



City of Nedlands

Planning and Development Reports

Committee Consideration – 10 July 2018

Council Resolution – 24 July 2018

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Council: 24 July 2018

PD30.18	(Lot 5146) No. 2 Alfred Road, Claremont – Increase in Staff and Children Numbers for a Child Day Care Centre (Retrospective)
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Committee	10 July 2018
Council	24 July 2018
Applicant	R Skinner
Landowner	A Skinner
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/253
Previous Item	PD12.18 – April 2018
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	<ol style="list-style-type: none"> 1. Photograph of the subject property 2. Photographs of the Parking Situation on 19 October 2017 3. Photographs of the Parking Situation on 24 October 2017 4. Photographs of the Parking Situation on 25 October 2017 5. Photographs of the Parking Situation on 21 March 2018 6. Photographs of the unauthorised patio structures 7. Noise Management Plan (received on 7 March 2018) 8. Photographs of the unauthorised shade sail structure 9. Photograph of the unauthorised sign

1.0 Executive Summary

Retrospective development approval is being sought to:

- a) increase the number of staff from 4 to 10; and
- b) increase the number of children from 39 to 46,

at the property which is currently occupied by the Tiny Beez child day care centre. The child day care centre was approved in September 1987.

In April 2018, an item regarding the proposal was withdrawn from the Ordinary Council meeting upon the applicant’s request to allow the applicant to try and address the concerns raised during the advertising period. The applicant has subsequently advised the City that despite their best efforts they have been unable to address the submitters’ concerns.

The number of staff and children currently on site was brought to the City’s attention as a consequence of concerns being received regarding parking difficulties in the local area. The City was advised that the situation was being caused by vehicles associated with the child day care centre.

The proposal was advertised to nearby landowners for comment, and during the advertising period 7 objections and 2 non-objections were received.

It is recommended that the application be approved by Council as the proposed number of staff and children is deemed to not be having a significant adverse impact on the local amenity, as ample parking is available for residents and for those associated with the child day care centre.

Also, if the measures recommended in the patio acoustic assessment and the noise management plan received by the City are implemented (see condition no. 6, 7 and 8), the noise associated with the child day care centre is unlikely to have a significant adverse impact on nearby residents.

2.0 Recommendation to Committee

Council approves the retrospective development application to increase staff and children numbers at (Lot 5146) No. 2 Alfred Road, Claremont, in accordance with the amended plans received on 7 December 2017, subject to the following conditions and advice:

- 1. The development shall at all times comply with the approved plans.**
- 2. The on-site car-parking bays being maintained by the landowner to the City's satisfaction.**
- 3. A maximum of 10 staff and 46 children on the premises at any one time.**
- 4. The child day care centre only being permitted to operate between 7.00am and 6.00pm Monday to Friday (excluding public holidays).**
- 5. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**
- 6. The landowner complying with the noise management plan received on 7 March 2018 (Attachment 7) to the City's satisfaction.**
- 7. Absorptive lining being applied to the underside of the patios' roof frame within 28 days from the date of this decision, in accordance with the Patio Acoustic Assessment dated 9 February 2018, to the City's satisfaction.**
- 8. The absorptive lining applied to the underside of the patios' roof frame is to remain and be maintained by the landowner thereafter to the City's satisfaction.**

Advice Notes specific to this proposal:

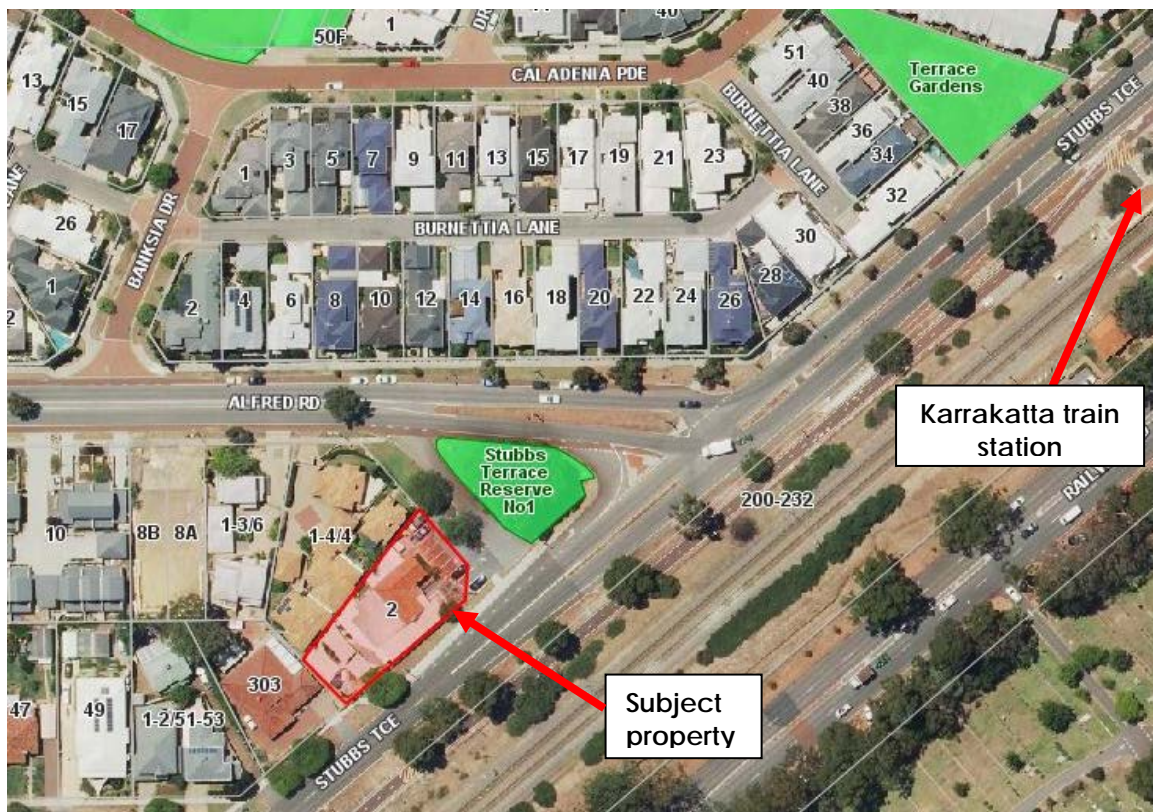
- 1. A separate application is required to be lodged and approved by the City prior to increasing staff and/or children numbers for the child day care centre in future.**
- 2. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.**
- 3. The landowner is advised that all mechanical equipment and activities on the property are required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.**
- 4. The applicant shall make application to the City's Building Services for a Building Approval Certificate, to acknowledge the unauthorised works.**

3.0 Site Details

Lot area	860m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R40
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property is located at the end of a cul-de-sac section of Alfred Road, opposite Stubbs Terrace Reserve No. 1. Surrounding properties contain single and grouped dwellings. Nearby is the Karrakatta train station.

An aerial image showing the subject property and the surrounding area is below.



4.0 Background

The premises were approved to be used as a child day care centre in September 1987. According to the application up to 4 staff were to be on the premises. It was a condition of the approval that the number of children be limited to 35.

In May 1998, development approval was granted for the maximum number of children on the premises to be increased from 35 to 39. Approval was not sought to increase the number of staff on the premises.

No development approval has been granted since for the number of staff and/or children to be increased.

In April 2018, an item regarding the proposal was withdrawn from the Ordinary Council meeting upon the applicant's request to allow the applicant to try and address the concerns raised during the advertising period.

5.0 Specific Application Details

The applicant seeks retrospective approval to:

- a) increase the number of staff from 4 to 10; and
- b) increase the number of children from 39 to 46,

at a child day care centre which is an 'AA' use in the Residential zone under Town Planning Scheme No. 2 (TPS 2).

