

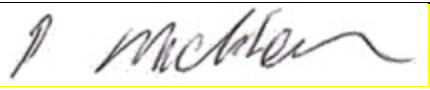
Planning and Development Reports

Committee Consideration – 10 March 2015
Council Resolution – 24 March 2015

Table of Contents

Item No.	Page No.
PD09.15	(Lot 2) No.2a Archdeacon Street, Nedlands – Retrospective Change of Use (Use Not Listed - Short Stay Accommodation)..... 2
PD10.15	(Lot 469) No. 42 Viking Road Dalkeith –Proposed Extensions (Kitchen and Carport) To Single House 15
PD11.15	(Lot 173) No. 49 Bruce Street Nedlands –Proposed Ancillary Accommodation 25
PD12.15	(Lot 412) No. 109 Stirling Highway Nedlands –Proposed Change Of Use (Office And Lunch Bar) 35
PD13.15	(Lot 761) No. 16 Circe Circle North Dalkeith – Two Storey Single Dwelling 46
PD14.15	(Lot 753) No. 11 Circe Circle North Dalkeith Additions (Gazebo) to Single House 56
PD15.15	Tresillian Arts Centre Leases – Delegated Authority..... 61

PD09.15	(Lot 2) No. 2a Archdeacon Street, Nedlands – Retrospective Change of Use (Use Not Listed - Short Stay Accommodation)
----------------	---

Committee	10 March 2015
Council	24 March 2015
Applicant	A Giambazi
Landowner	B E & A Giambazi
Officer	Jennifer Heyes – Manager Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/396 – AR1/2A
Previous Item	PD45.14

1.0 Executive Summary

This application was last considered at the 25 November 2015 Council meeting, where a procedural motion was resolved that “The motion be adjourned to the next appropriate meeting of Council”.

Since this time a further submission has been received from the applicants planning consultant and is attached as appendix 3.

The application seeks retrospective approval for a change of use from grouped dwelling to ‘use not listed’ (short stay accommodation) at 2a Archdeacon Street, Nedlands.

The application was advertised to surrounding neighbours and five submissions were received (one support, four objections). The objections primarily related to safety, noise/nuisance, management and parking.

In accordance with delegation 6A, the Council’s determination is required as neighbour objections have been received and have not been resolved.

The application is recommended for refusal. Should the application be refused by Council, administration will take appropriate action to require the landowner to cease operation of the short stay accommodation.

1.1 Recommendation to Committee

Council refuses the application for a retrospective change of use (use not listed - short stay accommodation) at (Lot 2) No. 2a Archdeacon Street Nedlands, in

accordance with the application and plans received on 18 July 2014, for the following reasons:

1. The short stay accommodation does not satisfy the amenity considerations of cl. 5.5.1 and cl. 6.4.1 of Town Planning Scheme No. 2, as the land use is inappropriate within the suburban site context.
2. The short stay accommodation does not satisfy the amenity considerations of cl. 5.5.1 and sub-cl. 6.4.2 (a), as the unpredictable hours of vehicular trips and entertaining is considered to impact on the amenity of the surrounding properties.
3. The short stay accommodation does not satisfy the amenity considerations of sub-cl. 6.4.2 (h), as the use is not necessary to service the needs of the district's residential population and is not in keeping with the City's intentions for the locality.
4. The short stay accommodation does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.
5. The approval of the short stay accommodation could establish an adverse planning precedence which could lead to the erosion of the local suburban character and detract from the amenity of the locality.

However, should Council choose to approve the application the following conditions are recommended:

Alternate Recommendation to Committee

Council approves the application for a retrospective change of use (use not listed - short stay accommodation) at (Lot 2) No. 2a Archdeacon Street Nedlands, in accordance with the application and plans received on 18 July 2014, subject to the following conditions:

1. Unless otherwise approved by the City, the short stay accommodation is to cease operation no later than 12 months from the date of this approval, after which point, the building is not to be used for any purpose other than that of a dwelling.
2. Within 21 days of the date of approval, the applicant is to prepare a Management Plan and submit it to the City for approval. The Management Plan is to detail the process of managing:
 - a) Noise;
 - b) Complaints;

- c) Maintenance;
- d) Security;
- e) Behaviour; and
- f) Car parking.

