

Planning and Development Services Reports

Committee Consideration – 10 April 2012

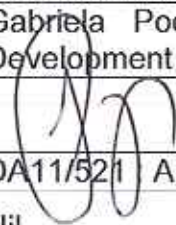
Council Resolution – 24 April 2012

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PD14.12	No. 22 (Lot 307) Adderley Street, Mt Claremont – Retrospective Additions (Carport) to Single House
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Committee	10 April 2012
Council	24 April 2012

Applicant	Elaine Crane
Owner	Elaine Crane
Officer	Elle O'Connor – Planning Officer
Director	Gabriela Poezyn – Acting Director Planning & Development Services
Director Signature	
File ref.	DA11/521 AD2/22
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This application is referred to Council for determination as the proposal does not meet the provisions in the City of Nedlands Town Planning Scheme No. 2 (TPS2) and Council Policy, 6.23 Carports and Minor Structures Forward of the Primary Street Setback.

Recommendation to Committee

Council refuses an application for retrospective carport at No. 22 (Lot 307) Adderley Street, Mt Claremont in accordance with the application and plans dated 30 November 2011, for the following reasons:

1. the carport does not comply with Council's Policy 6.23 '*Carports and Minor Structures Forward of the Primary Street Setback*'; and
2. the approval of this carport will not be orderly and proper planning.

Strategic Plan

- KFA 3: Built Environment
 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

- KFA 5: Governance
 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address: No. 22 (Lot 307) Adderley Street, Mt Claremont
 (Refer to attachment 1)
 Zoning MRS: Urban
 Zoning TPS2: Residential, R10/20 coding
 Lot Area: 1011 m²

In late 2000 an application for a proposed carport at 22 Adderley Street, Mt Claremont was submitted by Mrs. Crane (the Owner). The City's planning department advised her that the carport did not comply with the Local Council Policy 6.23 *Carports and Minor Structures Forward of the Primary Street Setback* as it had reduced setbacks to the front and side boundaries.

The owner decided to withdraw the application for a carport and the application was cancelled in 2001.

Despite the above, the owner decided to construct the carport without receiving planning approval.

It came to the City's attention that the unauthorised carport had been built when a neighbouring resident applied for a carport with a reduced front setback on the basis that there was precedent along this portion of Adderley Street for reduced setbacks.

The City sent a letter to the owner in October 2011 requiring the owner to either remove the unauthorised carport, or submit a retrospective application for planning approval.

Accordingly, a retrospective application was received on 30 November 2011.

Proposal Detail

This proposal is for a retrospective carport with reduced front and side boundary setbacks.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Notification Period: 20 January 2012 – 3 February 2012

The variations identified were advertised by letter to surrounding affected landowners for fourteen days.

Comments received: One (1) comment – Support / No objection

Legislation

- Residential Design Codes (RCodes).
- City of Nedlands Town Planning Scheme No.2 (TPS2) – Clause 5.6.2.
- Policy 6.23 *Carport and Minor Structures Forward of the Primary Street Setback* (Policy 6.23).
- Policy 6.4 *'Neighbour Consultation – Planning Applications'*.

The application proposes the following variations to the provisions of TPS2 and Policy 6.23:

1. Policy 6.23 requires carports to be setback a minimum of 3.5 m from the front boundary. The carport is setback 1 m from the front boundary.
2. Policy 6.23 requires carports to be setback a minimum of 1 m from side boundaries. The carport is setback 0.15 m from the northern side boundary.

Budget/financial implications

Nil

Risk Management

If this retrospective application is approved, it would likely lead to other applications of a similar nature being built contrary to Policy 6.23. Ultimately resulting in the need to amend this policy. It is considered that this would compromise the purpose of the policy, which is to ensure the open character and street amenity of the City.

Discussion

Clause 5.3.3 of the TPS.2 requires a 9.0m front setback in order to retain the open nature and character of the streetscape. Policy 6.23 gives Council discretion to vary the front setback provisions set out in clause 5.3.3 to allow for carports within the 9 m Primary Street Setback subject to requirements.

The variations to the TPS2 and Policy 6.23 are discussed as follows:

Issue: Reduced front setback of the retrospective carport

Requirement	Policy 6.23 requires carports forward of the primary street setback area to have a minimum front setback of 3.5 m.
Proposal	The carport has a front setback of 1 m.
Assessment under Policy 6.23	Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on “ <i>either the relevant adjoining property or the streetscape</i> ”.
Officer technical comment	<p>As seen in Attachment 2 (Site and Elevation Plan) there is ample space within the front setback to locate a 36 m² carport at 3 m from the front boundary. There is no justifiable reason for the carport to be setback at 1 m.</p> <p>The 1 m setback is a significant reduction from the standard 3.5 m required under Policy 6:23. The existing streetscape is very open in nature with minimal building bulk. This variation is not considered to be acceptable as the open character of the streetscape is negatively affected by the reduced setback, and creates precedent for other carports in the locality to be closer to the street.</p>

Issue: Reduced side setback of the retrospective carport

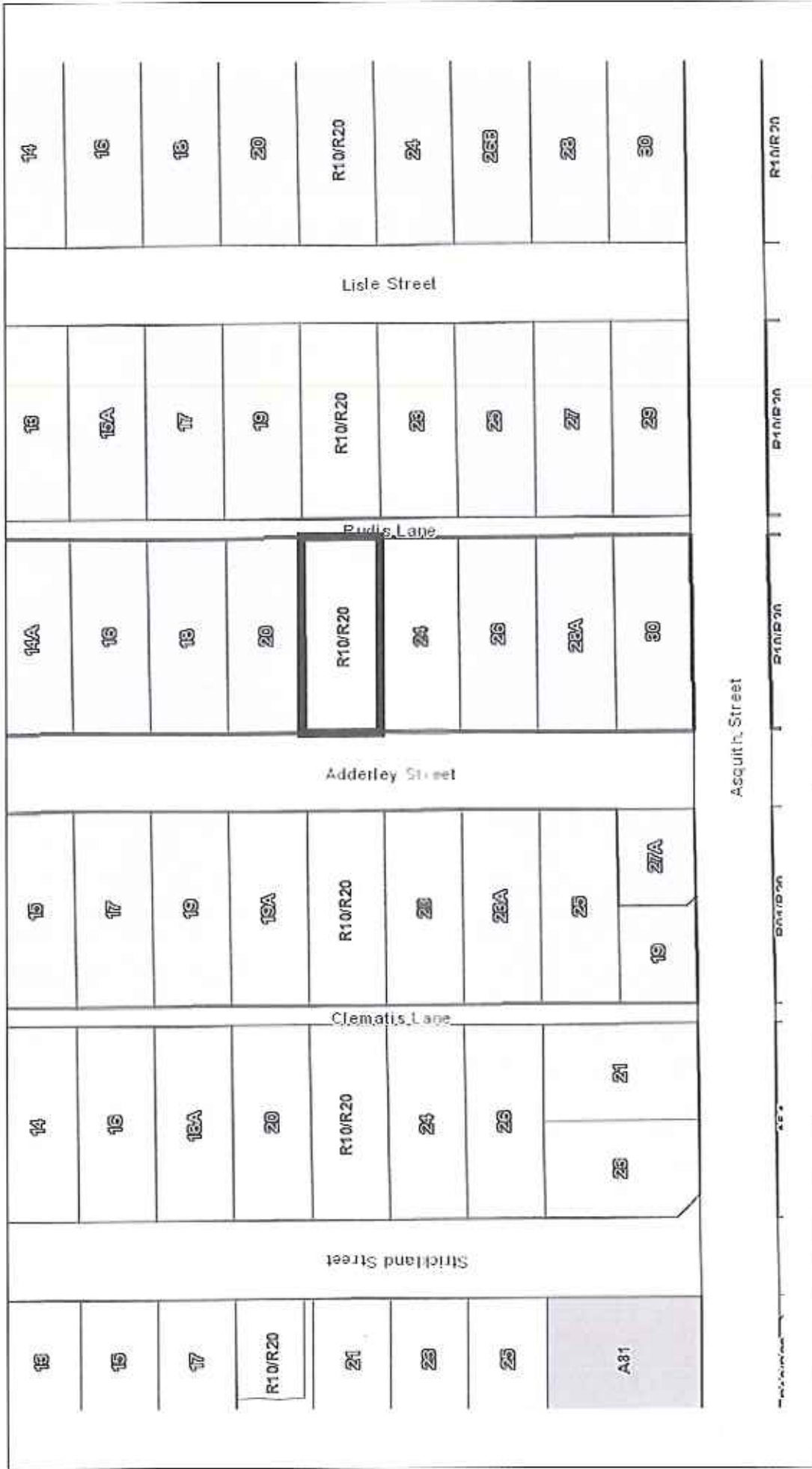
Requirement	Policy 6.23 requires carports forward of the primary street setback area to have a minimum side setback of 1 m.
Proposal	The carport has a side setback of 0.15 m.
Assessment under Policy 6.23	Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on “ <i>either the relevant adjoining property or the streetscape</i> ”.
Officer technical comment	<p>The proposed carport piers are setback 0.15 m from the side boundary.</p> <p>The carport is an open structure and is not abutting a structure on the adjoining property. As a result, the side setback variation is deemed to not adversely impact the adjoining property or the streetscape.</p> <p>Furthermore the adjoining owners at No. 24 Adderley Street have no objections to the retrospective side setback variation of the carport.</p> <p>Accordingly, this setback variation is considered acceptable.</p>