No changes are proposed to the hours of operation nor to the number of car bays currently available on site.

6.0 Consultation

During the advertising period 7 objections and 2 non-objections were received.

The following is a summary of the concerns received:

- Noise levels considered to be excessive, potentially as a result of a patio being constructed near the north western (side) boundary of the subject property.
- Parking being in short supply for residents. Parking restrictions along Alfred Road are suggested.
- Parents visiting the child day care centre parking on verges and damaging sprinklers.
- The increase in staff and children numbers resulting in waste bins overflowing and litter blowing onto nearby properties.
- The proposal potentially affecting the value of nearby properties.
- A portable sign being placed on the reserve opposite the child day care centre.

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

By way of justification in support of the proposal, the applicant has advised the following:

"Staff who are on opening and closing shifts park directly in the centre carpark for health and safety reasons."

"I am aware that a lot of local commuters travelling by train to work, park their cars along this section to avoid car parking fees at the station."

"We only have 2 staff driving to work Monday to Friday, and our cook Monday to Thursday from only 8.30am till 12.30pm."

7.0 Assessment of Statutory Provisions

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

In accordance with provisions (n), (s), (t) and (u) of the Regulations Schedule 2 Part 9 Clause 67, due regard is to be given to the likely effect of the proposal on the local amenity, the proposed means of access, and potential traffic impacts. Where relevant, these matters are discussed in the following sections.

7.2 Town Planning Scheme No. 2

7.2.1 Car Parking and Traffic Safety

No car parking requirements are stipulated under TPS 2 for child day care centres therefore the number of car bays required is at the City's discretion.

It should be noted that the WAPC's Child Care Centre Bulletin recommends that the minimum parking requirement for a child care centre, including staff parking, will be 1 car bay per 5 children, as such 10 (9.2) car bays are required for the 46 children. A total of 8 car bays are available on site. Therefore, a deficit of 2 car bays therefore exists.

A car bay exists within the adjoining portion of road reserve which partially encroaches onto the subject property.

The following on street car parking restrictions exist within the local area:

- a) Cul-de-sac section of Alfred Road – No stopping at all times.
- b) Alfred Road (between Brockway Road and Stubbs Terrace) – No parking restrictions.
- c) Stubbs Terrace – No stopping at all times.

Administration Comments

In response to the concerns regarding car parking availability and traffic safety, the following is advised:

- The local area was visited by City Officers on different days and times to ascertain whether any parking difficulties exist, particularly along the section of Alfred Road near to the child day care centre. Photographs taken during the visits are shown in Attachments 2 to 5.

During the visits vehicles associated with the child day centre were not seen to be parking on verges adjacent to residential properties.

The majority of the car parking bays on the child care centre site were vacant, and the majority of nearby car parking spaces along Alfred Road (between Stubbs Terrace and Brockway Road) were also vacant.

- Residents along the northern side of Alfred Road have covered car spaces for 2 vehicles on their property, access to which is obtained from rear laneways. Vehicles associated with the child day care centre were not observed as preventing access to these garages and/or to driveways for other properties.

- Since receiving this application in August 2017 no complaints have been received regarding car parking associated with the child day care centre.
- The nature of the use means that when parents drop off and collect their children from the child day care centre their vehicles are likely to only be parked for a short period of time, meaning that car bays are frequently available.

Taking this into consideration, an ample amount of car parking spaces are available for the child day care centre and nearby residents despite the increase in staff and children numbers.

There is no evidence to suggest that the vehicles parking along the section on Alfred Road near to the subject property are all associated with the child day care centre. It is likely that the majority of these vehicles belong to commuters using the nearby train station.

7.2.2 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

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

Unauthorised Patio Structures

During the advertising period concerns were raised regarding noise levels being excessive, potentially as a result of a patio structure being constructed adjacent to the north western (side) boundary of the property, and another patio structure at the rear of the child day care centre building. Refer to Attachment 6 for photographs of the patio structures concerned.

According to the City's records no building or planning approvals had been granted previously for these structures, which were constructed between February 2015 and September 2015 according to the City's aerial imagery.

Amended plans were requested and subsequently provided by the applicant which show the unauthorised structures.

Despite a child day care centre being a non-residential use the provisions of the Residential Design Codes (R-Codes) are of relevance due to the property being zoned Residential under TPS 2.

As discussed under section 8.0 of this report, the patio structures comply with the deemed-to-comply provisions of the R-Codes.

Despite this, their location, size and purpose (being to accommodate the children), potentially resulted in excessive noise levels. Therefore, an acoustic assessment was requested and was subsequently provided which recommends various measures so that activities on the property comply with the *Environmental Protection (Noise) Regulations 1997*. One measure is to apply absorptive lining to the underside of the patios' roof frame.

The applicant subsequently provided a noise management plan (refer to Attachment 7) which was prepared in conjunction with the acoustic assessment. The measures outlined in this management plan are consistent with the recommendations in the acoustic assessment.

If the application is approved by Council, it is recommended that appropriate conditions be included requiring the measures outlined in the acoustic assessment and the noise management plan to be implemented to ensure compliance with the Noise Regulations.

Non-Compliant Shade Structure

During an inspection of the property by the City it was noted that a shade structure existed at the rear of the property which had been attached to the dividing fencing with 4 Alfred Road (refer to Attachment 8). The structure did not comply with the Building Code of Australia requirements; therefore, the City requested the landowner to remove it. The structure was subsequently removed.

8.0 Residential Design Codes

8.1 Lot Boundary Setbacks

Deemed-to-Comply Requirement	Proposed	Complies
<p>In accordance with clause 5.1.3 of the R-Codes structures such as patios on an R40 coded property may be built up to a lot boundary behind the street setback area not higher than 3.5m, for two-thirds the length of the lot boundary behind the front setback, to one side boundary only.</p> <p>They are also to comply with the overshadowing requirements.</p> <p>Note: The term ‘up to a lot boundary’ means a wall, on or less than 0.6m from any lot boundary, other than a street boundary.</p>	<p>The patio structures are setback 0.5m from the north western (side) lot boundary, and their total length is 15.28m.</p> <p>The length of the north western (side) lot boundary behind the street setback area is 42m.</p> <p>Taking this into consideration, the patio structures occupy 36.3% of the lot boundary’s length.</p> <p>The height of the patio structures nearest to the north western lot boundary is between 2.6m and 3.3m above natural ground level.</p> <p>Being on the northern side of the property means that the patio structures concerned comply with the overshadowing requirements.</p>	<p>Yes</p>

8.2 Open Space

Deemed-to-Comply Requirement	Proposed	Complies
<p>In accordance with table 1 of the R-Codes properties with an R40 coding are to have 45% open space.</p>	<p>The total area of the existing buildings on the property is 343.3sqm. Approximately 60% open space is therefore provided.</p>	<p>Yes</p>

9.0 Other Matters of Concern

During the advertising period concerns were also received with regard to the following:

- The increase in staff and children numbers resulting in waste bins overflowing and litter blowing onto nearby properties.
- The proposal potentially affecting the value of nearby properties.
- A portable sign being placed on the reserve opposite the child day care centre.

During the advertising period it was also suggested that either parking permits or time restrictions be introduced along the northern side of Alfred Road.

9.1 Waste Bin Concerns

The matter was investigated by the City and no overflowing bins have been observed to date.

Bins belonging to the child care centre were however being placed on the verge 2 days prior to their waste collection day, which breached the City's Waste Local Law.

The child care centre has since been asked to place their waste bins on the verge on their scheduled waste collection day (being on Mondays) and there is no evidence that this request has not been adhered to. The City will continue to monitor the situation.

9.2 Property Value Concerns

The potential impact proposed development may have on nearby property values is not a matter due regard is to be given to when determining the application under the Regulations.