The Management Plan is to be prepared to the City's satisfaction, is to be implemented immediately after approval, and is to remain in place at all times.

3. A fire and emergency response plan is required to be clearly displayed in a conspicuous location within the dwelling, plus:
 - a) Each bedroom is to be fitted with a hard wired smoke detector;
 - b) A fire extinguisher, in a clearly visible location, is to be maintained in proper working order; and
 - c) Outside barbeques are to be gas or electric.
4. A guest register is to be maintained by the operator, which records the name, contact details and period and duration of stay for all persons occupying the premises.

Advice Notes

1. Room sizes shall allow for a minimum 14m³ of air space per person in accordance with the Health Act 1911.
2. It is recommended that house rules are established for guests in relation to noise and disturbance to mitigate impact to surrounding neighbours.
3. There shall be no more than 6 persons accommodated, otherwise Lodging-house requirements will apply per the Health Act 1911.

1.2 Strategic Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design principles of the Residential Design Codes of Western Australia, contributing to well-planned and managed development in the City of Nedlands.

2.0 Background

Property address	(Lot 2) No. 2a Archdeacon Street Nedlands ('subject site')	
Lot area	443m ²	
Zoning / Reserve / Density Code	MRS	Urban
	TPS2	Residential at R12.5 density

The subject site has frontage to Archdeacon Street to the west and is located in close proximity to Stirling Highway, public transport and UWA, as seen in the location plans below.



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (TPS2 or **Scheme**).
- Residential Design Codes of WA 2013 (**R-Codes**).

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation): Yes ☐ No ☒

3.2 How and when was the community consulted?

As short stay accommodation is a 'use not listed' and is designated an 'AA' symbol on 'Table 1 – Use Class Table' of TPS2, the City advertised the proposal in accordance with the Special Procedures prescribed in cl. 6.3 of TPS2. This included the erection of a sign on site, and letters sent to potentially affected neighbours for a period of 21 days.

During the consultation period, five submissions were received (one support, four objections). The objections are summarised as follows, and the full submissions form a part of the separate attachments provided to elected members:

1. Management/Maintenance - As the owner does not reside at the property, there are concerns regarding the management of guests and the ongoing maintenance of the property (e.g. collecting mail, rubbish bins, lawn mowing etc.).
2. Safety/Security - Short stay accommodation would introduce many unknown people into the neighbourhood. Plus, not collecting mail shows that the property is vacant which creates security concerns.
3. Appropriateness of land use - Archdeacon Street is a residential zone and the proposed use is unsuitable.
4. Noise - There have been instances where parties have caused noise nuisance.
5. Parking - Tenants park illegally on the east side of Archdeacon Street. This causes traffic and safety concerns.

In response to the neighbours' objections, the applicant has made the following submission, which is summarised as follows. Note that the full submission forms a part of the separate attachments provided to elected members:

1. Management/Maintenance - We own the property and would never let a property worth over \$1.3m deteriorate. Living approximately 2km from the subject site means that we drive by three to four times per week. On two occasions the bins were placed on the verge one day earlier due to holiday plans. The lawns and garden are maintained on a regular basis and a cleaner services the property as needed.
2. Safety/Security - We have a policy of renting for a minimum of three days, as any less is unviable. Junk mail is a problem for all home owners.
3. Appropriateness of land use - Most of our tenants are families and the traffic generated from the property is less than other properties in the vicinity (e.g. neighbouring units on the corner of Stirling Highway and Archdeacon Street).
4. Noise - The noise is no greater than that of every other home in Nedlands.
5. Parking - The cars that park on the street are mostly people who work in offices on Stirling Highway and Williams Road. We have on a number of occasions, contacted the Rangers due to these issues.

The above matters are considered in the discussion section of this report.

The applicant has also provided a summary of the occupancy rate of the short stay accommodation. The summary identifies that between 1 March 2014 and 10 July 2014 (131 days), the short stay accommodation was occupied for 93 days. This represents an occupancy rate of 71%.

4.0 Budget / Financial Implications

The proposal is for works related to a private lot, and therefore has no budget or financial implications for the City.

5.0 Risk Management

Not applicable.