Conclusion

As the retrospective application for a carport at No. 22 Adderley Street, Mt Claremont does not comply with the intent of Policy 6.23 'Carports and Minor structures forward of the Primary Street Setback', which is to preserve open streetscapes, it is recommended for refusal.

Attachments

1. Locality Plan
2. Site and Elevation Plan
3. Photos



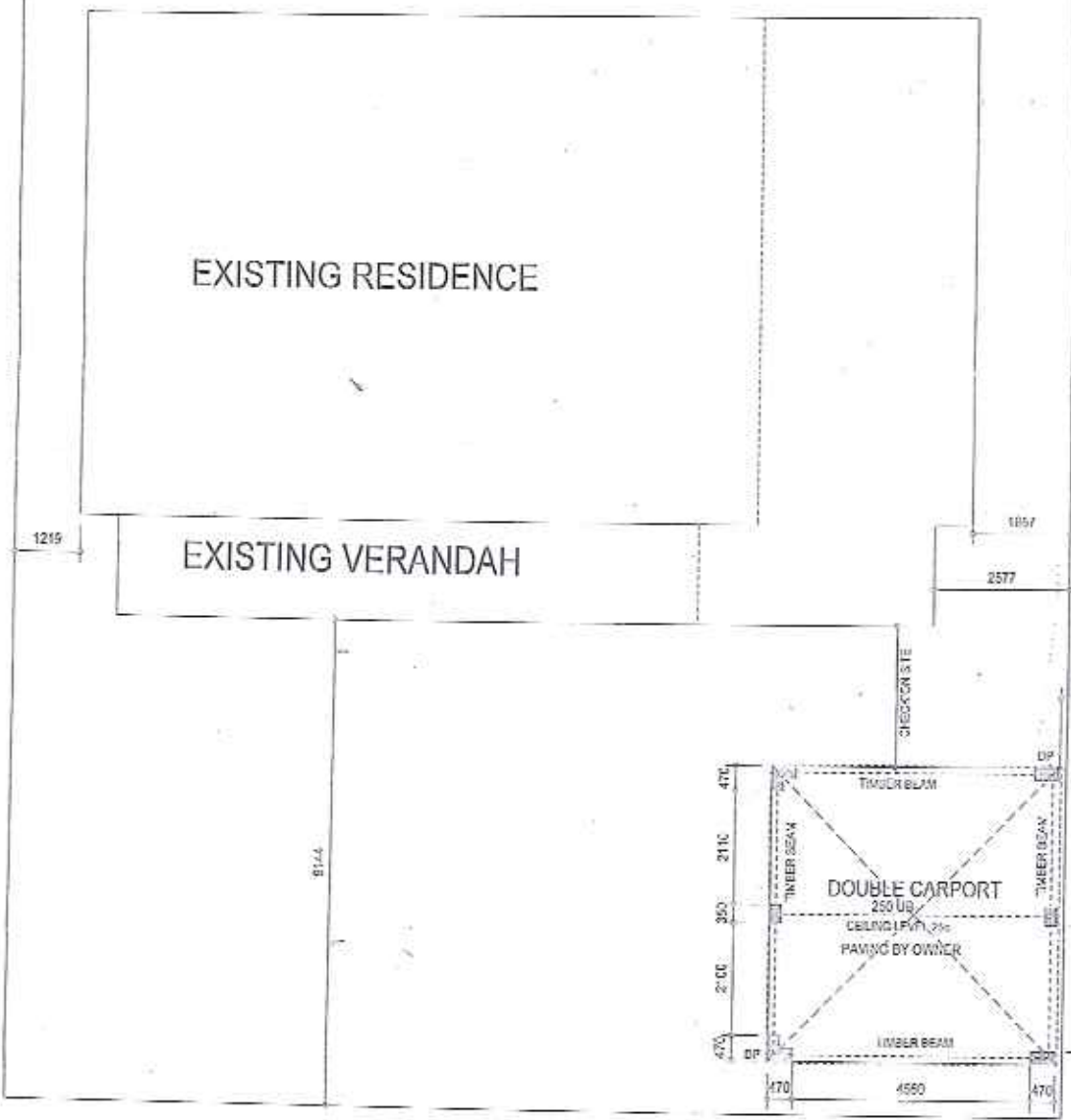
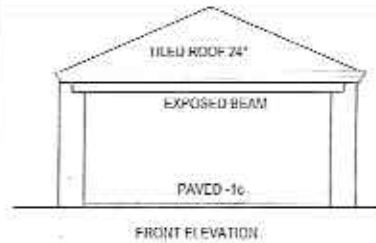
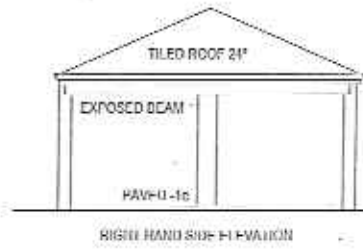
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PD14.12- Attachment 1 Locality Plan



PD14.12- Attachment
Site & Elevation Plan



Elain's Care

CITY OF NEDLANDS
RECEIVED
30 NOV 2011

42 L156E 5' (on } from boundary
15 L156E 5' 2m }

FERRANTE DESIGN & DRAFTING
04 12692973
JOP FERRANTE

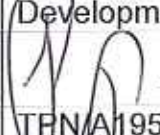
PROPOSED CARPORT FOR ELAINE CRANE
LOT 307 ADDERLEY ST MT CLAREMONT



PD14.12– Attachment 3
Photos

PD15.12	Amendment No. 195 to Town Planning Scheme No. 2 – Maximum building height of 12 metres at Lots 49, 50 and 51 Nidjalla Loop, Swanbourne
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Committee	10 April 2012
Council	24 April 2012

Applicant	Halsall & Associates Town Planning Consultants
Owner	Mr. and Mrs. Zorzi – No. 6 (Lot 49) Nidjalla Loop Mr. Carlin – No. 4 (Lot 50) Nidjalla Loop Mr. and Mrs. Mori – No. 2 (Lot 51) Nidjalla Loop
Officer	Michael Swanepoel – Acting Manager Strategic Planning
Director	Gabriela Poezyn – Acting Director Planning and Development Services
Director Signature	
File ref.	TFN/A195
Previous Item No's	D25.11 – 22 March 2012 D49.07 – 31 July 2007
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

In March 2011, Council initiated Amendment No. 195 to the Town Planning Scheme No. 2 to permit a maximum building height of 12 metres at Lots 49 to 51 at Nidjalla Loop, Swanbourne (formerly Swanbourne High School).

Public consultation of this amendment has concluded. The purpose of this report is for Council to decide whether or not to adopt this amendment.

Recommendation to Committee

That Council does not adopt Amendment No. 195 to the Town Planning Scheme No. 2 for the following reasons:

1. to retain consistent application of height restrictions throughout the City of Nedlands;
2. proceeding with a scheme amendment to facilitate views may create a domino effect that is neither appropriate nor desirable from a planning perspective;

3. proceeding with a scheme amendment every time there is a flaw in the purchasing process has implications that extend well beyond the boundaries of these three lots;
4. proceeding with this amendment undermines Council's ability to maintain a considered, consistent and accountable approach for guiding overall development in the City; and
5. to retain consistent application of RCodings and Design Guidelines for the area.