9.3 Signage on Stubbs Terrace Reserve

A portable sign advertising the child day care centre had been placed on Stubbs Terrace Reserve opposite the subject property (refer to Attachment 9).

This has since been removed by the applicant and they have been advised that should they wish to place the sign on the verge immediately adjoining their property a Nature Strip Development Application would need to be approved by the City.

9.4 Request for Parking Restrictions

The request for parking permits or time restrictions to be introduced along the northern side of Alfred Road has been considered by the City.

It was noted during inspections of the local area that the existing parking situation is not preventing vehicles from accessing the residential properties. The request for parking permit or time restrictions is therefore not currently supported by administration.

10.0 Budget / Financial Implications

N/A

11.0 Risk Management

N/A

12.0 Conclusion

There is deemed to be an ample amount of parking available for residents, visitors to the residential properties nearby, and for those associated with the child day care centre.

If the measures recommended by the patio acoustic assessment and the noise management plan are implemented noise levels are likely to be compliant with the Noise Regulations and therefore not have a significant adverse impact on nearby residents.

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



PD30.18 - Attachment 2
Photographs of the Parking Situation on 19 October 2017

Date Taken: Thursday 19 October 2017
Time Taken: 5.30pm





Date Taken: Tuesday 24 October 2017
Time Taken: 7.30am





Towards northern side of Alfred Road

24/10/2017



Banksia Drive

Westward along Alfred Road

24/10/2017

Date Taken: Wednesday 25 October 2017
Time Taken: 4.30pm





Towards northern
side of Alfred
Road

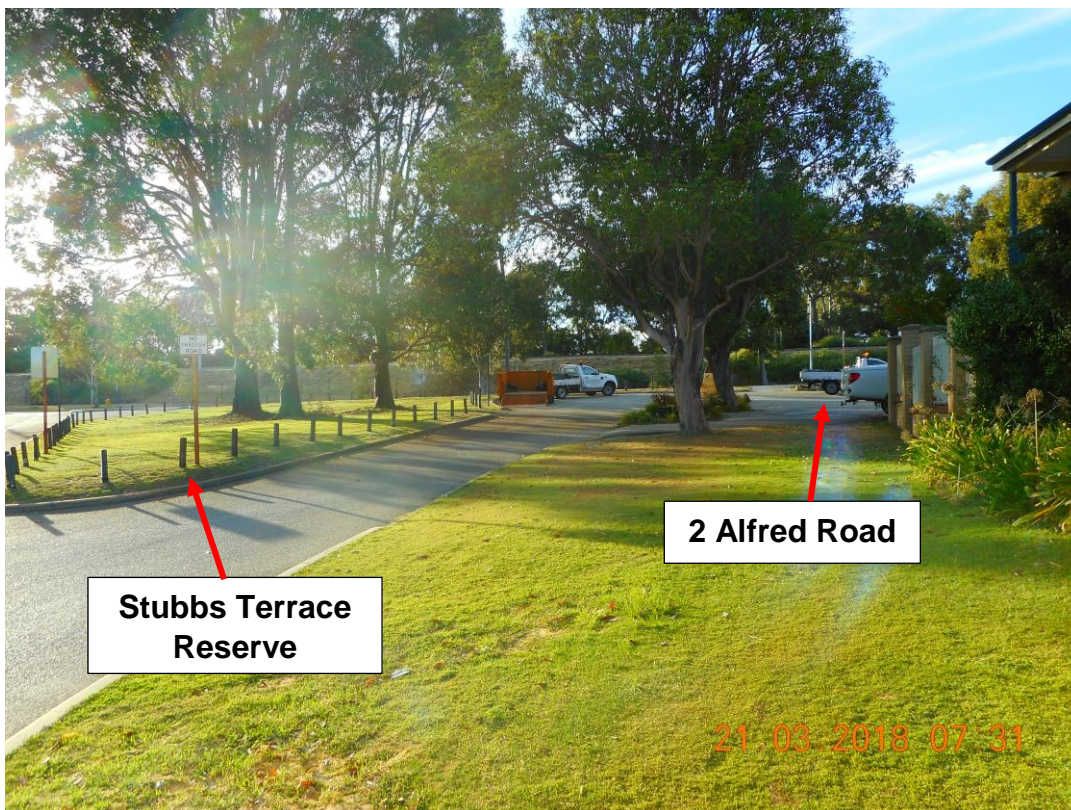
25/10/2017



Westward along
Alfred Road

25/10/2017

Date Taken: Wednesday 21 March 2018
Time Taken: 7.31am









Noise Management Plan

TinyBeez Education & Care Centre Claremont is located on the corner of Alfred Road and Stubbs Terrace Claremont.

The nearest noise sensitive 'residential' premises, relevant to the two new patios, are located adjacent to the Western side of the property.

The main noise source at the site associated with the two new patios will be:

a. Children's voices categorised by age groups:

- Kindy 3 - 5 years old, 18 total utilising rear patio; and
- Toddlers 2 - 3 years old, 15 total utilising rear patio; and
- Babes 0.5 - 2 years old, 12 total utilising the side patio.

b. Occasional music with the music being non-impulsive by nature.

Noise emissions from the CCC patio areas are expected to occur Monday to Friday between 0700 to 1745 hours. Children are not permitted outdoors (carpark excluded) prior to 7:00am and after 5:45pm Monday-Friday. The service is closed on Saturdays, Sundays and public holidays so there is no noise to be expected at these times.

The residents immediately to the Western side of the property adjacent to the patios will be provided with the direct mobile phone contact details to the Directors of the Childcare centre rather than having them deal with staff directly in order to voice their concerns if they are having any issues with noise.

If a child is crying outdoors the staff at the childcare centre will immediately take the child inside the building to prevent disturbing nearby residents and close any open doors or windows.

Other noise emissions raised by the resident adjacent to the Babes side patio is staff and children singing for birthday parties and having music playing. Any parties or celebrations and any music being played must be indoors with external windows and doors shut during the period of these celebrations.

The staff at TinyBeez Education & Centre Claremont will do their utmost to adhere to this noise management plan at all times.





PD31.18	(Lot 55) No. 5 Webster Street, Nedlands – Proposed Retaining Walls and Dividing Fencing
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Committee	10 July 2018
Council	24 July 2018
Applicant	L and E Stoyanov
Landowner	As above
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2018/28736
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photograph of the subject property

1.0 Executive Summary

Development approval is being sought to construct the following:

- a) Fill and retaining walls of up to 0.8m in height above natural ground level in lieu of 0.5m adjacent to the property’s southern lot boundary, behind the street setback area.
- b) Solid fencing of 1.5m in height being proposed on the retaining wall resulting in an overall (combined) height of up to 2.3m in lieu of 1.8m above natural ground level.

One objection was received during the advertising period regarding overlooking and the appearance of the development.

Whilst the height of the proposed retaining and associated fencing is considered to satisfy Council’s Fill and Fencing Local Planning Policy (Fill and Fencing LPP), the proposal does not satisfy the design principles of the Residential Design Codes (R-Codes) in terms of overlooking.

It is recommended that Council approves the application subject to amended plans being submitted as part of the building permit application which show the proposed finished ground level between the dwelling and the southern lot boundary not exceeding 0.5m above natural ground level so as to comply with the overlooking requirements.

2.0 Recommendation to Committee

Council approves the development application dated 23 April 2018, with amended plans received on 11 May 2018, for proposed retaining walls and fencing at (Lot 55) No. 5 Webster 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 fencing and retaining walls proposed along the property’s southern lot boundary.
3. Amended plans being submitted as part of the building permit application which show the finished ground level proposed as part of this development application not exceeding 0.5m above natural ground level.
4. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
5. All footings and structures to retaining walls and fences shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.