6.0 Discussion

The proposal involves the retrospective change of use (use not listed - short stay accommodation) of the existing two storey dwelling, as depicted in the submitted plans (**Attachment 1**).

The existing dwelling contains four bedrooms, which, according to the applicant, are furnished with two double beds and two single beds. The applicant has indicated that the property is usually occupied by between two and four people and that these tenants are primarily local workers, overseas tourists or other locals.

The property can accommodate two vehicles in the existing double carport, and the design of the crossover is such that two additional vehicles could be parked in the driveway/crossover (i.e. partially located on the verge).

The proposal does not include any signage as tenants are obtained through the internet.

In addition, the Applicant's letter describes the proposal in more detail (**Attachment 2**).

6.1 Requirements

The proposed land use of 'short stay accommodation' is not listed on 'Table 1 – Use Class Table' of TPS2.

Where a use is not listed on 'Table 1 – Use Class Table' of TPS2, it is designated an 'AA' symbol, which means that the use is not permitted unless approval is granted by the Council, after following the special procedures specified in cl. 6.3 of TPS2, and after taking into account the considerations specified in cl. 6.4 of TPS2.

For the purposes of this report, the considerations specified in cl. 6.4 of TPS2, which are relevant to this application are as follows. Note that emphasis has been added for clarity:

Cl. 6.4 - Consideration of applications:

“6.4.1 In considering any application for planning approval the Council may have regard to the appropriateness of the proposed use and its effect on the Scheme area, and in particular the provisions of this Scheme or any By-laws in force in the district and the relationship of these to the proposed development or use.”

“6.4.2 In respect of an application for planning approval made under Clause 6.3 the applicant shall satisfy the Council that the following conditions and standards have been met.

(a) the nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;

(b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;

...

(e) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;

(f) that any traffic generated must be capable of being accommodated within existing streets;

(g) that the development or use will not place excessive loads on existing or projected essential services;

(h) the proposed development or use is necessary to service the needs of the district's residential population and is otherwise generally in keeping with the Council's Town Planning intentions for the locality;

...”

Other relevant TPS2 provisions include:

Cl. 5.5.1:

“Without limiting the generality of Clause 6.5 the Council may refuse to approve any development if in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any factor inconsistent with the use for which the lot is zoned.”

Cl. 6.5.1:

“The Council may determine an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, having regard to the orderly and proper planning of the area.”

6.2 Consultation

The consultation period resulted in four (4) objections to the application. The objections related to:

1. Management/Maintenance

2. Safety/Security
3. Appropriateness of land use
4. Noise
5. Parking

The matters raised by the neighbours are discussed in the assessment section of this report.

6.3 Assessment

Short stay accommodation is generally considered a component of tourism planning. The Western Australian Planning Commission (WAPC) has published a planning bulletin (*Planning Bulletin 99*) and guidelines (*Holiday Home Guidelines - short stay use of residential dwellings*) which provide guidance on the assessment of short stay accommodation proposals. The bulletin and guidelines primarily focus on location, amenity and management considerations.

In the absence of any of the City's specific controls regarding short stay accommodation, the WAPC bulletin and guidelines have been utilised to guide the City's assessment, which is as follows:

6.3.1 - Management/Maintenance

In order to ensure that the property is appropriately managed and maintained, should the application be approved, it is considered appropriate to apply a condition requiring the applicant submit a management plan detailing the process of managing:

- Noise
- Complaints
- Maintenance
- Security
- Behaviour
- Car parking
- Fire and emergency response

This will establish the parameters of how the premises are to be managed and maintained and will assist in minimising the impact on the locality.

This approach is recommended by the WAPC guidelines.

6.3.2 - Safety/Security

It is noted that the short stay accommodation has been operating since at least March 2014, and to date, the City has not been notified of any safety or security concerns of surrounding neighbours.

Whilst it is noted that short stay tenants usually have a limited connection to the community and have the potential to disrupt the area, there is insufficient evidence to conclude that the safety/security of the neighbouring residents would be impacted by short stay tenants.

In order to assist in managing security, should the application be approved, it is recommended that a condition be applied to the approval requiring a guest register to be kept, which provides contact details for all persons occupying the premises.