Strategic Plan

KFA 3: Built Environment

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

Background

Property Address: Lots 49 to 51 Nidjalla Loop, Swanbourne
Zoning MRS: Residential
Zoning TPS2: R20 (Precinct 5 of Swanbourne Design Guidelines)
Lot Area: No. 2 (Lot 51) Nidjalla Loop – 442 m²
No. 4 (Lot 50) Nidjalla Loop – 442 m²
No. 6 (Lot 49) Nidjalla Loop – 442 m²
Total Area 1326 m²

1. Swanbourne High School redevelopment

The redevelopment of the Swanbourne High School began with the Western Australian Planning Commission approving the subdivision of the site subject to a set of conditions, including the preparation of design guidelines.

The following is noted:

- Nine precincts were established through two sets of design guidelines (A and B) that were prepared by LandCorp and Mirvac.
- Each precinct is intended to have its own distinctive character based on topography and derived from specific provisions.
- Design outcomes for medium density dwellings are covered by Design Guidelines A (Precincts 1, 2, 3, 4, 5 and 9).
- Design outcomes for higher density dwellings are covered by Design Guidelines B (Precincts 6, 7 and 8).

- Each lot was given a residential coding to ensure that they reflected the intended dwelling type and outcome for the precinct.
- Maximum height requirements were based on the intended dwelling outcome and the residential coding that was applied to the site.

The table below summarises the nine precincts:

Precinct	TPS2	Dwelling type	Maximum height	Design Guidelines
1	R25	Single dwellings	10 m	A
2	R30	Single dwellings	10 m	A
3	R25	Single dwellings	10 m	A
4	R20	Single dwellings	10 m	A
5	R20	Single dwellings	10 m	A
6	R60	Single dwellings	12 m (Amd 189)	B
7	R80	Multiple dwellings	21 m (Amd 189)	B
8	R60	Multiple dwellings	10 m	B
9	R30	Grouped dwellings	10 m	A

Lots 49 to 51 Nidjalla Loop are included within Precinct 5. These lots are zoned 'Residential R20' and currently a 10 m maximum building height restriction applies.

2. Objectives of Precinct 5

The objectives of Precinct 5 are:

- A detached built form that is in a landscaped setting (including the setbacks of both side boundaries).
- A contemporary architectural built form where the elevations on all sides are consistent in design quality, composition and detailing.
- A response to the surrounding context of the Public Open Spaces and streetscapes.
- That any two-storey portion is located at the front western part of the Lot to promote streetscape consistency and scale, and to minimise overshadowing of any neighbouring southern lot's rear outdoor living area.
- Outdoor living area that receives winter sunlight.

3. Key Relevant Previous Decisions

- 12 June 2006 Western Australian Planning Commission grants conditional subdivision approval.
- 10 April 2007 Council adopts Swanbourne Design Guidelines A (for precincts 1, 2, 3, 4, 5 and 9).
- 31 July 2007 Council completes Scheme Amendment No. 189 to allow increased height restrictions to 21 m on Lot 60 (precinct 7) and 12 m on Lots 52-59 (precinct 6).
- August 2007 Council adopts Swanbourne Design Guidelines B (for precincts 6, 7 and 8).
- 22 March 2011 Council initiates Amendment No. 195.

Proposal Detail

The purpose of Amendment No.195 to the Town Planning Scheme No. 2 is to increase the maximum permissible height of lots 49 to 51 at Nidjalla Loop, Swanbourne (formerly Swanbourne High School) from 10 m to 12 m.

1. Applicant justification for Scheme Amendment

The applicant advises that the primary motivation for the scheme amendment is:

"The owners of Lots 49 to 51 purchased the property from Mirvac/Landcorp and were not provided with information in relation to a scheme amendment that was occurring relevant to Lots 52 to 59 providing a greater height limit up to 12 m. As such, views to the city and suburban vista was envisaged to the east however this could be potentially lost if dwellings are now constructed to a maximum height of 12 m within Lots 52 to 59."

The applicant has approached the Minister for Planning, Culture and the Arts and the Senior Development Manager at Mirvac and provided their comments which are in support of this proposal.

Stakeholder

Senior Development Manager, Mirvac

Summary

Mirvac has no objection to Lots 49-51 having a maximum building height from natural ground of 12 m.

Administration response

There is no evidence that this comment includes the assessment of the Mirvac Design Committee.

<p>Stakeholder Minister for Planning, Culture and the Arts</p> <p>Summary I am unable to provide a definitive response in support (or otherwise) at this time, as the proposal is required to follow due planning process before I am able to make a decision on the matter.</p> <p>In making my decision, I must consider all relevant details of the proposal, the recommendation of the local government, the content of any public submissions and the recommendation of the Western Australian Planning Commission</p> <p>Administration response Noted.</p>
--

The applicant also provided the following planning rationale in support of the proposal:

"This proposal is formulated on the same basis given that current Detailed Area Plans/Design Guideline restrictions result in Lots 49 to 51 probably being able to achieve only a marginally larger sized dwelling to Lots 52 to 59 (Precinct 6). The proposal is therefore so that larger dwellings can be developed on Lots 49 to 51 which is logical given these lots are more than twice the size of Lots 52 to 59."

To achieve their objective the applicant proposes a Detailed Area Plan (refer to attachment 2) which indicates the potential location and form of a mezzanine level within the additional 2 m.

The applicant notes that this proposal is contingent on specific design guidelines being prepared so that issues of streetscape, access to light and northern sun are addressed and to ensure that no additional storeys are constructed.

The applicant concludes by arguing that the proposal is a minor adjustment to provide additional height opportunities for the subject lots so that additional floor space can be provided.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type:

- Letters were mailed to residents and landowners affected by the proposal with a comment form and explanatory document enclosed.

- The amendment was also advertised in the Post newspaper on 28 January 2012.

Dates:

- The proposal was open to comment for a period of 42 days from 27 January 2012 to 12 March 2012.

1. Response to submissions

- No responses were received from the public.
- Two (2) submissions were received State Government agencies (Western Power and Water Corporation), neither of which objected to the proposal.

Legislation

- *Planning and Development Act 2005*
- Town Planning Scheme No. 2

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

There is no financial impact for the City.

Risk Management

If Council was to adopt Amendment No. 195, the following risk would apply:

- The consistent application of the current height restriction of 10 metres that applies to R20 coded sites around the City would be compromised. On this basis, more ad-hoc proposals of a similar nature may be requested by other landowners/residents.

If Council resolves not to adopt Amendment No. 195, the following risk would apply:

- Under *Planning and Development Act 2005* the Minister can progress a scheme amendments that has been initiated by a Council.

Discussion

In considering this item, the following is relevant:

1. Flaw in purchasing process

From the perspective of landowners an increase in height restriction will result in city views that they believe have been lost. According to the applicant this loss occurred because the owners were not informed of the scheme amendment that increased the height of the lots to the east of the subject properties at the time of purchase.

In this regard, the following is noted:

- The purpose of planning is to achieve good development outcomes. Its role is not to remedy commercial errors.
- Proceeding with a scheme amendment every time there is a flaw in the purchasing process has implications that extend well beyond the boundaries of these three lots.
- It undermines Council's ability to maintain a considered, consistent and accountable approach for guiding overall development in the City.

2. City views

While views from properties are desirable they are not a valid planning consideration. This is acknowledged by the applicant in their submission which states that views are "*not a planning issue*".

Ultimately, proceeding with a scheme amendment to facilitate views may create a domino effect that is neither appropriate nor desirable from a planning perspective.

3. Minimal Impact

The applicant argues that increasing the maximum building height will have a minimal impact on the surrounding properties.

It is noted that this is subjective and that no evidence has been provided to substantiate this claim. A 10 m height limit applies to the majority of single dwellings across the City.

4. Design Guidelines

Design guidelines exist that are based on sound planning grounds where properties of similar character and density code are grouped to achieve specific outcomes.

Precinct 5 is part of Design Guidelines A. Its density code dictates the expected outcome of development which aligns with all the other properties included in Design Guidelines A.

5. Height is non-negotiable

Since the inclusion of Clause 5.11 'Maximum building height' in 2001, building height within the City has become largely non-negotiable as there is no general variation clause in the scheme. Supporting this scheme amendment contradicts this principle.

6. Consistent application of residential coding

The rationale behind allocating residential codings to specific sites is to guide the likely development outcome. In general, lower codings equate to single detached dwellings on larger blocks whilst higher codings are more likely to equate to single detached dwellings on smaller blocks.

