



4.3 Variations to this Policy

The City may consider a variation to this Policy through the lodgement of a development application. Any proposed variation to the requirements of this Policy are to be assessed against the Policy's purpose and objectives. Should applicants wish to vary any part of this Policy, applicants are to submit a statement of justification outlining why the City should consider the proposed variations, having regard to the Policy's purpose and objectives. In addition, applicants are to provide a design statement addressing the requirements of State Planning Policy 7.0. Applications will be assessed on an individual basis, having regard to the proposed development's typology, streetscape interface and broader regional context/implications.



5.0 ADDITIONAL DEVELOPMENT APPLICATION REQUIREMENTS

5.1 All development applications are to be accompanied by a landscape plan for assessment and endorsement. The landscape plan must address the required information stated in either *Part 3 – Accompanying information 2(o)* of the *State Planning Policy 7.3: Residential Design Codes Volume 1* or *Appendix 5 – Development application guidance of State Planning Policy 7.3: Residential Design Codes Volume 2*, whichever applies.

6.0 DEFINITIONS

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7.0 RELATED LEGISLATION

7.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

7.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- State Planning Policy 7.3 – Residential Design Codes Volume 1
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- Local Planning Scheme No. 3

Council Resolution Number	PDX.XX
Implementation Date	Date and Item Number of Council Meeting
Date Reviewed/Modified	DD MM YYYY

**PD29.20 - Attachment 3
Schedule of Submissions**

No.	Name and Address of Submitter	Are they within a 400m radius?	Form of Submission	Summary of Submission	Response and recommendation
1	John Stanning 35 Langham St	Yes – directly affected owner	Your Voice (12.04.2020)	<ul style="list-style-type: none"> a) Need for policy acknowledged due to current application at 92 Smyth Road to protect streetscape, landowner amenity and clarify future development requirements b) Concerns raised regarding the practical interpretation of clause 4.1.5 “laneway finished levels shall be 150mm less than the adjoining property” c) Overall support for the policy with refinement to ensure pragmatic approach and balance key stakeholder needs 	<p>Clarification of the operation of proposed clause 4.1.5 provided direct to the landowner by email on 23.04.2020 following updated engineering advice that:</p> <p><i>The laneway will be generally designed to match the centreline levels to the natural ground and will be informed by a detailed design.</i></p> <p><i>Whilst road pavement is usually 150mm below verge height due to the kerb height, laneways usually have flush kerbs and reverse crown (gutter down road centreline) to mitigate drainage / flooding issues when builders construct garages below gutter level.</i></p> <p><i>The longitudinal gradient of the road design will be independent of who develops first and dependent on the optimum longitudinal profile to link Smyth and Langham</i></p>

					<p><i>and probably with a lip to restrict Smyth Rd drainage entering the laneway.</i></p> <p>The current policy provision of clause 4.1.5 has been modified to reflect the updated engineering advice.</p>
2	Farah Abdul Aziz Karim Ghanim	Yes – directly affected owner	Individual email (21.04.2020)	a) Strongly oppose laneway proposal due to concern the owners house will need to be ‘cut’ to make way for the laneway. Queried whether existing house would be demolished and rebuilt and whether Council would pay for this.	<p>Clarification of policy intent provided direct to the landowner by email on 21.04.2020.</p> <p>The policy will only be triggered by applications on 92 and 94 Smyth Road or 33 and 35 Langham Street to subdivide or develop for the purpose of Multiple or Grouped Dwellings (refer to clause 2.1 of the proposed draft policy). There is otherwise no trigger for land to be ceded to construct a laneway.</p>
3	John Stanning 35 Langham St	Yes – directly affected owner	Individual email (01.05.2020)	a) Need for policy acknowledged due to current application at 92 Smyth Road to protect streetscape, landowner amenity and clarify future development requirements	a) DA19-43081 for grouped dwellings at No. 35 the Avenue has not yet been approved. It has been scheduled to be

				<ul style="list-style-type: none"> b) Policy is not supported unless amendments are made to the policy to address concerns with the treatment of open space. c) Ceding approx. 18sqm of land to the laneway, for no value, materially cuts into land area that could be classified as open space to support the development sizing. There is a material penalty and inequitable treatment for ceding this land which could otherwise comprise a driveway for a grouped development under R60. d) The common driveway for grouped development is counted as open space to meet the R60 open space requirement as was the case for a recent development approved by Council at Lot 740, No. 35 The Avenue. e) Policy is not supported in its current form but an amended policy would be supported if land ceded for the laneway is counted towards meeting the open space requirement for a R60 development, or otherwise an allowance is made in assessing applications where land is ceded to ensure an equitable outcome is achieved. f) Note that Clause 4.1.5 is to be amended as per communication with the Council staff on 21.04.2020. 	<p>considered at the June Ordinary Council Meeting.</p> <p>b) The application as amended does not meet Clause 4.8.1 of the <i>LPP- Residential Development: single and grouped dwellings</i> which is to be read as one of the 'Deemed-to-comply' provisions related to Element 5.3.2 Landscaping. It is understood that Administration has not included the common driveway area towards meeting the requirement of Clause 4.8.1 minimum 20% site area. Administration is assessing the provision of landscaping against Design Principle P2 rather than the 'Deemed-to-comply' pathway with opportunity for the application of Council discretion.</p>
4	Jean Stanning 35 Langham	Yes – directly affected owner	Individual email (01.05.2020)	a) Need for policy acknowledged due to current application at 92 Smyth Road to	a) DA19-43081 for grouped dwellings at No. 35 the