This approach is recommended by the WAPC guidelines.

6.3.3 - Appropriateness of land use

The function of the short stay accommodation creates a higher likelihood of potential disturbances to the local amenity, such as tenant's irregular and unpredictable hours of vehicular trips and entertaining. These considerations have the potential to erode the amenity of surrounding neighbours. Therefore, the location of property and its surrounding context is a critical consideration in determining whether the proposal should be supported.

The planning bulletin and guidelines provide certain criteria to assist in determining whether the location of the site is appropriate for tourism accommodation. These criteria include:

1. Zoning - tourist accommodation should be located within preferred areas identified in the local planning strategy or a local planning policy.
2. Amenities - tourist accommodation should be located within close proximity to key tourism attractions such as the beach or town centre.
3. Transport - tourist accommodation should be located within close proximity to road links and public transport.
4. Tenure - the use of grouped or multiple dwellings will generally not be supported for holiday home accommodation given the potential impacts on adjoining residents, unless all owners are in agreement.

Regarding the above, administration considers the following:

1. Zoning - the City's planning regulations do not provide any control or guidance on appropriate tourist accommodation locations.
2. Amenities - the subject property is located within an 800m walkable catchment of the University of Western Australia, within a 1km catchment of Sir Charles Gairdner Hospital and the Swan River, and within a 3km catchment of Kings Park and the Claremont Town Centre.
3. Transport - the subject property is located within 75m of Stirling Highway and within 150m of high frequency bus routes to Perth and Fremantle.
4. Tenure - the property is a grouped dwelling and the agreement of the neighbour has not been obtained.

Whilst the location of the site may be considered appropriate due to its close proximity to public transport and amenities, the location is also considered inappropriate because:

1. The proposed land use is located within an established low density residential area which currently benefits from the absence of any commercial activity;
2. The lot measures 9m in width and 443sqm in area and is designated an R12.5 density code. Properties within an R12.5 density typically measure no less than 17m in width and 700sqm in area. The reduced dimensions and area of the lot result in a closer proximity to other residential lots, which compounds the noise and behavioural impacts experienced by surrounding properties; and
3. The existing dwelling is located on the northern (side) boundary, and its main outdoor living areas are setback approximately 4.8m from the eastern (rear) boundary and 2.8m from the southern (side) boundary. The close proximity to other residential lots, results in greater noise and behavioural impacts.

Given the above, the land use of the short stay accommodation in this location is considered inappropriate due to the potential impacts on the neighbouring properties and the residential character of Archdeacon Street. Accordingly, these impacts are considered to warrant the refusal of the application.

Further to the above, the City needs to consider whether the approval of the proposal would set an adverse precedence in the area. The increase in rental return for short stay accommodation (compared to long term rentals) could potentially result in similar proposals which could lead to an increase in the potential for impacts on the amenity of the area.

The State Administrative Tribunal, based on other case law, has previously ruled on the circumstances in which precedent is a relevant consideration in a planning assessment. These circumstance are:

1. The proposed development is not, in itself, unobjectionable; and
2. There is more than a mere chance or possibility that there may be later undistinguishable applications.

It is considered that each of these criteria is met.

Firstly, as discussed above, it is considered that the proposed development has the potential to adversely impact on neighbouring properties and the residential character of the area.

Secondly, it is not considered that the site is sufficiently unique to make it distinguishable from future applications within the locality, as the the subject site is one of many located close to transport and amenities within the City. Further, given the increased rental return for short stay accommodation, it is possible that there may be later undistinguishable applications.

Adverse precedent is therefore considered relevant.

Given that the proliferation of short stay accommodation units would inevitably erode the local suburban character and detract from the amenity of the locality, the potential adverse precedence created by the approval of this application is considered to warrant the refusal of the application.

6.3.4 - Noise

As discussed above (see 6.3.3), noise is considered a relevant consideration given the site conditions and the function of short stay accommodation.

Given the close proximity of the proposal to other residential properties, noise is considered to potentially impact on surrounding properties.

6.3.5 - Parking

It is noted that Archdeacon Street contains a number of 'no parking', 'no stopping' and '2 hour parking' zones. Therefore, it is important to ensure that off-street parking is provided.