In this case, Lots 49 to 51 are zoned as 'Residential R20' in the TPS2, whilst the lots to the east in Precinct 6 are zoned 'Residential R60'. Given these codings, it is reasonable to conclude that the intention for Lots 49 to 51 is for a single detached dwelling to be built on a larger block. This contrasts with the intention of the R60 lots in Precinct 6 which are designed to facilitate single detached dwellings on smaller blocks. The applicant has not adequately justified why lots coded R20 should be given the same height restriction as those lots coded R60.

7. Ad-hoc change

Unplanned changes tend to result in unforeseen consequences. This situation is exacerbated when there are already existing mechanisms, such as design guidelines, in place to guide development.

This proposal is ad-hoc in nature. The Design Guidelines do not include a 'review and monitor' section which makes it difficult to recommend making a change on the run.

8. Submissions

It is acknowledged that there were no submissions from the public objecting to the proposal. This does not absolve the proposal of its flawed town planning approach.

Whilst there is no precedent to be set, adopting the proposal on the basis that there were no objections in the context of the flawed nature of the proposal establishes a risky trend.

Conclusion

In conclusion the arguments for and against this proposal can be summarised as follows:

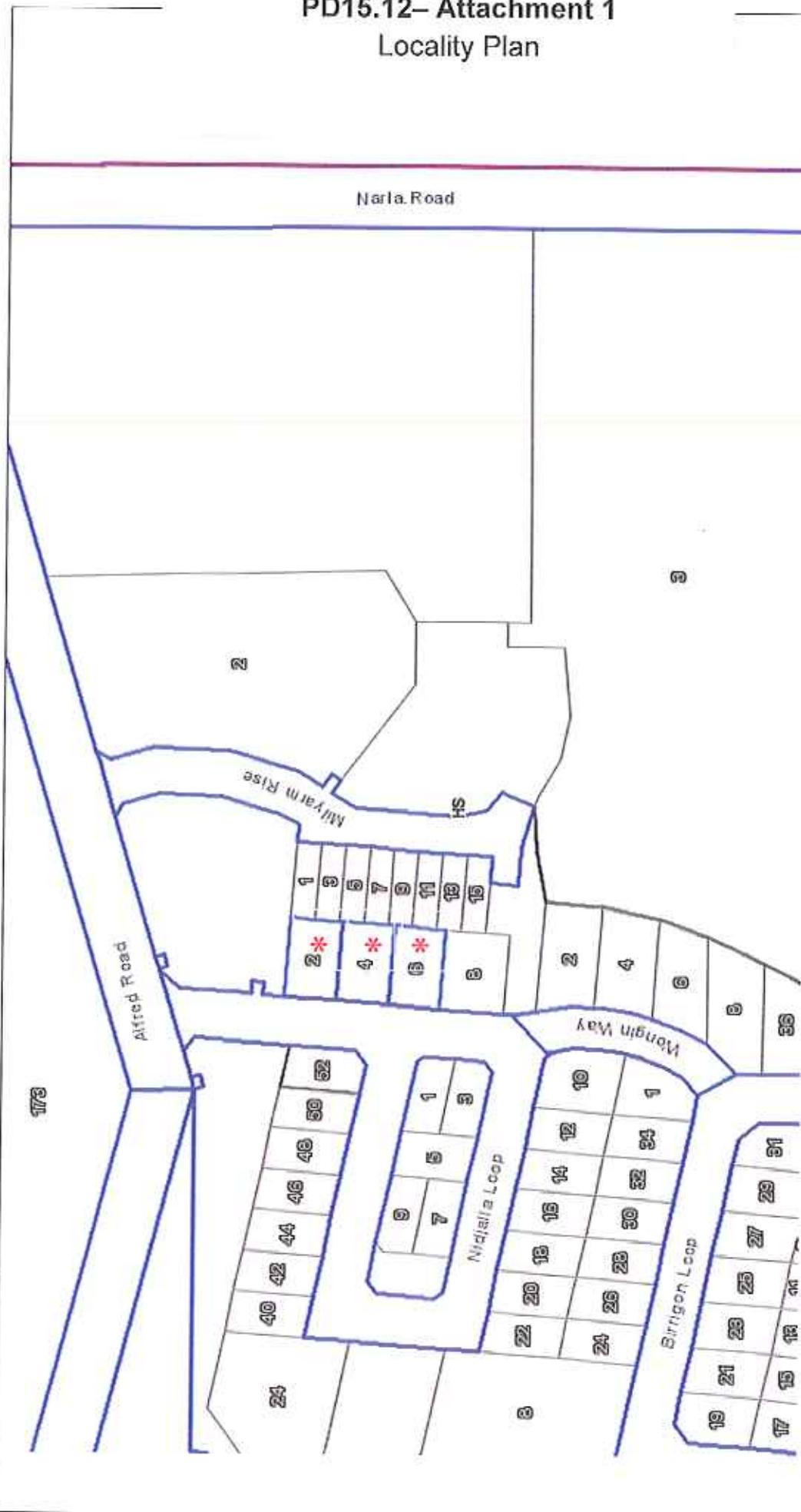
For	Against
<ul style="list-style-type: none"> • Minimal impact. • Flaw in purchasing process. • Achieve a city centre view. 	<ul style="list-style-type: none"> • Height is on-negotiable which and this principle should not have to be compromised. • Inconsistent application of Rcodings. • Ad-hoc change. • Views are not a planning issue.

On balance the forces 'against' this change outweigh any advantages that may exist. Adopting this proposal would be contrary to orderly and proper planning because it has the potential to have extensive ramifications to the planning process with City-wide implications.

Attachments

1. Locality Plan
2. Scheme Amendment No. 195 documentation

PD15.12– Attachment 1 Locality Plan



City of Nedlands

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* Subject sites (Lots 49 – 51 Midjalla Loop, Swanbourne)

April 2012

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Halsall & Associates

Town Planning Consultants

City of Nedlands
Town Planning Scheme No. 2

Scheme Amendment No.195

Lots 49, 50 & 51 Nidjalla Loop
SWANBOURNE WA 6010

June 2011

PD15.12– Attachment 2
Scheme Amendment No. 195
documentation



PLANNING AND DEVELOPMENT ACT, 2005 (AS AMENDED)

CITY OF NEDLANDS

TOWN PLANNING SCHEME NO.2

AMENDMENT NO. 195

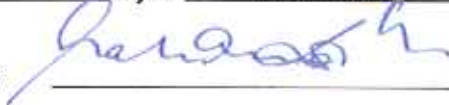
The City of Nedlands under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 (as amended) hereby amends the above Town Planning Scheme by:

1. Amending Clause 5.3.11 by including an additional point (d) to be worded as follows:

"In respect to lots 49, 50 and 51 Nidjalla Loop Swanbourne, a height restriction of 10 metres applies to buildings except a mezzanine level which may be developed up to 12 metres in addition to two storeys only in accordance with the Detailed Area Plan and Design Guidelines for the area as adopted by the Council."

Dated this 3 day of October, 20 11.

CHIEF EXECUTIVE OFFICER



PLANNING AND DEVELOPMENT ACT, 2005 (AS AMENDED)

CITY OF NEDLANDS



Town Planning Scheme No 2

AMENDMENT NO. 195

The City of Nedlands under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 (as amended) hereby amends the above Town Planning Scheme by:

1. Amending Clause 5.3.11 by including an additional point (d) to be worded as follows:

"In respect to lots 49, 50 and 51 Nidjalla Loop Swanbourne, a height restriction of 10 metres applies to buildings except a mezzanine level which may be developed up to 12 metres in addition to two storeys only in accordance with the Detailed Area Plan and Design Guidelines for the area as adopted by the Council."