Advice Notes specific to this approval:

1. Stormwater to be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
2. 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.
3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	1,011m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. The subject property’s topography falls towards its western (rear) lot boundary. An aerial image showing the location of the property is on the following page.



4.0 Background

In September 2017, development approval was granted for a single dwelling at the property. The approved plans show banking of up to 0.5m above natural ground level being proposed between the dwelling and the southern lot boundary. This is currently under construction.

5.0 Specific Application Details

Development approval is being sought to construct the following:

- Fill and retaining walls of up to 0.8m in height above natural ground level in lieu of 0.5m adjacent to the property's southern lot boundary, behind the street setback area.
- Solid fencing of 1.5m in height being proposed on the retaining wall resulting in an overall (combined) height of up to 2.3m in lieu of 1.8m above natural ground level.

By way of justification in support of the proposal the applicant has advised that the fill and retaining is proposed in order to allow for access from the front of the property to the rear.

6.0 Consultation

One objection was received during the advertising period regarding overlooking from the subject property and the visual impact of the fencing and retaining walls due to their combined height.

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

7.0 Statutory Requirements

The following requirements apply to the development being proposed:

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

7.2 Town Planning Scheme No. 2

Amenity

Under clause 5.5.1 of Town Planning Scheme No. 2 (TPS 2) Council may refuse to approve any development if:

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

7.3 Residential Design Codes

Site Works and Retaining Walls

In accordance with clause 5.3.7 of the R-Codes fill within 1m of a lot boundary behind the street setback area shall not exceed 0.5m in height.

In accordance with clause 5.3.8 and table 2A of the R-Codes the retaining walls are required to be setback 1.5m from the eastern lot boundary.

In accordance with clause 5.4.1 of the R-Codes unenclosed outdoor active habitable spaces which have a floor level of more than 0.5m above natural ground level, and screening less than 1.6m in height above the finished ground level, are to be setback at least 7.5m from a lot boundary.

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“5.3.7 Site works

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.”

“5.3.8 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 due regard to clauses 5.3.7 and 5.4.1.”

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

7.4 Fill and Fencing Local Planning Policy

An objective of the Fill and Fencing LPP is to ensure that the amenity of neighbouring properties and the streetscape is maintained.

The Fill and Fencing LPP stipulates that the maximum height of fencing behind street setback areas is restricted to 1.8m above natural or approved ground levels. Fill is not permitted to exceed 0.5m in height above natural ground level.

Any fencing and/or fill which does not meet these requirements shall:

- a) Meet the design principles of the R-Codes;
- b) Be assessed in terms of the developments impact upon the streetscape; and
- c) Be advertised in accordance with Council’s Neighbour Consultation Policy.

7.5 Discussion

Having had regard to the matters stipulated sections 7.1 to 7.4 of this report the following is advised:

- The Fill and Fencing LPP permits retaining up to 0.5m in height above natural ground level and fencing up to 1.8m in height above permitted ground levels, potentially resulting in an overall height of 2.3m above natural ground level.

At its highest points the overall height of the retaining walls and the fencing proposed will be 2.3m. It therefore satisfies the objectives of the Fill and Fencing LPP, and the design principles of the R-Codes in terms of retaining walls.

- The fencing proposed within the street setback area complies with the Fill and Fencing LPP provisions.
- The height of the fill and fencing proposed behind the street setback area means that overlooking will be possible directly into 2 major openings on the ground floor of the dwelling on the adjoining property.

Increasing the height of the fencing will likely have a significant impact on the amenity of the adjoining neighbours and therefore not satisfy the objectives of the Fill and Fencing LPP.

Given this, if the application is approved by Council it is recommended that the finished ground level proposed as part of this application is not raised by more than 0.5m above natural ground level as to comply with the overlooking requirements.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

The bulk and scale of the retaining walls and solid fencing proposed along the southern lot boundary will unlikely have a significant visual impact on the adjoining properties due to its overall height being consistent with what is permitted under the Fill and Fencing LPP.

The amount of fill and the height of the fencing proposed will however result in overlooking being possible into 2 major openings on the adjoining property.

Notwithstanding this, it is noted that there is the opportunity for the fill not to be more than 0.5m above natural ground level and still allow for access to be possible from the front of the property to the rear.

Accordingly, it is recommended that the application be approved by Council subject to amended plans being submitted as part of the building permit application which show the finished ground level not exceeding 0.5m in height above natural ground level.



Location of the proposed retaining walls and over height fencing

28.05.2018 09:24

PD32.18	(Lot 4) No. 67 Minora Road, Dalkeith – Proposed Patio
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Committee	10 July 2018
Council	24 July 2018
Applicant	Oasis Patios Pty Ltd
Landowner	S and M Gonsalves
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA18/28229
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photograph of the patio's proposed location

1.0 Executive Summary

Development approval is being sought to construct a patio adjacent to the eastern lot boundary of the property.

The patio is proposed to be setback 0.5m in lieu of 1.5m from the eastern (side) lot boundary.

One objection was received during the advertising period. The concerns raised were with regard to the structure being proposed to be setback less than the required distance, and potential noise and drainage issues.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the *Residential Design Codes 2018 (R-Codes)*.

The patio complies with the open space, overlooking and overshadowing requirements, and will be unenclosed on all sides apart from where attached to the existing dwelling. As such, it will not contribute significant bulk. It also responds to the local development context.

There is also no evidence which suggests that having a patio structure over an existing outdoor living area would result in a significant increase in noise levels.

Given this, and the nature and the scale of the building, it is unlikely to have a significant adverse impact on the local amenity.

2.0 Recommendation to Committee

Council approves the development application for a patio to be constructed at (Lot 4) No.67 Minora Road, Dalkeith, received on 11 April 2018, with an amended elevation plan received on 1 May 2018, 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 pertains to the proposed patio only.
3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.

Advice Notes specific to this approval:

1. The swimming pool shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
2. Stormwater to be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	830m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. The subject property's topography is relatively flat. A locality plan showing the property is on the following page.



4.0 Specific Application Details

The applicant seeks development approval to construct a gable roofed patio adjacent to the property's eastern (side) lot boundary where currently a pergola exists.

The patio is proposed to be setback 0.5m in lieu of 1.5m from the side boundary and be attached to the existing dwelling which is setback the same distance from the boundary.

The proposed finished ground level of the outdoor living area where the patio is proposed to be constructed will remain unchanged.

5.0 Consultation

One objection was received during the advertising period. The following is a summary of the concerns received:

- The structure being setback closer than what is permitted.
- Potential noise issues due to the structure being closer than what is permitted.
- Potential drainage issues due to the structure being closer than what is permitted.

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) of the Regulations 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.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 of Town Planning Scheme No. 2 (TPS 2) Council may refuse to approve any development if:

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

In 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.

Having had regard to the matters stipulated under the Regulations and the submissions received, the following is advised:

- The proposal complies with the rear lot boundary setback, open space, overlooking and building height requirements.

Solid dividing fencing of up to 1.8m in height along a retaining wall of approximately 0.4m in height exists along the eastern lot boundary.

Mature vegetation exists on the adjoining property within close proximity to where the patio is proposed.

Considering the above, the patio will be partially screened from the adjoining properties.

- The finished floor level of where the patio is proposed to be located is not proposed to be raised by more than 0.5m above natural ground level and therefore complies with the overlooking requirements.
- Considering that the area where the patio is proposed to be located is already used as an outdoor living area there is no evidence to suggest that the patio would result in noise levels permitted under the *Environmental Protection (Noise) Regulations 1997* being potentially exceeded.
- If Council approves the application, it is recommended that a condition be included requiring all stormwater runoff from the patio to be contained on site.

Considering the above, the appearance and the location of the proposed patio is unlikely to have a significant adverse impact on the local amenity.