The parking provided (i.e. two onsite covered bays and two partially offsite parking bays) is considered sufficient, as one off-street parking bay has been provided for each bedroom.

7.0 Applicant's submission

Following the 25 November Council decision the applicant's planning consultant, TPG has lodged a submission of support for the application which is attached as appendix 3.

The submission considers that the proposal will be complimentary to the exiting mix of uses in the locality and will not impact upon the locality, especially in terms of traffic.

8.0 Conclusion

The proposal is for a Retrospective Change of Use (Use Not Listed - Short Stay Accommodation) on (Lot 2) No. 2a Archdeacon Street Nedlands.

Whilst the location of the site may be considered appropriate due to its close proximity to public transport and amenities, the location is also considered inappropriate due to the suburban site context, the lot conditions (e.g. lot width and area) and the building setbacks relative to adjacent residential properties.

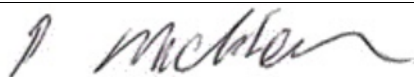
Furthermore, the approval of the short stay accommodation in this location, could set an adverse precedence resulting in the proliferation of short stay accommodation units, inevitably eroding the local suburban character and detracting from the amenity of the locality.

Accordingly, the application is recommended to the Council for refusal, however, should the Council wish to approve the application, appropriate conditions are recommended.

9.0 Attachments

1. Plans (floor plans and strata plans)
2. Applicant's justification
3. Applicant's submission

PD10.15	(Lot 469) No. 42 Viking Road Dalkeith – Proposed Extensions (Kitchen and Carport) To Single House
----------------	--

Committee	10 March 2015
Council	25 March 2015
Applicant	Blane Brackenridge Architects
Landowner	Ms S A Healy
Officer	Julian Berzins – Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/498 – VI3/42

Note: This item was deferred from February

1.0 Executive Summary

This proposal is for a carport and kitchen extension to a single house in Dalkeith with variations to the planning requirements.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received.

The kitchen extension does not satisfy all of the relevant deemed-to-comply, design principles and other planning requirements. As a result, the application is recommended for refusal.

The carport extension satisfies the relevant provisions of the City's planning requirements for carports forward of the primary street setback and is recommended for approval.

1.1 Recommendation to Committee

Council:

1. Refuses the application for kitchen extensions at (Lot 469) No. 42 Viking Road Dalkeith, in accordance with the application received on 22 September 2014 and amended plans received on 31 October 2014, for the following reasons:

- a. The proposal does not satisfy all the design principles relating to provision 5.1.3 Lot boundary setbacks as per the Residential Design Codes (2013), as the impact of building bulk will be increased.
 - b. The proposal does not comply with the amenity considerations of cl. 5.5.1 of Town Planning Scheme No. 2 as it is considered to adversely impact upon the appearance the neighbouring properties.
 - c. The proposal does not represent orderly and proper planning, in accordance with cl. 6.5.1 of Town Planning Scheme No. 2.
2. Approves the proposed carport extension at (Lot 469) No. 42 Viking Road Dalkeith, in accordance with the application received on 22 September 2014 and amended plans received on 31 October 2014, subject to the following conditions:
- a. The development shall at all times comply with the approved plans.
 - b. All crossovers to the street(s) shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
 - c. The existing crossover(s) shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
 - d. All footings and structures of the fencing shall be constructed wholly inside the site boundaries of the Certificate of Title.
 - e. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.

Advice Notes specific to this proposal:

- 1. 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.
- 2. 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.

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address		No. 42 Viking Road Dalkeith (the site)
Lot area		1012m ²
Zoning /	MRS	Urban
Reserve /	TPS2	Residential at R10 density
Density Code		

The subject site has frontage to Viking Road to the north as seen in the location plan below.



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

The site features a single house, set into the rear of the lot as depicted in Figure 2. The property was originally built in 1938, with additions approved in 1981 to the rear (new laundry and kitchen) 1m from the boundary. In 2014 an application was received by the City of Nedlands for further additions to the rear of the property and a carport located at the front of the property.

2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (**TPS2**).
- Residential Design Codes of WA 2013 (**R-Codes**).
- Local Planning Policy 6.23 – Carports and Minor Structures Forward of the Primary Street Setback (**Carport Policy**).