Adoption Regulation 13(1)	<p>Adopted by Resolution of Council of the City of Nedlands at the Ordinary Meeting of the Council held on the <u>22</u> day of <u>March</u> 20<u>11</u>.</p> <p style="text-align: right;">  _____ Mayor </p> <p style="text-align: right;">  _____ Chief Executive Officer </p>
Final Approval Regulation 21(2), 22(1) & (2)	<p>Adopted for Final Approval by Resolution of the City of Nedlands at the _____ meeting of Council held on the _____ day of _____ 20____, and the Seal of the municipality was, pursuant to that Resolution, hereunto affixed in the presence of</p> <p style="text-align: right;"> _____ Mayor </p> <p style="text-align: right;"> _____ Chief Executive Officer </p>
Recommended/Submitted for Final Approval	<p style="text-align: right;"> _____ Delegated under S.16 of Planning and Development Act 2005 </p> <p style="text-align: right;">Date: _____</p>
Final Approval Granted	<p style="text-align: right;"> _____ Minister for Planning </p> <p style="text-align: right;">Date: _____</p>



Scheme Report - Lots 49,50 and 51 Nidjalla Loop Swanbourne

**City Of Nedlands
Town Planning Scheme No.2
Scheme Amendment No.195**

Lots 49, 50 & 51 Nidjalla Loop
SWANBOURNE WA 6010

Prepared for

Mr Carlin
Mr and Mrs Zorzi and
Mr and Mrs Mori

Prepared by

Halsall & Associates Town Planning Consultants
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MARGARET RIVER WA 6285

Telephone: 9758 8676

Facsimile: 9758 8679

Email: admin@halsall.net.au



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List of Attachments

1. Detailed Area Plan/Guidelines
2. Correspondence from Mirvac
3. Correspondence from the Minister of Planning, Culture and the Arts



1.0 INTRODUCTION

The owners of Lots 49, 50 and 51 Nidjalla Loop, Swanbourne made a combined request to Halsall and Associates to propose this Scheme Amendment and adjustments to the relevant Detailed Area Plan/Design Guidelines for the area to allow development of dwellings on their lots to a maximum height limit of 12 metres on a restricted basis. This was supported by the City of Nedlands and initiated at its meeting of the 22nd March 2011.

The justification for the proposal was that it will have negligible impact from a planning perspective, will be consistent with an opportunity for a greater height limit for adjoining lots to the east and is proposed on the same basis.

Advice from the City was that Lots 52 to 59 Milyarm Rise (adjoining the lots the subject of this amendment) were given an increased height limit to 12 metres to allow for a reasonable area of floor space to be accommodated on the smaller lots provided.

Lots 49, 50 and 51 are more than twice the size of Lots 52 to 59 and could only be developed with a dwelling with approximately 78.5m² more habitable space than Lots 52 to 59. The Design Guidelines for Lots 49, 50 and 51 provide restrictions on building and setbacks partially to protect the amenity of Lots 52 to 59 however this results in a restricted dwelling floor space slightly greater to that achievable on Lots 52 to 59. Lots 52 to 59 can achieve a greater height limit and therefore more floor space as an extra level can be achieved.

This Scheme Amendment will increase the applicable height limit for Lots 49, 50 and 51 to also be a maximum of 12 metres therefore consistent with Lots 52 to 59 however subject to alterations to the Detailed Area Plan (DAP)/Design Guidelines to that the achievement of the 12 metre height limit may only be with a mezzanine located centrally to the site with specified setbacks. This is so that views from the streetscape and access to solar aspect within each lot to the south will not be affected. To a lesser extent and with less importance, access to natural light within Lots 52 to 59 from the west is also factored in. The amendment is therefore a minor adjustment to the Scheme and DAP/Design Guidelines considered to be without impact from a planning perspective. This will provide Lots 49, 50 and 51 with the ability to accommodate larger dwellings consistent with the reasoning for Lots 52 to 59. It is reasonable to expect that Lots 49, 50 and 51 would be able to build houses with much more habitable space than Lots 52 to 59 given lots are more than twice



Scheme Report - Lots 49,50 and 51 Midjulla Loop Swanbourne

the size. The amendment is therefore couched on the same basis as the amendment as facilitated for adjoining lots.

The intention of this Scheme Amendment is to introduce a clause into the Scheme which will allow for the greater height limit and upon completion of this, the relevant policy of Council can be amended to incorporate the new Detailed Area Plan and Design Guidelines as included in this amendment documentation.

The result would be that precincts 5 and 6 under the Detailed Area Plan (which are contiguous) would be the only area where a 12 metre height area could be achieved and this is spatially legible.

Whilst not a planning issue, part of the motivation for the proposal was that Lots 49, 50 and 51 may be able to achieve a view over the top of dwellings constructed on Lots 52 to 59 to the city and over a suburban vista. Information regarding the amendment (allowing a 12 metre height limit) relevant to Lots 52 to 59 was not provided to the purchasers of Lots 49, 50 and 51 at the time of sale and they were therefore not aware of the possibility of views being blocked to the east. This was the motivation for the proposal however not the planning justification. The planning justification is on the same basis that provided support to the amendment to the height limit for Lots 52 to 59 addressing the relevant planning issues through Design Guidelines.

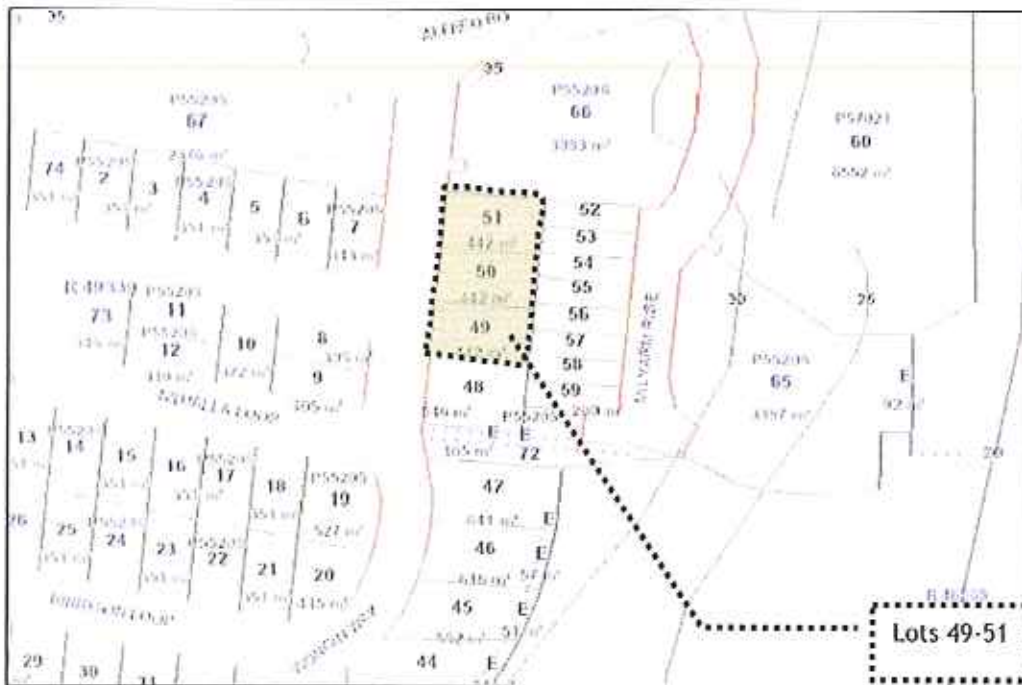


Scheme Report - Lots 49,50 and 51 Nidjalla Loop Swanbourne

2.0 THE SUBJECT SITES

The subject sites are Lots 49, 50 and 51 Nidjalla Loop, Swanbourne as depicted in Figure 1 below.

Figure 1 - Subject Sites

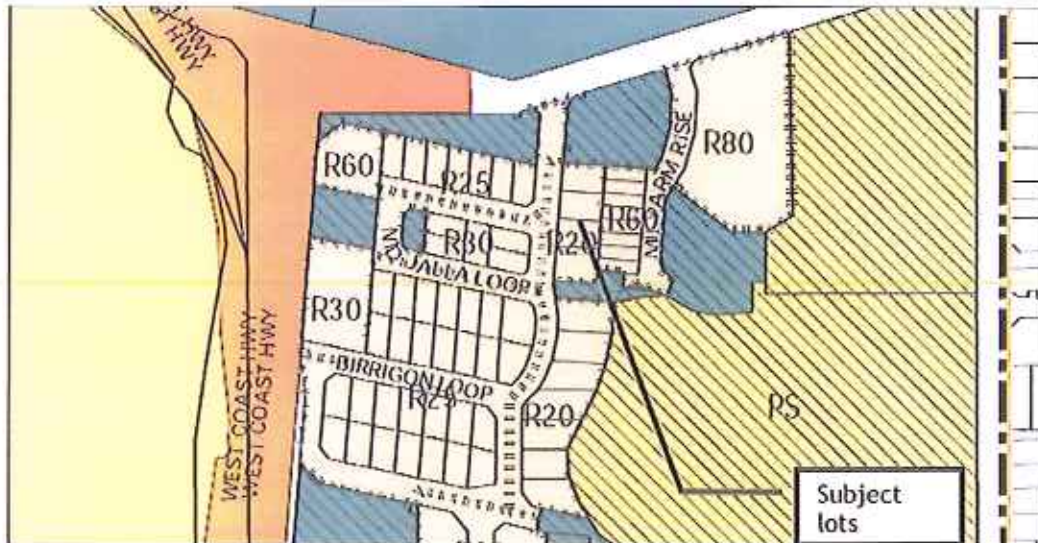


Source: Landgate

The subject lots are 442m² in area and zoned Residential R20 under the City of Nedlands Town Planning Scheme No.2 as evident in Figure 2 below.