				<p>protect streetscape, landowner amenity and clarify future development requirements</p> <p>b) Policy is not supported unless amendments are made to the policy to address concerns with the treatment of open space.</p> <p>c) Ceding approx. 18sqm of land for a laneway for no value, materially cuts into land area that could be classified as open space to support the development sizing.</p> <p>d) The ceding of land for a laneway creates a material penalty and inequitable treatment unless the ceded land can be classed as open space to meet the 40% open space requirement under R60.</p> <p>e) The common driveway for grouped development is counted as open space to meet the R60 open space requirement as per the recent grouped dwelling development as was the case for a recent development approved by Council at Lot 740, No. 35 The Avenue.</p> <p>f) Policy is not supported in its current form but an amended policy would be supported if the ceded land can be classed as open space for the purposes of assessing the open space requirements for an R60 development or the otherwise an allowance in assessing applications be made for land which is ceded to ensure an equitable outcome is achieved.</p>	<p>Avenue has not yet been approved. It has been scheduled to be considered at the June Ordinary Council Meeting.</p> <p>b) The application as amended does not meet Clause 4.8.1 of the <i>LPP-Residential Development: single and grouped dwellings</i> which is to be read as one of the 'Deemed-to-comply' provisions related to Element 5.3.2 Landscaping. It is understood that Administration has not included the common driveway area towards meeting the requirement of Clause 4.8.1 minimum 20% site area. Administration is assessing the provision of landscaping against Design Principle P2 rather than the 'Deemed-to-comply' pathway with opportunity for the application of Council discretion.</p>
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				g) Note that clause 4.1.5 requiring that 'Finished levels shall be 150mm less the adjoining properties' is being reconsidered.	
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PD30.20	Local Planning Scheme 3 – Local Planning Policy: Short Term Accommodation - Amendments
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Committee	9 June 2020
Council	23 June 2020
Applicant	City of Nedlands
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Reference	Nil
Previous Item	OCM 26 November 2019 – PD47.19
Attachments	<ol style="list-style-type: none"> 1. Draft Short Term Accommodation LPP with amendments – tracked changes 2. Legal Advice from Flint Legal provided by applicant for 135 Broadway Nedlands

1.0 Executive Summary

The purpose of this report is for Council to prepare (adopt for advertising) amendments to the Local Planning Policy - Short Term Accommodation (LPP). It is proposed that the policy be modified to include several amendments. These amendments are identified on the draft revised policy at Attachment 1.

The purpose of this policy is to provide guidance and development provisions for operators seeking to establish short-term accommodation land uses within the City of Nedlands.

If Council choose to consider the amendments to the LPP the amended version will be advertised to the community as per the requirements of the City's Consultation of Planning Proposals Local Planning Policy and the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015.

2.0 Recommendation to Committee

Council prepares, and advertises for a period of 21 days in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Division 2, Clause 5(1) the amendments to the Local Planning Policy - Short Term Accommodation as included in Attachment 1.

3.0 Background

At the Council Meeting 27 August 2019 Council resolved to prepare and advertise the Short Term Accommodation Local Planning Policy for a period of 21 days, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4.

The Short Term Accommodation LPP was amended through Council's resolution at the Council Meeting, prior to being advertised, to:

- add an additional clause (k) in section 7.0 Management Plan 7.1 to provide details of waste disposal; and
- remove former clauses 4.2(b) and 4.4(b) which were in relation to short term accommodation uses having to be within 250m of a high frequency bus stop or 800m of a high frequency train station or 400m from a hospital or university.

At the Council Meeting 26 November 2019 Council resolved to adopt the Short Term Accommodation Local Planning Policy, post advertising. The Council's Resolution was as follows:

1. adopts the Short-Term Accommodation Local Planning Policy, with modifications as set out in Attachment 1, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4;
2. approves a 6-month amnesty period from December 2019 until May 2020 (inclusive) for any retrospective change of use applications received for short-term accommodation uses as defined in the Short Term Accommodation Local Planning Policy where they will be charged the standard change of use fee rather than the retrospective (3 times) fee; and
3. instructs the CEO when the State Government makes amendments to the deemed provisions, the CEO is to review and amend the relevant Local Planning Policy as required for presentation to Council for approval.

It is noted that thus far, during the amnesty period from December 2019 until May 2020 (inclusive), the City has received two applications for short term accommodation.

The LPP was first tested against a complex development application with the submission of a Mixed Use development proposal at 135 Broadway Nedlands. This application was approved by the Metro West JDAP on the 3 April 2020. During the application consideration process, several key built form elements that the LPP did not address were identified. The amendments are now presented to Council seeking to rectify this.

4.0 Detail

During the application process for the approved Mixed Use development at 135 Broadway Nedlands, the applicant provided the City with advice that highlighted legal weaknesses with Clause 4.6 (a) of the LPP, which requires Serviced Apartments to comply with built form standards for Multiple Dwellings. Due to this, it is recommended that this clause be removed from the LPP. Further information regarding this matter is provided in the proposed modifications to the policy section below.

Some further amendments to the LPP relating to built form requirements for Serviced Apartments have also been included. These proposed clauses address issues including the separation of uses where Serviced Apartments and Multiple Dwellings are proposed in the same development, and visual privacy. These matters were raised during the application process for 135 Broadway Nedlands, and Administration considers that it is now pertinent to make amendments to the LPP that circumvent similar issues from occurring in future developments. Further information regarding these matters is provided in the proposed modifications to the policy section below.

5.0 Consultation

If Council resolves to prepare the amendments to the LPP it will be advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 5(1) of the Planning and Development (Local Planning Schemes) Regulations 2015. This will include a notice being published in the newspaper and details being included on the City's website, Your Voice page and social media pages, in accordance with the City's Consultation of Planning Proposals LPP.