6.3 Residential Design Codes - State Planning Policy 3.1

6.3.1 Lot Boundary Setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings setback in accordance with Table 2A which requires a setback of 1.5m.	The patio is proposed to be setback 0.5m in lieu of 1.5m from the side (eastern) lot boundary.	No
<p>Design Principles</p> <p>Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:</p> <p><i>“P3.1 – Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <i>• reduce impacts of building bulk on adjoining properties;</i> <i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> <i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i> 		
<p>Administration Comments</p> <p>The proposed patio complies with the overlooking, overshadowing, open space and building height requirements.</p> <p>As advised under the previous section of this report, the appearance of the patio will unlikely have a significant adverse impact on the local amenity due to its scale and location. Any visual impact will also be minimised due to the existence of solid dividing fencing and mature vegetation.</p> <p>Taking into consideration the above, the proposal satisfies the design principles.</p>		

7.0 Budget / Financial Implications

N/A

8.0 Risk Management

N/A

9.0 Conclusion

The reduced side (eastern) lot boundary setback will unlikely have a significant adverse impact on the amenity of adjoining properties due to the structure being open on all sides, its scale and purpose.

Considering the purpose of the area where the patio is proposed to be located noise levels are unlikely to increase significantly compared with what is experienced currently.

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





PD33.18	(Lot 226) No. 37 Tyrell Street, Nedlands – Additions to Existing Single Dwelling
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Committee	10 July 2018
Council	24 July 2018
Applicant	Dale Alcock Home Improvements
Landowner	C Monaco
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA18/28482
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1d) of the City’s Instrument of Delegation, Council is required to determine the application when refusal is recommended and discretion exists for Council to approve the variations under the City’s Town Planning Scheme No. 2, Council Policies and/or the Residential Design Codes.
Attachments	1. Photographs of the subject property

1.0 Executive Summary

Development approval is being sought to construct the following:

- a) A games room which is proposed to be setback 1.78m in lieu of 6m from the western (rear) boundary, and 1.2m in lieu of 1.5m from the southern (side) lot boundary.
- b) A carport, the posts for which are proposed to be setback 0.1m in lieu of 1.5m from the southern (side) lot boundary.
- c) Fencing along the property’s street boundary.

No submissions were received during the advertising period.

It is recommended that the games room component of the application be refused by Council as its rear lot boundary setback is considered to not satisfy the design principles of the Residential Design Codes (R-Codes).

The scale of the building proposed within the rear setback area is likely to have an adverse impact on the amenity of the properties adjoining the southern and western boundaries and set an undesirable precedent.

The carport is proposed to be unenclosed apart from where it is attached to the dwelling, will be setback 16.7m from the street boundary and not be within close proximity to any major openings and/or outdoor living areas on the adjoining property.

Considering the proposed carport’s scale and location it is unlikely to have a significant adverse impact on the local amenity and therefore is deemed to satisfy the applicable design principles of the R-Codes.

The proposed street boundary fencing complies with Council’s Fill and Fencing Local Planning Policy (Fencing LPP).

Accordingly, it is recommended that the carport and fencing components of the application be approved by Council.

2.0 Recommendation to Committee

Council:

- 1. Refuses the games room component of the development application dated 20 April 2018, with amended plans received on 1 May 2018, for (Lot 226) No. 73 Tyrell Street, Nedlands, for the following reasons:**
 - a) The development will adversely affect the amenity of the local area as the it will increase the bulk and scale due to its reduced rear lot boundary setback and will set an undesirable precedent.**
 - b) The proposal does not satisfy the design principles stipulated under clause 5.1.3 (Lot Boundary Setback) of the *Residential Design Codes 2018* due to the bulk of the building when seen from adjoining properties caused by the rear lot boundary setback.**
 - c) The proposal does not satisfy provisions (m), (n) and (s) of Clause 67 within the *Planning and Development (Local Planning Schemes) Regulations 2015*, as the appearance of the building will negatively impact the amenity of the locality due to its rear lot boundary setback.**
 - d) A habitable room setback 1.78m in lieu of 6m from a rear lot boundary does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.**

- 2. Approves the carport and street boundary fencing components of the development application dated 20 April 2018, with amended plans received on 1 May 2018, for (Lot 226) No. 73 Tyrell Street, Nedlands, subject to the following conditions and advice:**
 - a) The development shall comply with the approved plans at all times.**
 - b) All footings and structures to the fencing and carport shall be constructed wholly inside the site boundaries of the Certificate of Title.**
 - c) All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**
 - d) The carport shall not accommodate a door.**

Advice Notes specific to this approval:

- 1. Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.**
- 2. The crossover to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.**

3. A separate development application is required to be submitted to and approved by the City prior to erecting any further 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 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.
5. 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.
6. 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.
7. 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.
 - a) 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.
 - b) 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.
8. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	1011m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those surrounding contain single dwellings and associated outbuildings. The topography of the land slopes upwards towards the western lot boundary. An aerial image showing the location of the property follows.



4.0 Specific Application Details

The applicant seeks development approval to construct a single dwelling on the property.

- a) A games room which is proposed to be setback 1.78m in lieu of 6m from the western (rear) boundary, and 1.2m in lieu of 1.5m from the southern (side) lot boundary.
- b) A carport, the posts for which are proposed to be setback 0.1m in lieu of 1.5m from the southern (side) lot boundary.
- c) Fencing along the property's street boundary.

The games room is proposed to contain a lounge, a kitchenette, a bathroom and a linen cupboard. The current landowner has confirmed in writing that the proposed building will not be used as ancillary accommodation or short-term accommodation.

The carport is proposed to be between 2.3m and 2.8m in height and be unenclosed apart from where attached to the dwelling.

The fencing is proposed to consist of 1.8m high and 0.4m wide brick piers, solid infill of up to 0.7m in height, and visually permeable infill of up to 1.6m in height.

By way of justification in support of the proposed rear setback the applicant has advised that buildings exist within the rear setback areas on nearby properties.

5.0 Consultation

No submissions were received during the advertising period.

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 Statutory Requirements

The following requirements apply to the development being proposed:

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.2 Town Planning Scheme No. 2

Amenity

Under clause 5.5.1 of Town Planning Scheme No. 2 (TPS 2) Council may refuse to approve any development if:

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

Games Room

The portion of the development which encroaches into the rear setback area is proposed to be 30sqm in area, have a wall height of 3m and a roof height of 4.5m above natural ground level.

Buildings which exist within the rear setback areas of nearby properties are outbuildings and patios, the exception being ancillary accommodation on 43 Tyrell Street.

The R-Codes permit outbuildings to be setback as close as 1m from a lot boundary, according to the City's records the ancillary accommodation at no. 43 Tyrell Street is setback 3m from the property's rear lot boundary and has a boundary wall which directly adjoins and is similar in dimension to a boundary wall for an outbuilding on 41 Tyrell Street. Under the deemed-to-comply provisions of the R-Codes a wall of a building may be built up to a boundary where it abuts an existing boundary wall on an adjoining site.

The proposed location of the games room on the subject property and in relation to existing buildings on adjoining properties means that it will likely have more of a visual impact on the local amenity compared with the ancillary accommodation at no. 43 Tyrell Street.

There is an ample amount of space available on the property for the games room to be designed in such a way so as to be setback further away from the rear lot boundary.

Considering the above, it is recommended that the games room component of the application be refused by Council.

Carport

The posts of the carport are proposed to be setback 0.1m from the southern lot boundary whereas the roof is to be setback 0.7m.

The carport is to be unenclosed apart from where it adjoins the dwelling.

No major openings or outdoor living areas exists within close proximity to the carport's proposed location.

The carport is proposed to be setback 16.7m from the street boundary, this being 7.7m further than the minimum setback stipulated under Town Planning Scheme No. 2.

Considering the above, the carport is unlikely to have a significant adverse impact on the neighbour's amenity and/or the streetscape.