Figure 2 - Excerpt City of Nedlands Town Planning Scheme No.2



Source: WAPC

The lots have been created as a result of a recent development by Landcorp in association with Mirvac. As such, lots are filled and retained and therefore levels have been set by subdivision. These levels therefore form the consideration of natural ground level for the purposes of future development.

Lot 48 is developed with an existing substantial dwelling and is not subject to this amendment, and Lots 49, 50 and 51 are vacant. Adjoining Lots 52 and 53 Milyarm Rise have been developed however Lots 54 to 59 are currently vacant.

A footpath exists adjacent to the frontage of the lots within Nidjalla Loop and a reserved area adjoins the precinct to the north between Alfred Road and the Cottesloe Golf Course.

The Scheme Amendment and changes to the DAP and Design Guidelines will affect only Lots 49, 50 and 51 as are outlined in the proposal section of this report.



Scheme Report - Lots 49,50 and 51 Nidjalla Loop Swanbourne

3.0 BACKGROUND

The owners of Lots 49 to 51 purchased the property from Mirvac/Landcorp and were not provided with information in relation to a scheme amendment that was occurring relevant to Lots 52 to 59 providing a greater height limit up to 12 metres. As such, views to the city and suburban vista was envisaged to the east however this could potentially be lost if dwellings are now constructed to a maximum height of 12 metres within Lots 52 to 59.

When some of the landowners discovered this prospect, further investigations with the City and the Minister's office was undertaken.

Advice from the Minister for Planning, Culture and the Arts was received by the owner of Lot 50, relevant to Lots 49 to 51 and this is contained in Attachment 2.

This correspondence acknowledges the circumstances that lead to this matter affecting the land and further that the City of Nedlands has been consulted by the owner of Lot 50 and information that the had indicated it may be willing to initiate the requested amendment.

The proposed scheme amendment appeared reasonable to the Minister however advice was that the Minister was unable to provide a definite response in support (or otherwise) and the proposal is required to follow due planning process before the Minister is able to make any decision. In making a final decision, the Minister must take into account a number of important pieces of information including all the relevant details of the proposal, the recommendation of the Local Government following formal advertising and its consideration of any public submissions. The content of any submissions made in relation to the proposal and a recommendation to the Planning Commission will also be taken into account.

It was recommended by the Minister that the proposal be commenced as a scheme amendment process by formally submitting this to the City of Nedlands seeking amendment to the scheme.

This amendment therefore follows on from the Minister's advice which forms an important part of the background to this proposal.

In addition to the advice from the Minister, the owner of Lot 50 contacted Mirvac and requested support from an adjustment to requirements so that a maximum height limit of



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12 metres could be achieved on Lots 49 and 50. Correspondence from Mirvac on this matter was received on 26th October 2009 and this is contained in Attachment 3.

This advice confirms "Mlrvac have no objection to Lots 49 to 50 Nidjalla Loop having a maximum height limit from natural ground of 12 metres. Although you have Mirvac and Landcorp's support with this request the change will require an amendment to the City of Nedlands Town Planning Scheme. And this is a statutory process requiring the City of Nedlands and the Western Australian Planning Commission's support."

Given the subject area was developed by Mirvac in liaison with Landcorp and specific Design Guidelines and Detailed Area Plan requirements were produced by that group, the support of Mirvac for the amendment provides some comfort to the City that the prospect is reasonable in planning terms. Mirvac and Landcorp must be aware of the relevant issues and the planning background leading to development of guidelines for the area and therefore do not consider this to be in conflict with the overall objectives. Mirvac/Landcorp apparently still own some of the lots within the area and therefore form an important group for consultation in respect of such a proposal in any case.

Following on from liaison with the Minister and Mirvac/Landcorp, further consultation with City planners occurred. The mechanics of the proposal was discussed carefully and justification considered. It was determined that the justification for an additional height limit for Lots 52 to 50 (adjoining the subject sites) was so that these lots would be able to achieve a more substantial dwelling given they were small in size.

This amendment was formulated on the same basis given that current Detailed Area Plan/ Design Guideline restrictions result in Lots 49, 50 and 51 probably being able to achieve only a marginally larger sized dwelling to Lots 52 to 59. The amendment is therefore so that larger dwellings can be developed on Lots 49, 50 and 51 which is logical given these lots are more than twice the size of Lots 52 to 59. It is important to ensure that planning issues arising from additional (potentially higher) development does not impact on the area. The size of buildings when viewed from the streetscape needs to be considered and in addition, access to natural light and northern sun also needs to be factored in. The amendment is therefore presented so that these issues are addressed and additional height can be achieved by a mezzanine only. This is also a minor adjustment in the context of the area.



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The amendment is therefore presented following detailed liaison with the Minister, the original developer/Landcorp and the City, and is presented as an adjustment justified on the same basis as that given to Lots 52 to 59 with a slight adjustment to the height limit on restricted terms.

To assist in the consideration of habitable floor space as justification, calculations on achievable habitable space is provided as follows:

Lots 52 to 59 (R60)

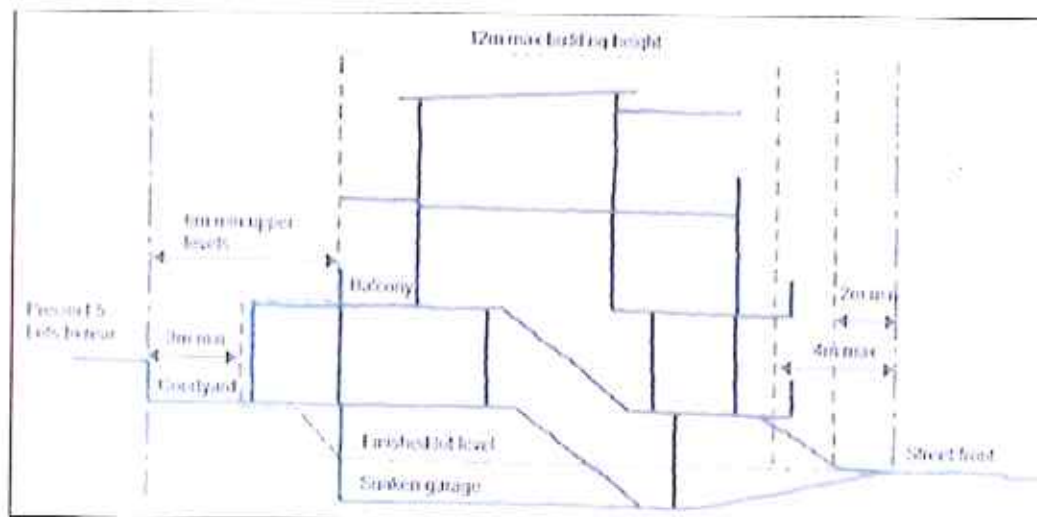
Under the Detailed Area Plan, the guidelines indicate a sunken garage could be achieved in addition to three habitable floor space levels above.

With minimum setbacks etc., the following appears achievable.

- 36m² sunken garage
- 1st level 20m x 7m = 140m²
- 2nd level 17m x 7m = 119m²
- 3rd level 17m x 7m = 119m² (includes 30m² of balcony so as to achieve the 35% open space requirement)

This provides for a total achievable habitable floor space of 378m². A diagram depicting the levels achievable on Lots 52 to 59 is included in the DAP and this is provided below:

Figure 3 - Diagram depicting levels achievable on Lots 52 to 59





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Given the area of the lots (200m^2), this indicates that the Detailed Area Plan allows for a ratio of 192% of habitable space relative to lot size on Lots 52 to 59.