Following the advertising period, the policy will be presented back to Council for it to consider any submissions received and to:

- (a) Proceed without the amendments to the policy; or
- (b) Proceed with the amendments to the policy.

6.0 Strategic Implications

How well does it fit with our strategic direction?

The LPP – Short Term Accommodation establishes built form and development requirements for various forms of temporary accommodation within the City. The amendments to the LPP provide further guidance to applicants wishing to establish temporary accommodation, in line with community and legal feedback. This will allow the City to guide applicants to design developments in a way that is considered to be high quality and in keeping with the City's strategic direction for key Mixed Use areas.

Who benefits?

The community, Council and Administration will benefit from the guidance provided by the amendments to the LPP – Short Term Accommodation, through better built form outcomes and a stronger policy framework.

Does it involve a tolerable risk?

The proposed amendments to the LPP – Short Term Accommodation is considered to reduce the risk associated with proposed temporary accommodation developments, through the provision of a more robust and specific planning framework.

Do we have the information we need?

Yes.

7.0 Budget Implications

Can we afford it?

The amendments to the LPP – Short Term Accommodation will have no impact upon the budget. The forecast cost associated with this proposal is for advertising costs only.

How does the option impact upon rates?

Nil.

Proposed modifications to policy

- 1) Removal of Clause 4.6 (a):

Applications for Serviced Apartments shall be subject to the siting and design requirements applicable to the site for Multiple Dwellings under the Residential Design Codes (excluding Plot Ratio requirements), and any relevant Precinct Policy, Local Planning Policy or Local development Plan applicable for the area;

Legal advice provided to the City (included as Attachment 2) outlines that Clause 4.6 (a) of the LPP is not based on sound town planning principles, as it seeks to apply residential development standards to a different land use, in this scenario, serviced apartments. Little weight can therefore be applied to this requirement in a judicial process, for instance if the application were to be presented to SAT. It is therefore recommended that Clause 4.6(a) be removed from the LPP.

2) Insertion of Clause 4.6 (b):

Separate entrances shall be provided for permanent and temporary residents where Serviced Apartments and Multiple Dwellings are proposed within the same development;

3) Insertion of Clause 4.6 (c):

Separation shall be provided between the Serviced Apartment and Multiple Dwelling uses, either by containing the uses on different floors or through spatial separation i.e. hallway and dividing doors between residential uses at the rear of the building and serviced apartments at the front of the building;

The addition of these clauses requires increased separation within the development between Serviced Apartments and Multiple Dwellings. This provides for the increased protection of the amenity, privacy and security of permanent residents of a proposed development.

4) Insertion of Clause 4.6 (d):

The rear interface of buildings shall not feature balconies or habitable room windows appurtenant to Serviced Apartments.

The 135 Broadway Nedlands application received intense scrutiny in relation to its impact on the visual privacy of surrounding residential properties. Although the development was largely compliant with the advised setbacks of the State Planning Policy Residential Design Codes Volume 2, the perceived visual privacy implications was a source of concern amongst community members. This requirement is intended to soften the interface between Serviced Apartments and residential properties by significantly reducing the potential for overlooking of residential dwellings.

8.0 Statutory Provisions

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 2, Division 2, Clause 5(1) of the Regulations, dictates that a Local Government may follow the procedure as per Schedule 2, Part 2, Division 2, Clause 4 to prepare amendments to a Local Planning Policy.

Schedule 2, Part 2, Division 2, Clause 5(1) requires that once Council resolves to prepare amendments to an LPP it must publish a notice of the proposed policy in a newspaper circulating the area for a period not less than 21 days.

9.0 Conclusion

The Short Term Accommodation Policy provides the City with an operative local planning framework in place under LPS 3 to adequately address the operation and management requirements associated with Short Term Accommodation uses. The amendments proposed to the LPP provide additional framework through which the City may seek to control the built form outcomes of future developments that include a proposal for Short Term Accommodation.

It is recommended that Council endorses administration's recommendation as set out in the resolution.



LOCAL PLANNING POLICY – SHORT TERM ACCOMMODATION

1.0 PURPOSE

- 1.1 The purpose of this policy is to provide guidance and development provisions for operators seeking to establish short-term accommodation within the City of Nedlands.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all short-term accommodation proposals captured by the following land use categories as defined in Local Planning Scheme No. 3, within all zones:
- Bed and breakfast;
 - Holiday house;
 - Holiday accommodation; and
 - Serviced apartments.
- 2.2 Where this Policy is inconsistent with a Local Development Plan or Local Planning Policy that applies to a specific site, area or R-Code, the provisions of that specific Local Development Plan or Local Planning Policy shall prevail.

3.0 OBJECTIVES

- 3.1 To ensure the location and scale of short-term accommodation uses are compatible with the surrounding area.
- 3.2 To maintain a high standard of amenity for the surrounding neighbourhood through required management controls.
- 3.3 To ensure properties used for a short-term accommodation uses do not have an undue impact on the residential amenity of the area by way of noise, traffic, or parking.
- 3.4 To establish a clear framework for the assessment and determination of applications for short-term accommodation.

4.0 POLICY MEASURES

Holiday House

- 4.1 Applications for Holiday House where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.2 Applications for Holiday House, where a keeper does not reside on-site may be supported where:
- (a) The number of guests is limited to 6 persons; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: *A Holiday house land use relates to short term accommodation within a single house. Where a variation is sought, Clause 11.1 of this policy applies.*



Holiday Accommodation

- 4.3 Applications for Holiday Accommodation where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.4 Applications for Holiday Accommodation, where a keeper does not reside on-site may be supported where:
 - (a) The occupancy is limited to 6 persons or less; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: A Holiday Accommodation land use relates to short term accommodation within grouped or multiple dwellings.