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes):

Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation):

Yes ☒ ☐ No

3.2 How and when was the community consulted?

Community consultation period:	29/10/2014 – 12/11/2014
Response:	One supporting/no objection, two objections, with the results found in Attachment 4 / below in Section 6.3 Submissions.

4.0 Budget / Financial Implications

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

5.0 Risk Management

Not applicable.

6.0 Discussion

The proposal involves the construction of additions (carport and rear additions) to the site, as depicted in the submitted plans (**Attachment 1**). In addition, the Applicant's report and site photographs describes the proposal in greater detail (**Attachment 2 and Attachment 3**).

The proposal involves the following:

- a) An extension of a single carport into a double carport.
- b) An extension of the kitchen (1.6m x 2.7m) located to the rear of the property.

Variations to the planning requirements are as follows:

- a) Council Policy 6.23 ' *Carports and Minor Structures Forward of the Primary Street Setback* ' - 3m in lieu of 3.5m
- b) R-Code 5.1.3 Lot boundary setback (rear) - 0.9m in lieu of 6m

In addition, consultation with the community resulted in two (2) objections being received (**Attachment 4**/Section 6.3 Submissions).

The following assessment of the variations is based upon the relevant areas, being the front and rear setbacks.

6.1 Specific Planning Considerations

6.1.1 Variation clause

a. Carport in the front setback area

Clause 'Carports' (b) (ii) of the Carport Policy requires the following (emphasis added):

"...Carports may be constructed forward of the required primary street setback, but the side facing the street must be left open. Council will however consider wrought iron or tube steel gates/fencing along the side facing the street for security purposes.

The following setbacks shall be deemed as standard and measured to the columns of the carport. All setbacks are measured at right angles to the wall and not the boundary.

- *Primary Street Setback - 3.5 metres*
- *Side Boundary - 1.0 metres*

b. Wall Setbacks

Design principle P3.1 of the R-Codes requires the following (emphasis added):

"Buildings set back from lot boundaries so as to:

- *reduce impacts of building bulk on adjoining properties;*
- *provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- *minimise the extent of overlooking and resultant loss of privacy on adjoining properties."*

6.1.2 Response to variation clause

a. Carport in the front setback area

The following is considered in response to the abovementioned clause in the Carport Policy:

With regard to the setback of the carport from the front boundary, it is considered that this aspect of the proposal can be supported as there is not enough space for a double carport setback at 3.5m due to the location of the existing carport, garage and crossover (approved 1962). It is considered that the proposed 0.5m setback will not be detrimental to the streetscape of Viking Road as there are several examples of carports located at a similar setback from the front boundary. Accordingly, it is considered that this section of the proposal complies with the policy, and therefore is supported by the City.

b. Wall setback – rear boundary (south)

The proposal is for an addition of 4m² to be located off the existing laundry. The kitchen and laundry facilities will be flipped to allow a larger kitchen area and more natural light into the rear of the property. The extension has a wall height with skillion roof of 5m sloping up away from the rear boundary.

The following is considered in response to the abovementioned design principle:

- The impact of building bulk will be increased on the neighbouring properties due to the height of the wall and location of the existing setback.
- The proposal provides adequate direct sunlight and ventilation to the adjoining properties in accordance with CI 5.4.2 Solar access for adjoining sites (R-Codes, 2013). The proposal will overshadow the neighbouring grassed backyard and existing garden shed as opposed to designated outdoor living areas.
- The extension does not propose any non-compliant windows and will not increase overlooking or loss of privacy to the adjoining properties that is not already screened by dividing fences.
- Adequate sun and ventilation will be available to the site and neighbouring property.
- Objections from the neighbours regarding the above clause not being supported due to above points (see section 6.3 + **Attachment 4**)

As the proposal does not reduce impact of bulk, it is considered that this section of the proposal does not comply fully with the design principles, and therefore is not supported by the City.

6.2 General Planning Considerations

6.2.3 Preservation of amenity

Scheme clause 5.5.1 (preservation of amenity) states (emphasis added):

*“...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 response, it is considered that the rear extension will adversely affect the amenity of the surrounding neighbours and as such is not supported by the City.