6.3 Residential Design Codes

6.3.1 Lot Boundary Setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
For properties coded R10, the rear lot boundary setback required is 6m in Table 1.	The games room is proposed to be setback 1.78m in lieu of 6m from the western (rear) boundary.	No
In accordance with Table 2A a building with a wall height of up to 3.5m and is more than 9m in length is required to be setback 1.5m from a side lot boundary.	The posts for the carport are proposed to be setback 0.1m in lieu of 1.5m from the southern (side) lot boundary.	No
	The games room is proposed to be setback 1.2m in lieu of 1.5m from the southern (side) lot boundary.	No
<p>Design Principles Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:</p> <p><i>"P3.1 – Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> • <i>reduce impacts of building bulk on adjoining properties;</i> • <i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i> 		

Administration Comments

The scale of the development which is to be setback less than 6m from the rear boundary is larger compared with what an outbuilding is able to be in the same location. It is generally not consistent with the local development context, and its appearance is likely to have a significant visual impact on the local amenity.

The proposed side setback variation is unlikely to be apparent when viewed from the neighbouring considering how minor it is and the existence of solid dividing fencing, unless the neighbours are well verse with the Planning legislation.

The carport’s proposed location and scale and being unenclosed apart from where attached to the dwelling, means that it is unlikely to have a significant impact on the neighbouring property and/or the streetscape.

The proposal complies with the overlooking and overshadowing requirements.

Given this, the proposed rear setback variation is deemed to not satisfy the design principles. Whereas the proposed side setback variations are deemed to satisfy the design principles.

6.4 Fill and Fencing Local Planning Policy

An objective of Council’s Fencing LPP is to ensure that the amenity of neighbouring properties and the streetscape is maintained.

The Fencing LPP stipulates that the following requirements apply to fencing which is proposed within a residential property’s street setback area:

- a) Brick piers to a maximum height of 2.1 metres from natural ground level and up to 0.5m in width.
- b) 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
- c) fences are not to be higher than 0.75 metre above natural ground level, within 1.5 metres of where it adjoins vehicle access points where a driveway meets a public street and where two streets intersect.
- d) Within the 1.5m area stipulated under this policy the following obstructions are deemed acceptable by the City:
 - i. One pier with a maximum height of 2.1 metres above natural ground level with a length and width of no greater than 0.5m; and
 - ii. All other solid structures to be reduced to a height of no greater than 0.75 metres above natural ground level; and
 - iii. All visually permeable structures to a maximum height of 1.8 metres above natural ground level.

The street boundary fencing proposed complies with the Fencing LPP.

7.0 Budget / Financial Implications

N/A

8.0 Risk management

N/A

9.0 Conclusion

The reduced rear setback of the proposed games room is likely to have a significant adverse impact on the amenity of adjoining properties considering its scale, location and height above natural ground level. It will have a significant visual impact on the adjoining properties and create an undesirable precedent.

Notwithstanding this, it is noted that there is the opportunity for the games room to be setback further away from the rear lot boundary considering the size and layout of the property.

The scale and location of the proposed carport means that it is unlikely to have a significant adverse impact on the local amenity.

The fencing proposed is compliant with the Fencing LPP.

Accordingly, it is recommended that Council refuses the games room component of the application and approves the proposed carport and street boundary fencing.

9.1 Recommended Conditions if Games Room is Approved

If Council resolves to approve the games room component of the application the following wording and conditions are recommended.

Council approves the development application dated 20 April 2018, with amended plans received on 1 May 2018, for a games room, carport and street boundary fencing to be constructed at (Lot 226) No. 73 Tyrell Street, Nedlands, subject to the following conditions and advice:

1. The development shall comply with the approved plans at all times.
2. The proposed games room not being used as a dwelling, ancillary accommodation or short-term accommodation.
3. Prior to the building permit application being lodged the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the games room is subject to the restriction set-out under condition b).
4. All footings and structures to the fencing and carport shall be constructed wholly inside the site boundaries of the Certificate of Title.
5. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.

Advice Notes specific to this approval:

1. Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to construction.
2. The crossover to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from

the Council's Infrastructure Services under supervision onsite, prior to commencement of works.

3. A separate development application is required to be submitted to and approved by the City prior to erecting any further 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 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

Below – Location of the proposed games room



Below – Location of the proposed carport



Below – View of the subject property as seen from Tyrell Street



PD34.18	(Lot 3) No. 7 Nardina Crescent, Dalkeith – Proposed Street Boundary Fencing (Retrospective)
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Committee	10 July 2018
Council	24 July 2018
Applicant	C Wang
Landowner	C Wang
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2017/334
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1d) of the City’s Instrument of Delegation, Council is required to determine the application when refusal is recommended and discretion exists for Council to approve the variations under the City’s Town Planning Scheme No. 2, Council Policies and/or the Residential Design Codes.
Attachments	1. Photographs of the subject property

1.0 Executive Summary

Retrospective development approval is being sought for existing fencing to remain on the street boundaries of the property.

Plans previously approved for the property show the fencing being up to 1.8m in height along both street boundaries, and the portion of fencing on the southern side of the driveway being visually permeable. A pillar for a letterbox on the northern side of the driveway is shown as being 0.5m in width.

As a consequence of concerns being received the City became aware that the fencing which exists is up to 1.9m in height and is solid on the southern side of the driveway. A pillar on the northern side of the driveway is 0.74m in width.

The application does not comply with the deemed-to-comply provisions of the Residential Design Codes (R-Codes) in terms of sight lines, and Council’s Fill and Fencing Local Planning Policy (Fencing LPP) in terms of height and width. It was therefore advertised for comment during which time one non-objection was received.

The fencing is 10cm higher than what was approved previously, therefore its appearance is not considered to be having a significant impact on the streetscape and therefore meets the objectives of the Fencing LPP.

The width and solid material of the fencing immediately adjoining the property’s driveway means that driver’s leaving the property will have obstructed sight lines, made worse by the road’s curved alignment.

It is therefore recommended that Council approves the application subject to alterations being made to the fencing in order for it to comply with the sight line requirements.

2.0 Recommendation to Committee

Council approves the retrospective development application received on 1 December 2017, with amended plans received on 28 March 2018, for the existing street boundary fencing to remain at (Lot 3) No. 7 Nardina Crescent, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. This development approval only pertains to the fencing which exists along the Nardina Crescent and Minora Road boundaries of the property.**
- 3. Amended plans being provided as part of the Building Certificate Application which shows the following alterations:**
 - a) The pillar for the letterbox on the northern side of the drive way being 0.5m in width; and**
 - b) The fencing on the southern side of the driveway consisting of one brick pier 1.9m in height and 0.5m in width, solid infill of 0.75m in height, and visually permeable infill up to 1.8m in height above natural ground level (refer to advice note 1).**
- 4. The alterations required to be made to the fencing specified under Condition 3 of this approval decision being made within 28 days of the Building Certificate being issued by the landowner to the City's satisfaction, or by an alternative date agreed to in writing by the City.**
- 5. All footings and structures to the fencing shall be constructed wholly inside the site boundaries of the property's Certificate of Title.**