Where a variation is sought, Clause 11.1 of this policy applies.

Bed and Breakfast Requirements

- 4.5 Management:
 - (a) The keeper of the bed and breakfast accommodation must always reside at the premises while the Bed and Breakfast is in operation;
 - (b) Breakfast is required to be provided to guests;
 - (c) Breakfast (and other meals if provided) are provided to bed and breakfast guests only;
 - (d) Access to a separate bathroom must be provided for bed and breakfast guests; and
 - (e) Access to a dining area and laundry facilities should be provided for bed and breakfast guests.

Serviced Apartments

- 4.6 Design:

~~Applications for Serviced Apartments shall be subject to the siting and design requirements applicable to the site for Multiple Dwellings under the Residential Design Codes (excluding Plot Ratio requirements), and any relevant Precinct Policy, Local Planning Policy or Local development Plan applicable for the area; and~~

 - (a) ~~Applications for Serviced Apartments shall include within the entrance, foyer or lobby a reception desk which shall always be attended by staff when apartment check-ins and check-out can occur;~~
 - (b) ~~Separate entrances shall be provided for permanent and temporary residents where Serviced Apartments and Multiple Dwellings are proposed within the same development;~~
 - (c) ~~Separation shall be provided between the Serviced Apartment and Multiple Dwelling uses, either by containing the uses on different floors or through spatial separation i.e. hallway and dividing doors between residential uses at the rear of the building and serviced apartments at the front of the building;~~
 - (d) ~~The rear interface of buildings shall not feature balconies or habitable room windows appurtenant to Serviced Apartments.~~

Commented [FA1]: Propose to remove this requirement, original Clause 4.6(a) as per legal advice provided by the applicant during the 135 Broadway Nedlands application, included as Attachment 2.

Commented [FA2]: No changes proposed to this Clause, but it becomes Clause 4.6(a).

Commented [FA3]: New Clauses (b) and (c) dealing with separation of serviced apartments and multiple dwellings where both uses are proposed within the same building.

Commented [FA4]: New Clause (d) dealing with rear interface issues, as these were a concern during the 135 Broadway Nedlands application.



4.7 Servicing Strategy:

- 4.7.1 In addition to the Management Plan in accordance with Clause 7.1, all applications for Serviced Apartments shall include a Servicing Strategy detailing the level of servicing containing, but not limited to the following:
- (a) Opening hours for guest check-ins and checkouts;
 - (b) Method of reservations/bookings;
 - (c) Means of attending to guest complaints;
 - (d) Cleaning and laundry services, where available;
 - (e) Company name and relevant experience of management/operator; and
 - (f) Management and accommodation of servicing vehicles within the context of the overall car parking for the development.

5.0 CAR PARKING

- 5.1 Car parking is to be in accordance with the requirements of the Parking Local Planning Policy.

6.0 SIGNAGE

- 6.1 Signage is limited to, 1 x Name Plates and wall signs and 1 x Portable sign (within property boundary) and is to be in accordance with the requirements of the Signs Local Planning Policy.

7.0 CONSULTATION

- 7.1 Consultation with affected landowners will be undertaken in accordance with the City's Consultation of Planning Proposals Local Planning Policy.
- 7.2 Applications where a short-term accommodation uses are listed as 'A' in the Zoning Table of the Scheme or where a variation is proposed to this Policy are to be advertised in accordance with the requirements of the Consultation of Planning Proposals Local Planning Policy.



8.0 MANAGEMENT PLAN

8.1 The Management Plan report is to include the following, **as a minimum**:

- (a) Establishing the maximum number of guests which will stay, in addition to (if applicable) those which reside at the property on a permanent basis.
- (b) Establishing a code of conduct detailing the expected behaviour and obligations of guests. The code of conduct shall be displayed in a prominent position within the premises.
- (c) Details of how complaints regarding anti-social behaviour, car parking and noise, amongst other matters, will be managed by the landowner(s).
- (d) The contact details of the landowner(s) if a neighbour wants to lodge a complaint.
- (e) Details regarding guest check-in and check-out procedures (i.e. days and times).
- (f) Details of how car parking for those staying at the property and (if applicable) those residing at the property on a permanent basis, will be managed by the landowner(s). The measures proposed are to ensure vehicles will always have easy access to on site car parking spaces.
- (g) Details of how the guests will be informed of the requirements for parking.
- (h) Details regarding how guests are expected to maintain the property.
- (i) Details whether pets and guests associated with those staying at the property will be permitted, and if so, how this will be managed.
- (j) Details of compliance with Strata By-laws (if applicable) in the form of a Statement of Compliance.
- (k) To provide details of waste disposal.

Notes: An example of a Management Plan is shown in Appendix 1.

9.0 BUSHFIRE MANAGEMENT

9.1 Where a property is within a designated Bushfire Prone Area, applications for Development approval will be required to comply with State Planning Policy (SPP 3.7) Planning in Bushfire Prone Areas, and any building requirements as required by the Building Code of Australia.

9.2 Short term accommodation is a vulnerable land use under SPP3.7 and may require a Bushfire Management Plan (BMP) submitted by a certified Level 2 or 3 Bushfire Management Consultant to the satisfaction of the City. Where a property is within a Bushfire Prone Area the application may require a referral to the Department of Fire and Emergency Services (DFES). The City will take into consideration comments from DFES in making their determination.