Lots 48 to 51

The Detailed Area Plan requirements for these lots indicates a minimum total open space of 45% with a mandatory outdoor living area and setback for the second level from the rear.

As such, the following areas appear achievable.

- Ground level - garage - 36m^2
- Ground level - central area - $14.5\text{m} \times 15\text{m} = 217.5\text{m}^2$
- Ground level - single storey section at rear - $10\text{m} \times 16.5\text{m} = 65\text{m}^2$

This provides a total at ground level of 282.5m^2 minus 36m^2 for a typical garage provides achievable habitable floor space of approximately 246.5m^2 at ground level.

At second level, an area of $14.5 \times 15\text{m}$ is achievable therefore providing 217.5m^2 . This provides a total habitable floor space of 464m^2 .

Given the lot sizes are 442m^2 in area, this provides for a ratio of 104% useable habitable space relative to the area of the lots.

The above calculations therefore indicate that the 200m^2 Lots 52 to 59 can achieve almost twice as much habitable floor space relative to lot size. The capabilities for Lots 48 to 51 are compromised by the greater setbacks to the rear for second levels and Lots 52 to 59 can achieve a third level which boosts its opportunity.

The amendment coupled with adjustments to policy will therefore provide an extra 36m^2 at mezzanine level which relative to lot size will only increase habitable space to 113%. This is still well below the 192% comparison for Lots 52 to 59.

Please note all of the above figures are approximate and take into account maximum opportunities. This is subject to the R codes but takes into consideration site coverage and open space. It is however a reasonable overview of comparisons.



4.0 THE PROPOSAL

The proposal is to amend the City of Nedlands Town Planning Scheme No. 2 so that a height limit of 12 metres can be achieved for Lots 49 to 51 by amending Clause 5.3.11 by including an additional point (d) to be worded as follows:

"In respect to lots 49 to 51 a height restriction of 10 metres applies to buildings except a mezzanine level which may be developed up to 12 metres in addition to two storeys only in accordance with the Detailed Area Plan and Design Guidelines for the area as adopted by the Council."

The proposal is contingent on specific design guidelines being incorporated so that the issues of streetscape, access to light and northern sun are addressed and no additional storeys are provided for (mezzanine level only). For all intents and purposes, changes to the maximum opportunities for development will have negligible consequence and provide additional floor space on lots which are currently restricted to similar opportunities to that existing on smaller lots adjacent.

The design guidelines for precinct 5 are therefore proposed to be amended and diagrams depicting the principle of these adjustments to protect the amenity of the area are included in Attachment 1.

The guidelines in Attachment 1 indicate the following:

- ❖ Nidjalla Loop is adjacent to the subject lots and a public footpath exists within the immediate verge to the frontage of the lots. No footpath is provided on the opposite side of the road. It is therefore proposed that a mezzanine level be set back from the frontage of the dwelling so that any view taken from streetscape either by pedestrian or traffic will not be compromised and the presentation of the building to the street will be unaffected.
- ❖ Lots 52 to 59 to the east of the subject lots currently have access to western sun over the subject sites. This is not the important solar aspect in planning terms, this is reserved for the northern aspect. In any case, the mezzanine level is therefore proposed to be setback so that access to western light is maintained.
- ❖ The mezzanine level is also proposed to be set back from the southern boundary of each lot so that access to northern light within the subject lots and in particular Lot 48 (which is already developed) would be unaffected.



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- ❖ The proposal will therefore provide for the potential only for a mezzanine level to be developed up to 12 metres for a restricted area centrally to each dwelling design.

The design guidelines referred to in Attachment 1 therefore provide for a maximum opportunity and it should not be expected that every development will take this form. It is simply an indication as to how additional floor space can be achieved without impact on the area.

It is important to note that Clause 5.11 of the Scheme refers to maximum height and requires that walls should not exceed 8.5 metres from natural ground level and must not contain more than two storeys directly above each other. Specific reference to the prospect for a mezzanine is provided in the recommended change to the Scheme clause so that it is expressly provided that an additional but specific form of floor level can be entertained within the subject lots.

It should be noted that there is no definition of a storey within the Scheme or within the Building Code of Australia relevant to residential buildings. A storey is however defined in relation to commercial buildings within the Building Code of Australia and this excludes a mezzanine. It could therefore be interpreted that a mezzanine is not a storey however to provide certainty, the amendment specifically makes reference to the prospect.

It was determined that an amendment to the Scheme provisions would be facilitated by the proposal initially and if successful, the Detailed Area Plan and Design Guidelines would be modified accordingly through an adjustment to the Council's policy. It was considered the adjustment to the Council's policy would only be made following final approval of the amendment by the Minister. The Scheme report and therefore this relevant documentation makes reference to this information as it is important to note that policy changes are relevant to the amendment and are referenced in the Scheme provision the subject of the amendment. This documentation will therefore guide a further process of policy adjustment should the amendment be successful.



5.0 CONCLUSION

The Scheme amendment is simply an adjustment to a relevant clause within the Town Planning Scheme to provide additional height opportunities for the subject lots. This is to provide for additional floor space within lots that are currently compromised such that the ability for floor space (habitable) is reasonably greater than that achievable on lots half the size adjoining to the east.

The additional height limit for lots adjacent to the subject sites (Lots 52 to 59) was justified on the basis that the ability to provide dwellings with a reasonable floor space should be given. The proposal is therefore couched on the same basis and with only limited opportunity at a mezzanine level. This is with detailed design guidelines so that the relevant issues apparent from the proposal in planning terms will be addressed. Streetscape, access to light and northern sunshine are all protected and this will provide for an interesting additional section of built form in a part of the area which is already provided with greater height limits. It should be noted that the north-eastern section of the Swanbourne School Site redevelopment has already been provided with greater height limits and the proposal is a minor extension of this and logically part of the precinct.

Positive comments to the proposal have previously been provided by the Minister and the original developer.

The support of the Council has been given to this conscientious approach and the mechanisms developed in consultation with City Planners. The amendment will ensure that future development is appropriate in its context and guided by relevant policy.

ATTACHMENT 1

RECOMMENDED DETAILED AREA PLAN AND DESIGN GUIDELINE CHANGES FOR POLICY REVIEW

PRECINCT 5: LOTS 48 TO 51 (R20 SINGLE DWELLING)

<p>RECOMMENDED AMENDED GUIDELINES – PAGE 13</p>

Lots 48 to 51 are wide frontage east-west orientated lots.

a) OBJECTIVES FOR DEVELOPMENT

The design for the dwelling on the Lot shall ensure:

- I. a detached built form that is in a landscaped setting (including the setbacks of both side boundaries)
- II. a contemporary architectural built form where the elevations on all sides are consistent in design quality, composition and detailing (refer to the section on *Built Form and Landscape*)
- III. a response to the surrounding context of the Public Open Spaces and streetscapes (refer to the section on *Built Form and Landscape*)
- IV. that any two-storey portion is located at the front western part of the Lot to promote streetscape consistency and scale, and to minimise overshadowing of any neighbouring southern lot's rear outdoor living area
- V. outdoor living area that receives winter sunlight.

b) DETAILED AREA PLAN

The Detailed Area Plan denotes particular site planning requirements; refer to Appendix 1 - Sheet 4: Precinct 5.

- **Front setback: 4m min and 6m max**
- **Minor horizontal incursions into the front setback:** The maximum depth of intrusion that is permitted is 1m and for a maximum of 50% of the elevation of the proposed dwelling (minor incursions include projections such as a balcony - roofed or unroofed - with no enclosed space underneath, porch, verandah, blade wall or chimney).
- **Side setbacks: 1m min for the ground and any upper floor for both side setbacks;** R-Codes wall setbacks apply for any upper level with major openings. No wall shall be permitted to be built on the boundary and variations to this 1m min requirement will not be accepted.

At the rear of the lot, the single-storey only element of the dwelling shall be setback 6m min from the northern boundary.
- **POS side setback: 1.5m min for the ground and any upper floor for corner Lots 48 and 51.**
- **Rear setbacks: 1m min for the ground floor. Any upper floor setback shall be 7.5m min. A non weather-proof light weight structure is permitted within the rear setback.**
- **Minimum total open space: 45%**
- **Outdoor living area:** A courtyard shall be located at the rear northern part of the Lot to receive winter sunlight (refer to DAP for mandatory location).
- **Garage setback and design requirements: 4.5m minimum and located at least 0.6m behind the dwelling's elevation. A verandah, porch or balcony is included as an element on the "elevation". Any element of the elevation that serves to reduce the visual impact of the garage on the street is deemed to be the dwelling's elevation.**

Carports are not permitted.