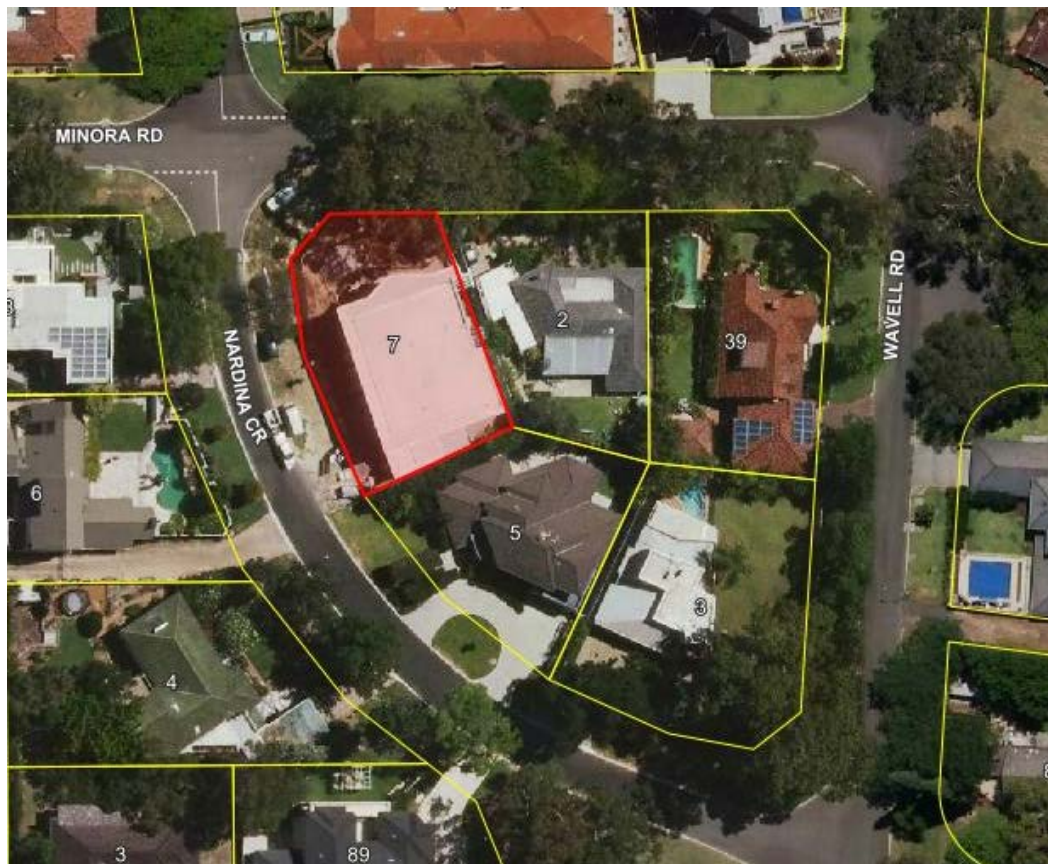
Advice Notes specific to this approval:

- 1. The applicant is advised that a wall for the gas and electric meter is able to be located within the street setback area subject to being solid up to 1.8m in height, 1m in width, right aligned to the street, and not being closer than 1.5m from where a driveway meets the crossover on the subject property and/or an adjoining property.**
- 2. A separate development application is required to be submitted to and approved by the City prior to erecting any further fencing within the street setback area(s) which does not form part of this approval, 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.**
- 3. The applicant shall make application to the City's Building Services for a Building Approval Certificate, to acknowledge any unauthorised works.**

3.0 Site Details

Lot area	850m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. The subject property's topography falls towards its north-western boundary. An aerial image showing the location of the property is below.



4.0 Background

In September 2015, Council resolved to approve a development application for a single dwelling at the property. This is currently under construction.

In February 2017, development approval was granted under delegated authority for street boundary fencing at the property consisting of the following:

- Solid piers up to 1.8m in height above natural ground level.
- Solid infill sections of fencing up to 0.7m in height above natural ground level.
- Visually permeable infill sections of fencing up to 1.8m in height above natural ground level.
- A brick pier on the northern side of the driveway being 0.5m in width.

In October 2017, the City received concerns regarding the height of the street boundary fencing.

During the investigation process it was noted that portions of the existing fencing encroached into the adjoining road reserves, they have since been removed.

5.0 Specific Application Details

Retrospective development approval is being sought for existing street boundary fencing to remain on the property, details of which are as follows:

- Solid sections of fencing up to 1.9m in height above natural ground level in lieu of 1.8m along both street boundaries.
- A 0.7m wide brick pier in lieu of 0.5m within the 1.5m truncation area on the northern side of the driveway.
- A 2.29m high 1.4m wide brick wall within the 1.5m truncation area on the southern side of the driveway, in lieu of 2.1m in height and 0.5m in width.

The remainder of the street boundary fencing is consistent with the development approval granted in February 2017.

6.0 Consultation

One non-objection was received during the advertising period.

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

7.0 Statutory Requirements

The following requirements apply to the development being proposed:

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

7.2 Town Planning Scheme No. 2

Amenity

Under clause 5.5.1 of Town Planning Scheme No. 2 (TPS 2) Council may refuse to approve any development if:

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

7.3 Residential Design Codes

Sight Lines

In accordance with clause 5.2.5 C5 of the R-Codes walls, fences and other structures are to be truncated or reduced to no higher than 0.75m within 1.5m of where walls, fences or other structures adjoin vehicle access points where a driveway meets a public street.

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P5 Unobstructed sight lines provided at vehicle access points to ensure safety and visibility along vehicle access ways, streets, rights-of-way, communal streets, crossovers, and footpaths.”

7.4 Fill and Fencing Local Planning Policy

An objective of the Fencing LPP is to ensure that the amenity of neighbouring properties and the streetscape is maintained.

The Fencing LPP stipulates that within 1.5m of where the fencing adjoins a vehicle access point the following obstructions are deemed acceptable:

“4.5 Within the 1.5m area stipulated under clause 4.4 of this policy, the following obstructions are deemed acceptable by the City:

- a) One pier with a maximum height of 2.1 metres above natural ground level with a length and width of no greater than 0.5m; and*
- b) All other solid structures to be reduced to a height of no greater than 0.75 metres above natural ground level; and*
- c) All visually permeable structures to a maximum height of 1.8 metres above natural ground level.”*

Any fencing and/or fill which does not meet these requirements shall:

- a) Meet the design principles of the R-Codes;
- b) Be assessed in terms of the developments impact upon the streetscape; and
- c) Be advertised in accordance with Council’s Neighbour Consultation Policy.

7.5 Discussion

Having had regard to the matters stipulated sections 6.1 to 6.4 of this report the following is advised:

- The fencing which exists is up to 10cm higher than what was previously approved. Considering the scale and location of the fencing this variation is considered to be minor and is not having a significant impact on the streetscape.
- The height, width and material of the fencing which is less than 1.5m from where the driveway meets the street boundary means that drivers leaving the property will have obstructed sight lines. This is further restricted due to

vegetation which exists within the street setback area of 5 Nardina Crescent (adjoining the southern lot boundary).

The road reserve curves meaning that vehicles leaving the property will not have a clear sight of vehicles and/or pedestrians moving in either direction.

Given this, the proposal does not satisfy the design principles of the R-Codes nor the provisions of the Fencing LPP.

Despite being requested by the City, a sight line impact assessment from a Traffic Consultant was not provided by the applicant to demonstrate whether the fencing creates safety issues for pedestrians and/or other road users.

Considering the above, whilst the height of the fencing satisfies the Fencing LPP objectives the fencing within 1.5m of the driveway potentially creates safety issues for pedestrians and road users.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

The height of the fencing is not deemed to be having a significant adverse impact on the streetscape considering its scale and location.

The design of the fencing which exists within 1.5m of the driveway is likely to create safety issues for road users and/or pedestrians when vehicles leave the property. Insufficient information has been provided by the applicant which demonstrates whether the sight line variation is acceptable or not.

Accordingly, it is recommended that the application be approved by Council subject to alterations being made to the fencing in order to comply with the sight line requirements.