10.0 OTHER CONSIDERATIONS – HEALTH AND BUILDING APPROVAL

10.1 The applicant is advised to consult with the City's Building Services & Environmental Health Services to determine if a Building Permit, Food Business Registration or Aquatic facilities approval is required for a short-term accommodation use.



11.0 APPROVAL PERIOD

- 11.1 The City may grant temporary development approval for short-term accommodation uses for an initial 12-month period.
- 11.2 Following this initial 12-month period, a subsequent development approval will be required to be submitted for the renewal of the approval for the short-term accommodation which may then be on a permanent basis.
- 11.3 As part of considering a renewal, the City will give regard to any substantiated complaints against the operation of the short-term accommodation in accordance with the conditions of its development approval. Should a subsequent approval be granted, this may also be for a time limited period if the City is not satisfied that the use has not caused amenity impacts on neighbouring properties.

12.0 VARIATIONS TO POLICY

- 12.1 Where a variation to this policy is sought, consideration shall be given to objectives of the policy.

13.0 ADDITIONAL DEVELOPMENT APPLICATION REQUIREMENTS

- 13.1 In addition to the general requirements for an application for development approval, the following are required:
- (a) Detailed management plan, as per clause 9.1.
- 13.2 In Strata Title situations the consent of the Strata Company is required in accordance with the provisions of the Strata Titles Act 1985 and associated By-Laws. The Strata Company are to complete and sign the landowner section of the City's Development Application Form prior to lodgement.

14.0 RELATED LEGISLATION

- 14.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.
- 14.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:
- Planning and Development (Local Planning Schemes) Regulations 2015
 - Local Planning Scheme No. 3
 - State Planning Policy 7.3 – Residential Design Codes
 - State Planning Policy 3.7 – Planning in Bushfire Prone Areas
 - Parking Local Planning Policy
 - Consultation of Planning Proposals Local Planning Policy
 - Signs Local Planning Policy

**15.0 DEFINITIONS**

15.1 For this policy the following definitions apply:

Definition	Meaning
Bed and breakfast	Means a dwelling - (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and, (b) containing not more than 2 guest bedrooms.
Grouped dwelling	As per the R-Codes, being, a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise and includes a dwelling on a survey strata with common property.
Guest	Means a person who accommodates a short-term accommodation for a fee.
Keeper	Means a person who permanently resides on site and is responsible for its upkeep and management of the accommodation.
Holiday accommodation	Means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.
Holiday house	Means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.
Multiple dwelling	As per the R-codes, being, a dwelling in a group of more than one dwelling on a lot where any part of the plot ratio of the dwelling is vertically above any part of the plot ratio area of any other but: <ul style="list-style-type: none"> • does not include a grouped dwelling; and • includes any dwellings above the ground floor in a mixed-use development.
Serviced Apartment	Means a group of units or apartments providing- (a) self-contained short stay accommodation for guests; and (b) any associated reception or recreation facilities.
Single house	As per the R-Codes, being, a dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property.
Self-contained	Means accommodation having its own kitchen, bathroom and bedroom facilities.
Short term accommodation	Means temporary accommodation provided either continuously or from time to time with no guest/s accommodated for periods totalling more than 3 months in any 12-month period.
Strata Company	Means a body corporate constituted under section 32 of the Strata Titles Act 1985 whether for a strata scheme or a survey-strata scheme. Council of Owners means an elected representative council of a strata company constituted or deemed to have been constituted under the Strata Titles Act 1985.

Council Resolution Number	PD47.19
Adoption Date	OCM 26 November 2019
Date Reviewed/Modified	



Appendix 1 – Management Plan Template

Note: When developing a Management Plan, the headings below are to be followed as a minimum guide in terms of level of detail required by the City of Nedlands.

1.0 Introduction

Property address and overview of the short-term accommodation you wish to conduct at the property.

2.0 Check In

Check in time for guests.

3.0 Check out

Check out time for guests.

4.0 Complaints Management

How will you deal with complaints how do you wish for complaints to be received and whom to?

5.0 Use of Premises

How many people will the property be rented to at any given time and for how long?

6.0 On-Site Register

An onsite register should be provided for all residents to provide their full name, usual place of residence and check in and out dates.

7.0 Maintenance

Refers to both maintenance of the gardens and the buildings.

8.0 Guest Guide

Information to be provided in the Guest Guide e.g.:

- *Manager and contact details*
- *Code of Conduct*
- *Wi-Fi Device name and password*
- *Key lockbox code*
- *TV Information*
- *Air Conditioner operation*
- *Location of the first aid kit*
- *Extra towels and sheets*
- *Hot water systems operation*
- *Rubbish bin location*
- *Check in time*



- *Check out time*
- *Local restaurant and shopping*
- *Local parks and recreation services*
- *Important contact numbers*
- *Other major attractions*
- *Any other information required*

9.0 Managers Guide

A guide shall be prepared for the manager and kept in a folder by the manager, documenting tasks and processes for the following:

- *General hosting (Including liaisons with clients, providers and Local Government)*
- *Cleaning information between occupants*
- *Laundry requirements*
- *Garden preventative maintenance*
- *Building preventative maintenance*

10.0 Code of Conduct for Guests and Visitors

Provide information under all below headings to show how each of these requirements will be adequately managed.

10.1 General Principles

Short term Accommodation is a unique experience and the guiding principles of this Code of Conduct are as follows.

10.2 General Requirements

General Requirements Guests must adhere to.

10.3 Noise and Residential Amenity

Noise requirements for guests.