Garages with car spaces parallel to the street are not permitted.

The enclosed garage shall accommodate a minimum of two car spaces, and shall be integrated into the design of the dwelling. The maximum garage opening width is 6m.

c) OTHER REQUIREMENTS

- The nominated "ground level" for measurement of building and wall heights shall coincide with the "natural ground level" created as part of subdivisional works (refer to DAP for pad level).
- Increasing lot levels from those provided by more than 50mm will not be permitted. The finished floor level of the ground floor slab shall not be more than 300mm above the as-constructed level provided by the Developer
- Refer to *Built Form and Landscape* section f) for fence and letter box requirements.

Signed: _____

Dated: _____

ATTACHMENT 2

**SUPPORTING CORRESPONDENCE
FROM MIRVAC**

Level 3 502 Hay Street
Subiaco WA 6008
Australia

PO Box 272
Subiaco WA 6904
Australia

T +61 8 9424 9900
www.mirvac.com



26 October 2009

Dr. Simon Carlin
PO Box 1511
Margaret River WA 6285

Dear Dr. Carlin

LOTS 49-50 NIDJALLA LOOP, SWANBOURNE

Thankyou for your letter dated 13th October 2009 addressed to Belinda Brosnan.

Mirvac have no objection to lots 49-50 Nidjalla Loop having a maximum building height from natural ground of 12.0m. Although you have Mirvac and LandCorp's support with this request the change will require an amendment to the City of Nedlands town planning scheme. This is a statutory process requiring the City of Nedlands and Western Australian Planning Commission's support.

Please do not let this process deter you as it is achievable, but will require some time and effort on your behalf. If you have any queries in relation to the matter please contact me on 9424 9822 or phillip_gnech@mirvac.com.

Yours sincerely

A handwritten signature in black ink, appearing to read "Phillip Gnech".

Phillip Gnech
Senior Development Manager

Mirvac Limited
ABN 92 003 289 659

Mirvac Property Trust
ARSN 086 750 645

Mirvac Real Estate Pty Ltd
ABN 65 003 342 452

Licensed Real Estate Agent

Mirvac's Privacy Policy is on our website. To contact our Privacy Officer on 1 800 2 9080 8000

ATTACHMENT 3

CORRESPONDENCE FROM THE
MINISTER FOR PLANNING;
CULTURE AND THE ARTS



Minister for Planning; Culture & the Arts
Government of Western Australia

Our Ref: 33-09332

Dr Simon Carlin
8 Jameson Street
SWANBOURNE WA 6010

Dear Dr Carlin

LOTS 49 - 51 NIDJALLA LOOP SWANBOURNE - SCHEME AMENDMENT

Thank you for your letter dated 8 September 2010 regarding a possible future scheme amendment for Lots 49 - 51 Nidjalla Loop, Swanbourne.

I note the advice you have provided detailing the circumstances that led to the matter affecting your land. You further advise that the City of Nedlands has been consulted and has indicated that it may be willing to initiate the requested amendment.

Your proposed scheme amendment appears reasonable. However, I am unable to provide a definitive response in support (or otherwise) at this time, as the proposal is required to follow due planning process before I am able to make any decision on the matter. In making my final decision, I must consider a number of important pieces of information including: all relevant details of the proposal; the recommendation of the local government following formal advertising and its consideration of any public submissions; the content of any submissions made in relation to the proposal and the recommendation of the Western Australian Planning Commission. I trust you will appreciate that it would be inappropriate for me to make any comment on the proposal until I have been fully briefed on all of these matters.

At this stage, may I recommend you commence the scheme amendment process by submitting a formal request to the City of Nedlands, seeking an amendment to the scheme.

I trust this information is of assistance to you.

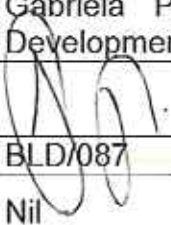
Yours sincerely

JOHN DAY
MINISTER FOR PLANNING;
CULTURE AND THE ARTS

26 OCT 2010

PD16.12	Fees and charges – Building Act 2011
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Committee	10 April 2012
Council	24 April 2012

Applicant	N/A
Owner	City of Nedlands
Officer	Matthew Deal - Manager Property Services
Acting Director	Gabriela Poezyn - Acting Director Planning & Development Services
Director Signature	
File ref.	BLD/087
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

To approve new fees and charges for a building certification service to be provided by the City as required by the *Building Act 2011*.

Recommendation to Committee

Council approves the following fees and charges for certificates of design compliance certification services for residential building permit applications, effective at 1 May 2012:

1. 0.12 % of the value of construction including GST, with a minimum fee of \$150.
2. Fees are to be capped to a maximum of \$3,500.

Strategic Plan

- KFA 5: Governance
- 5.4 Monitor and review business processes, systems, structure and policies to ensure effective service delivery and organisational performance.

Background

The schedule of fees and charges adopted as part of the 2011/12 Annual Budget does not include fees for building certification services.

The *Building Act 2011* was implemented on 2 April 2012. The effect and requirements of the new Building Act only became known once the Building Regulations 2012 were adopted on 16 March 2012.

The Building Act provides for the regulation of building approvals for Western Australia.

Its most significant impact has been to introduce private certification that did not previously exist in the *Local Government (Miscellaneous Provisions) Act 1960*.

Key Relevant Previous Decisions:

Nil

Proposal Detail

The proposed fee structure for the service to provide certificates of design compliance for residential building is 0.12 % of the value of construction including GST, with a minimum fee of \$150. Fees are to be capped to a maximum of \$3,500.

The amount proposed will ensure that the operational costs to the City in providing this service are met. The most significant component of this operational cost is the cost of staff time in assessing building permit applications. Accordingly staff time has been averaged out for different types of application resulting in the above fee structure.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

If the recommendation is approved by Council, notification as per the requirements of the *Local Government Act 1995* will be advertised in the West Australian.

Legislation

In accordance with Section 6.16 (3) of the *Local Government Act 1995*:

Fees and charges are to be imposed when adopting the annual budget but may be:

- (a) imposed during a financial year; and
- (b) amended from time to time during a financial year.

Under Section 6.19 of the *Local Government Act 1995*:

If a local government wishes to impose any fees or charges under this Subdivision after the annual budget has been adopted it must, before introducing the fees or charges, give local public notice of:

- (a) its intention to do so; and
- (b) the date from which it is proposed the fees or charges will be imposed.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

It is expected that the revenue that the City has previously derived from building licence fees will be reduced. As the City is able to provide this additional service it is essential that the City recovers at least the cost of this service.

Risk Management

Issue If fees are not adopted

Risk	Likelihood	Consequence	Level of risk	Risk acceptance
The City is providing a free certification service	Almost certain	Major	20	Extreme
Building permit fee revenue reduced	Almost certain	Major	20	Extreme
Workload becomes unmanageable	Likely	Medium	12	High

Discussion

The implementation of the *Building Act 2011* has introduced a raft of new requirements into the building approval process.

Each local government has the option to provide certification services in house, or outsource the certificate of design compliance of residential applications. The City has to provide one of these options to its customers.

The City has determined to provide a certification of design compliance service to its customers for residential building permit applications. To provide this service a fee is required.

The *Building Act 2011* distinguishes between:

1. a certified building permit application where a private building surveyor certifies that a proposal complies with the Act. The application then submitted to the local government for approval, which must be granted within 10 working days and attract a lower fee than was charged prior to 2 April 2012;
2. Uncertified applications which can be submitted to local government for residential applications, where the local government provides the certificate of design compliance and then issues the permit. As the service of providing a certificate of design compliance is not mandated, each local government can set its own fee for the provision of this service.

The City has determined to set a fee of 0.12 % of the value of construction, with a minimum fee of \$150, and a maximum fee of \$3,500.

The percentage of 0.12 % approximately represents the difference between the legislative fees for certified, building permit applications (0.19 %) and uncertified (0.32 %) building permit applications.

Conclusion

Approval of the fee structure of 0.12 % of the value of construction, with a minimum fee of \$150 and a maximum fee of \$3,500 for building certification services will enable the City to operate effectively within the parameters of the *Building Act 2011* and provide a fee for service for the provision of certificates of design compliance for residential building permit applications.

Attachments

Nil