Below – View from Minora Road/Nardina Crescent intersection



Below – View from Nardina Crescent



Below – Existing meter box wall, shown on approved plans required to be visually permeable



Below – View northwards along Nardina Crescent



PD35.18	(Lot 352) No. 81 Dalkeith Road, Nedlands – Home Business (Acupuncturist) Renewal
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Committee	10 July 2018
Council	24 July 2018
Applicant	C Xu and P Ding
Landowner	C Xu and P Ding
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2018/28882
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	<ol style="list-style-type: none"> 1. Details of the home business from the applicant’s website 2. Photographs of the acupuncture rooms on the subject property 3. Photographs of the car parking situation taken on 7 and 8 June 2018

1.0 Executive Summary

Development approval is being sought for a home business (acupuncturist) to continue operating at the property.

A home business is an ‘AA’ use on properties zoned Residential under Town Planning Scheme No. 2 (TPS 2), which means that the use is not permitted unless development approval is granted. The application was advertised to nearby landowners and occupants for comment. During the advertising period 2 objections and 3 non-objections were received.

Concerns raised include parking issues associated with the home business. There is currently no evidence that vehicles associated with the home business are creating parking difficulties within the local area, however according to the City’s records 3 vehicles have been infringed since January 2018 for parking illegally on the Jenkins Avenue verge between Mountjoy Road and Dalkeith Road.

It is recommended that the application be approved by Council as considering the nature and scale of the proposed use it is not having a significant adverse impact on the local amenity. However, considering the concerns raised and that vehicles have been infringed near to the property, it is recommended that the approval be for a 12-month period. The home business would not be able to continue operating beyond this unless further approval is obtained.

2.0 Recommendation to Committee

Council approves the development application for a home business (acupuncturist) to continue operating at (Lot 352) No. 81 Dalkeith Road, Nedlands, received on 14 May 2018, subject to the following conditions and advice:

1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.
2. The home business approval being valid for a period of 12 months from the date of Council's decision in accordance with Council's Home Business Policy, after which time it is not permitted to continue operating unless a separate planning application has been approved.
3. The proposed use complying with the home business definition stipulated under the City's Town Planning Scheme No. 2 (refer to advice note 1).
4. Patients visiting the property by prior appointment only.
5. The home business only being permitted to operate between the following times:
Mondays to Fridays – 8.00am to 6.30pm
Saturdays – 8.00am to 1.00pm

Advice Notes specific to this approval:

1. With regard to Condition 2, The applicant is advised that the use 'Home Business' is defined as being the following under the City's Town Planning Scheme No. 2:

"Home Business - means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which:
 - a) *does not employ more than 2 people not members of the occupier's household;*
 - b) *will not cause injury to or adversely affect the amenity of the neighbourhood;*
 - c) *does not occupy an area greater than 50 square metres;*
 - d) *does not involve the retail sale, display or hire of goods of any nature;*
 - e) *in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
 - f) *does not involve the use of an essential service of greater capacity than normally required in the zone."*
2. Noise levels are to comply with the *Environmental Protection (Noise) Regulations 1997*.
3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.

3.0 Site Details

Lot area	1,011m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings as shown on the locality plan below.



4.0 Background

The home business was first granted approval to operate at the property in February 1993 for a period of 12 months. Subsequently applications for it to continue to operate have been approved.

5.0 Specific Application Details

The applicant seeks development approval to continue operating a home business (acupuncturist) at the property.

Details of the application are as follows:

- The home business will continue to be operated by those residing at the property.
- Customers are proposed to visit the property by prior appointment only.
- Approximately 45sqm of the dwelling is proposed to be used in conjunction with the home business.
- Appointments typically last up to 1 hour.

- The home business is proposed to continue operating between the following times (including public holidays):
Monday and Friday – 8.00am to 6.30pm
Saturday – 8.00am to 1.00pm

6.0 Consultation

Two objections and 3 non-objections were received during the advertising period. The following is a summary of the concerns received:

- The home business creating car parking difficulties within the local area.
- The number of customers visiting the premises.

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

7.0 Assessment of Statutory Provisions

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

7.2 Town Planning Scheme No. 2

7.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

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

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the compatibility of the proposed development within its setting and the potential impact it will have on the local amenity.

Having had regard to the matters stipulated under the Regulations and the submissions received, the following is advised:

- The home business is operating within 3 rooms equating to 45sqm in total. No outdoor activities associated with the home business are undertaken.

Having inspected the premises, it is consistent with the floor plan provided as part of the application.

- The following car parking restrictions exist within close proximity to the property:

Jenkins Avenue (northern side) – 3-hour parking between Monday and Friday 8.00am to 5.00pm.

Jenkins Avenue (southern side) – No parking permitted between Monday and Friday 8.00am to 5.00pm.

Dalkeith Road (western side) – 3-hour parking between Monday and Friday 8.00am to 5.00pm.

Dalkeith Road (eastern side) – No parking permitted.

There is space available for up to 2 cars to park on the property, and there is space for up to 3 vehicles to park along the portion of verge which adjoins the property's Jenkins Avenue boundary.

The home business is being operated by those residing at the property, and patients are visiting the property by prior appointment only

Having inspected the current car parking situation within close proximity to the property, there is no evidence to suggest that vehicles associated with the home business have been and/or are creating car parking difficulties. Refer to Attachment 3 for photographs showing the current car parking situation. It should however be noted that 3 vehicles have been infringed for illegally parking on the verge between Mountjoy Road and Dalkeith since the beginning of 2018.

- The home business is proposed to continue operating in the same manner as it has done for a number of years. According to the City's records there is no evidence to suggest that any of the conditions have been breached to date.

Considering the above, the operation of the home business is not having a significant adverse impact on the local amenity and is consistent with the home business definition stipulated under TPS 2.

If the application is approved by Council, it is recommended that it be for a 12-month period having had regard to the concerns raised.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

Considering the nature and the scale of the proposed home business is it unlikely to have an adverse impact on the local amenity.

The proposal complies with the home business requirements stipulated under TPS 2.

It is recommended that the application be approved by Council for 12 months, after which time consideration will be given to possibly allowing the home business to operate for a longer period having regard to any parking issues experienced.

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Chinese Therapy Clinic

Perth's Acupuncture and Chinese Medicine Clinic since 1989

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ABOUT US



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ABOUT US



Chinese Therapy Clinic established in 1989 is one of the first Acupuncture and Chinese Medicine Clinics in Perth Western Australia. We are delighted to have a patient population which spans our vast State, ranging from Port Hedland to Kalgoorlie and of course our Perth locals. We believe in holistic health practices that improve the overall wellbeing of our patients.

OUR SERVICES

OUR SERVICES



What I can Expect

Common Conditions

Chinese Medicine

Acupuncture

Moxibustion (Cupping)

OUR PRACTITIONERS

OUR PRACTITIONERS



Professor Chao Ji Xu

Professor Xu has extensive training and experience in Traditional Chinese Medicine (TCM). He practised TCM in China for 15 years prior to migrating to Perth Western Australia. In 1989 Professor Xu first opened Chinese Therapy Clinic, bringing his wealth of knowledge and training to the people of Western Australia. Since then he has practiced Chinese Medicine and Acupuncture in Perth for more than 25 years.

Qualifications:

• Adjunct Professor Yunnan University of Traditional



Ms Pei Lin Ding

Ms Ding has practiced Traditional Chinese Medicine at Chinese Therapy Clinic with Professor Xu since its opening in 1989. She has a special interest in Women's Health, and has a wealth of experience in treatment of infertility and weight loss.

Qualifications:

- Master's Degree in Chinese Medicine, Yunnan University of Traditional Chinese medicine
- Registered with the Chinese Medicine Board of Australia (MURBA)

CONTACT US

Our Address

81 Dalkeith Rd
Nedlands WA 6009

Opening Hours

Monday to Friday 08:00 - 18:00
Saturday 08:00 - 13:00

Contact

Tel: [9386 2766](tel:93862766)
E: chaojixu@hotmail.com
peilinding@hotmail.com



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Photographs of the acupuncture rooms on the subject property



2018

7 June 2018





8 June 2018