10.4 Visitors

Will visitors other than those who have booked be able to stay or visit the property?

10.5 Gathering or Functions

Are gatherings or functions allowed at the property?

10.6 Parking

How much parking is provided for guests?

10.7 Garbage and Recycling

How will rubbish and recycled goods be disposed of?



10.8 Security

What security measures will be at the property?

10.9 Smoking

Will smoking be tolerated at the property?

10.10 Pets

Will pets be allowed at the property?

10.11 Damages and Breakages

How will damages and breakages be dealt with at the property?

10.12 Compliance

How will breaches of this code of conduct be dealt with?

Our ref: 20-011

5 November 2019

Mr Christopher Ng
Director
Cedar Cove Pty Ltd
By e-mail: chris@cedarcove.com.au

Dear Mr Ng

135 Broadway, Nedlands – application for planning approval

I confirm you seek my advice as to three issues that have arisen to date in respect of an application for planning approval at 135 Broadway, Nedlands (**Property**).

Background and instructions

- 1 Cedar Cove Pty Ltd (**Cedar Cove**) is the registered proprietor of the Property.
- 2 Under the *City of Nedlands Local Planning Scheme No.3 (LPS3)* the Property is zoned 'Mixed Use' and is coded 'R-AC3' (see *State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments (R-Codes Volume 2)*).
- 3 Cedar Cove has applied for planning approval for a development on the Property comprising 26 serviced apartments and a café (**Application**).
- 4 At its meeting on 22 October 2019, the Council of the City of Nedlands (**City**) considered a Responsible Authority Report in respect of the Application prepared by the Executive of the City for submission to the Metropolitan West Joint Development Assessment Panel (the determining authority in respect of the Application) (**RAR**).
- 5 Amongst other matters, the RAR contains the following recommended reasons for refusing the Application:

5.1 Reason 2 – 'Mixed Use' zone objectives

Having regard to clause 67(a) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, the development does not satisfy the objectives of the Mixed-Use zone within the City's Local Planning Scheme No.3 as the development does not provide for a significant residential component as part of the development. Further to this, the applicant has not adequately addressed the ability to provide multiple dwellings on the site in the future. The

development was found to have material amenity impact on the adjoining properties. (Reason 2)

5.2 Reason 7 – plot ratio

The amended plans have increased the plot ratio from approximately 2.78 to 3. The default plot ratio for R-AC3 is 2, so the applicant is seeking further discretion which would trigger the need for further advertising, which has not been undertaken. (Reason 7)

6 In light of Reason 2 and Reason 7 above, I am instructed as follows:

6.1 In respect of Reason 2, provide my advice as to the ability of the proposed development to be approved without there being a significant residential component, including:

- * whether the proposed development can be approved with serviced apartments in lieu of multiple dwellings; and,
- * whether the ability to convert the serviced apartments to multiple dwellings is enough to satisfy the 'Mixed Use' zone objectives.

6.2 In respect of Reason 7, provide any relevant comment I have.

7 Additionally, you seek my advice as to the weight to be placed on the City's draft *Local Planning Policy – Short Term Accommodation (draft LPP)*, and in particular clause 4.6(a) of the draft LPP, which provides as follows:

Serviced Apartments

4.6 *Design:*

- (a) *Applications for Serviced Apartments shall be subject to the siting and design requirements applicable to the site for Multiple Dwellings under the Residential Design Codes (excluding Plot Ratio requirements), and any relevant Precinct Policy, Local Planning Policy or Local Development Plan applicable for the area*
...

8 It is important to note that if any information in this 'Background and instructions' is not correct it may affect my advice that follows. Therefore, if any information in this 'Background and instructions' is not correct please advise me immediately.

Analysis – Reason 2 – 'Mixed Use' zone objectives

9 The objectives of the 'Mixed Use' zone are set out in Table 2 within clause 16(2) of LPS3 and are as follows:

- *To provide for a significant residential component as part of any new development.*

-
- *To facilitate well designed development of an appropriate scale which is sympathetic to the desired character of the area.*
 - *To provide for a variety of active uses on street level which are compatible with residential and other non-active uses on upper levels.*
 - *To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres and eating establishments which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.*

10 In considering the Application, due regard is to be had to the objectives of the 'Mixed Use' zone. However, the objectives do not go to the ability to approve the Application – they are not requirements that must be met. As the State Administrative Tribunal (**Tribunal**) said recently in *West Australian Shalom Group Inc. and City of Swan* [2019] WASAT 80 (**Shalom**) (copy attached) at [53]:

The ordinary meaning of 'objectives', when used as a noun, is 'an end towards which efforts are directed; something aimed at': Macquarie Dictionary Online.

11 Therefore, if the view were taken that the proposed development does not 'provide for a significant residential component', the Application is still able to be approved.

12 I pause to note that, irrespective of consideration of the objectives of the 'Mixed Use' zone, the Application can be approved. Of all the considerations to be taken into account in determining the Application, the only one that goes to the issue of whether the Application can be approved is whether each of the uses is able to be approved under the zoning table in LPS3 ('Table 3 – Zoning table' in clause 17). Reference to the zoning table immediately confirms that 'Serviced apartment' and 'Restaurant/café' are able to be approved in the 'Mixed Use' zone.

13 What then is to be made of an assessment of the Application against the objectives of the 'Mixed Use' zone? Again, the Tribunal's decision in *Shalom* is instructive.

14 In *Shalom* the Tribunal was dealing with two proposals – the Park Street proposal and the Forest Road proposal. In respect of each proposal there were a number of objectives applicable pursuant to the *City of Swan Local Planning Scheme No.17 (LPS17)* and the *Swan Valley Planning Act 1995 (SVP Act)*.

15 In respect of each proposal the Tribunal made a determination as to whether it was appropriate or inappropriate in respect of each applicable objective. Having undertaken that exercise the Tribunal then weighed those determinations along with the other factors relevant to each proposal to determine, in the exercise of discretion, whether approval ought to be granted. The Tribunal said at [199]:

The Tribunal must weigh each of the relevant factors for consideration and make a discretionary determination as to the correct and preferable decision in relation to the Park Street proposal and the Forest Road proposal.

16 The outcome in *Shalom* was the approval of both proposals, despite:

-
- 16.1 In the case of the Park Street proposal, the proposal being 'neither appropriate nor inappropriate' by reference to the applicable objectives in LPS17 and 'not inconsistent' with the applicable objectives in the SVP Act.
- 16.2 In the case of the Forest Road proposal, the proposal being:
- * 'neither appropriate nor inappropriate' by reference to two of the three applicable objectives in LPS17; and,
 - * significantly, required to be discouraged by one of the applicable objectives in the SVP Act.
- 17 The *Shalom* decision emphasises the point I make in 11 above, i.e. if the view were taken that the proposed development does not 'provide for a significant residential component', the Application is still able to be approved.
- 18 It follows that the proposed development can be approved with serviced apartments in lieu of multiple dwellings.
- 19 Is the ability to convert the serviced apartments to multiple dwellings enough to satisfy the objectives of the 'Mixed Use' zone? This query, of course, arises in the context of the first objective, being:
- *To provide for a significant residential component as part of any new development.*
- 20 The term 'residential' connotes permanent accommodation. Therefore, the ability to convert the serviced apartments to multiple dwellings is certainly more appropriate when assessed against the objective 'To provide for a significant residential component as part of any new development' than if that were not the case. I emphasise again, however, that the extent to which the proposed development meets the objective 'To provide for a significant residential component as part of any development' is to be weighed against all other relevant factors, including the extent to which the other three objectives of the 'Mixed Use' zone are met.
- 21 There is one other matter I wish to address. In the Responsible Authority Report for this matter published on the Department of Planning, Lands and Heritage website (**published RAR**), Reason 2 has been amended to add at the end 'and as such does not satisfy the discretionary criteria of clause 34 of Local Planning Scheme No.3'. Consequently, Reason 2 now reads as follows:
- Having regard to clause 67(a) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015, the development does not satisfy the objectives of the Mixed-Use zone within the City's Local Planning Scheme No.3 as the development does not provide for a significant residential component as part of the development. Further to this, the applicant has not adequately addressed the ability to provide multiple dwellings on the site in the future. The development was found to have material amenity impact on the adjoining*

properties and as such does not satisfy the discretionary criteria of clause 34 of Local Planning Scheme No.3.

- 22 Reference to clause 34 of LPS3 is erroneous for the following reasons:
- 22.1 Clause 34 deals with site and development requirements. The objectives of the 'Mixed Use' zone are neither a site nor a development requirement.
- 22.2 In any event, clause 34 is dealing with 'additional site and development requirements' set out in clauses 32 and 33. The objectives of the 'Mixed Use' zone are set out in Table 2 within clause 16(2) of LPS3.

Analysis – Reason 7 – plot ratio

- 23 Table 6 within clause 32(1) of LPS3 'sets out requirements relating to development that are additional to those set out in the R-Codes, activity centre plans, local development plans or State or local planning policies'.
- 24 No. 32.4(5) of Table 6 provides in respect of the 'Mixed Use, Local Centre and Neighbourhood Centre zones' that:

In relation to developments that are not subject to the R-Codes, where development standards are not specified in an approved structure plan, local development plan and/or activity centre plan, the development standards are subject to the applicable R-Code.

- 25 The proposed development is not subject to the R-Codes as it does not propose any of the residential purposes dealt with by the R-Codes. The Property is not the subject of 'an approved structure plan, local development plan and/or activity centre plan'. Therefore, as a consequence of No. 32.4(5) of Table 6 within LPS3, the development standards applicable to the proposed development are those set out in the R-Codes Volume 2 in respect of the coding 'R-AC3'.
- 26 The calculation of plot ratio under the R-Codes Volume 2 is to be carried out by reference to the following definitions in the R-Codes Volume 2:

Plot ratio – the ratio of the gross **plot ratio area** of **buildings** on a **development site** to the area of land in the site boundaries.

Plot ratio area – the gross total area of all floors of **buildings** on a **development site**, including the area of any internal and external walls but not including:

- the areas of any lift shafts
- stairs or stair landings common to two or more **dwelling**s
- machinery, air conditioning and equipment rooms
- space that is wholly below **natural ground level**

- *areas used exclusively for the parking of wheeled vehicles at or below natural ground level;*
- *storerooms*
- *lobbies, bin storage areas, passageways to bin storage areas or amenities areas common to more than one dwelling*
- ***balconies, eaves, verandahs, courtyards and roof terraces.***

(bold in original)

27 I confirm your instructions that the City has calculated the plot ratio area for the proposed development by reference to the definition in 26 above with two changes. Those changes are to include the following on the basis that the development does not propose multiple dwellings:

- stairs or stair landings common to two or more dwellings
- lobbies, bin storage areas, passageways to bin storage areas or amenities areas common to more than one dwelling.

This position is consistent with the statement by the City in the published RAR that 'Elements [of the R-Codes Volume 2] that refer to dwelling requirements have not been included'.

28 The comments I make about Reason 7 are as follows:

28.1 Reason 7 states that the 'amended plans have increased the plot ratio from approximately 2.78 to 3'. Of course, the method by which this plot ratio was determined is different to that prescribed in the R-Codes Volume 2 (see 27 above).

28.2 Reason 7 then states that '[t]he default plot ratio for R-AC3 is 2' under the R-Codes Volume 2. This is correct. However, the plot ratios of '2' and '3' are not comparable because they have been determined using different methods of calculation.

28.3 Reason 7 then states 'so the applicant is seeking further discretion'.

Firstly, as the two plot ratios have been calculated differently it is meaningless to compare them.

Secondly, to speak of a 'variation' under the R-Codes Volume 2 is erroneous. Page iv of the R-Codes Volume 2 specifies the manner in which they operate as follows:

› ***Performance-based policy***

*This is a performance-based policy. Applications for **development** approval need to demonstrate that the design achieves the*

objectives of each design element. While addressing the Acceptable Outcomes is likely to achieve the Objectives, they are not a deemed-to-comply pathway and the proposal will be assessed in context of the entire design solution to ensure the Objectives are achieved. Proposals may also satisfy the Objectives via alternative means or solutions.

(bold in original)

- 29 I note that the published RAR no longer cites plot ratio as a reason for refusal, although it has still been calculated as per 27 above and then compared to the 'Acceptable Outcome' plot ratio of 2.0 calculated as per 26 above (see p.21 and attachment 9).

Analysis - the weight to be placed on clause 4.6(a) of the draft LPP

- 30 The Council of the City resolved to advertise the draft LPP at its meeting on 27 August 2019.
- 31 The published RAR states that the draft LPP 'is currently being advertised and will be considered by Council for adoption later this year', although I note that by reference to yourvoice.nedlands.wa.gov.au advertising may have closed on 3 October 2019.
- 32 It would appear that the intention of clause 4.6(a) of the draft LPP is to amend the effect of No. 32.4(5) of Table 6 within LPS3 and thereby get around the position that the dwelling requirements of volumes 1 and 2 of the Residential Design Codes are not applicable to serviced apartments.
- 33 There is a fundamental problem with clause 4.6(a) of the draft LPP that strikes at its validity. It is clearly inconsistent with No. 32.4(5) of Table 6 within LPS3 (see 31 above) and therefore cannot be valid. A local planning policy cannot operate inconsistently with the relevant local planning scheme, nor can it have the effect of amending the relevant local planning scheme.
- 34 In 35-42 below, I have gone on to consider what weight ought to be placed on clause 4.6(a) of the draft LPP if it were to be valid.
- 35 Clause 67(b) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions)* provides that 'due regard' is to be had to a 'proposed planning instrument that the local government is seriously considering adopting or approving'.
- 36 The term 'planning instrument' in clause 67(b) of the Deemed Provisions includes a local planning policy (see *Terra Spei Pty Ltd and Shire of Kalamunda* [2015] WASAT 134 (***Terra Spei***) (copy attached) at [204]).
- 37 Having been adopted for advertising, the draft LPP is a 'proposed planning instrument that the local government is seriously considering adopting or approving' (see *Newsonic Pty Ltd and City of Stirling* [2008] WASAT 282 (copy attached) at [32]).
- 38 Therefore, if clause 4.6(a) of the draft LPP were to be valid, 'due regard' is to be had to it.

-
- 39 The Tribunal made it clear in *Terra Spei* that once a proposed planning instrument is to be given 'due regard' pursuant to clause 67(b) of the Deemed Provisions the principles outlined in *Nicholls and Western Australian Planning Commission* [2005] WASAT 40 as to the weight to be given to such a document continue to apply (see *Terra Spei* at [205]-[206]).
- 40 The four principal criteria to be applied in determining the weight which should appropriately be given to a draft (or proposed) planning instrument are as follows (see *Terra Spei* at [205]):
- (1) *The degree to which the draft addresses the specific application.*
 - (2) *The degree to which the draft is based on sound town planning principles.*
 - (3) *The degree to which its ultimate approval could be regarded as 'certain'.*
 - (4) *The degree to which its ultimate approval could be regarded as 'imminent'.*
- 41 My assessment of clause 4.6(a) of the draft LPP against the four criteria set out in 40 above is as follows:
- 41.1 Clause 4.6(a) of the draft LPP does address the Application due to it dealing with serviced apartments.
- 41.2 Clause 4.6(a) of the draft LPP is not based on sound town planning principles.
- It is seeking to apply residential development standards to a different land use, being serviced apartments. Clause 4.6(a) of the draft LPP, with due respect to the City, seems to be a knee-jerk reaction when what is needed is appropriately considered standards directly relevant to serviced apartments.
- Furthermore, it is not orderly and proper planning in this circumstance to effectively attempt to amend No. 32.4(5) of Table 6 within LPS3 (a written law) by way of a local planning policy. Indeed, No. 32.4(5) of Table 6 within LPS3 specifically allows for development standards to be introduced via structure plans, local development plans and activity centre plans, not via a local planning policy.
- 41.3 As the draft LPP is still out for advertising the degree to which its ultimate approval will be in its present form, including in respect of clause 4.6(a), cannot at all be regarded as certain.
- 41.4 It may be that the ultimate approval of the draft LPP can be regarded as imminent.

42 In my opinion, the assessment recorded in 41 above leads to the clear conclusion that at this point in time, if valid, little weight can be given to clause 4.6(a) of the draft LPP.

If you have any queries, please contact me on 0403 861 896 or by e-mail at martin@flintlegal.com.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. Flint', with a stylized flourish at the end.

Martin Flint
Director

Att.