6.2.4 Orderly and proper planning

Scheme clause 6.5.1 (determination by council) states (emphasis added):

“The Council may determine an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, having regard to the orderly and proper planning of the area.”

In response, the proposal does not comply with Scheme provisions, with discretionary variations which are not acceptable (for the aforementioned reasons).

Accordingly, it is considered that this section of the proposal (rear additions) does not represent orderly and proper planning, and is not supported by the City.

6.3 Submissions

Summary of comments received	Officer's technical comment
Issue: 1 <i>The 0.9m rear setback of the existing additions exacerbates its bulk as viewed from the objector's property and, when combined with the fact that it is 4.2m high, constitutes a visually obtrusive building that is inconsistent with the established and expected built form in the area.</i>	<p>The bulk is increasing and as such impacts further on the neighbours as it is only 0.9m from the boundary of the site.</p>
Issue: 2 <i>The proposed addition does not reduce the impacts of building bulk on the adjoining property.</i>	<p>Any addition in this location would likely increase the impacts of building bulk.</p>
Issue: 3 <i>The proposal will have a detrimental impact on the adjoining properties amenity.</i>	<p>There will be an increased impact on the adjoining properties due to the increased bulk of the building 0.9m from the boundary.</p>
Issue: 4 <i>The proposed extension will abut the subject sites southern boundary and will therefore overshadow the objector's property.</i>	<p>The proposal complies with overshadowing requirements of the R-Codes.</p>
Issue: 5 <i>The existing dwelling does not allow adequate access to direct sun for the open space at the rear of the objector's property.</i>	<p>The proposal complies with overshadowing requirements of the R-Codes.</p>
Issue: 6	<p>Agree refer to issue 1.</p>

<i>Whilst it is acknowledged the addition will not result in overlooking the increase in habitable floor space and will further reduce the privacy of their backyard as compared to the existing situation.</i>	
Issue: 7 <i>The highlight windows are clear-glazed and devoid of any window treatments, this will result in light from the existing kitchen being dispersed directly into the backyard.</i>	The existing dwelling has prior approval and is not subject to this particular application.
Issue: 8 <i>The existing dwelling is situated 0.9m from the rear boundary and approximately 29m from the front boundary. This is inconsistent with the established front and rear setbacks of the other dwellings in the locality.</i>	The existing dwelling has prior approval and is not subject to this particular application.
Issue: 9 <i>The external appearance of the proposed addition will be obtrusive and highly visible from the rear the objector's property.</i>	Agree, refer to issue 1.
Issue: 10 <i>1. The proposed development will appear as an obvious addition that does not integrate with the existing dwelling. The skillion roof does not match the roof form of the main dwelling or the predominant pitched roof form.</i>	The roof pitch has been designed to reduce impacts of bulk onto neighbouring properties.
Issue: 11 <i>Bulk and height of the extension + close proximity to the back boundary. The proposed eastern glass wall which is 4.8m high is visually obtrusive.</i>	Refer to section 6.1.2 Response to variation clauses.
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 Conclusion

The proposal for additions (carport and kitchen) to a single house on Viking Road in Dalkeith has two variations to the planning requirements.

The carport is proposed to be extended from a single carport to a double carport and is to be setback in line with the existing single carport 3m from the primary street boundary in lieu of the required 3.5m. As discussed in section 6.0, due to the current location of carport, garage and existing streetscape the application can be supported by Council.

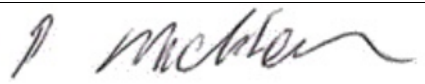
The 4m² extension to the existing laundry setback 0.9m in lieu of a compliant 6m does not satisfy the design principles of the Residential Design Codes cl 5.1.3 Lot boundary setbacks, and will negatively impact the amenity of neighbouring properties as per the specific objections received.

Accordingly, the part of the application for the carport is recommended to the Council for approval and the part of the application for the rear additions is recommended for refusal.

8.0 Attachments

1. Plans (site plan, floor plan, elevations)
2. Site photographs
3. Applicant's submission
4. Neighbour submissions (Confidential)

PD11.15	(Lot 173) No. 49 Bruce Street Nedlands – Proposed Ancillary Accommodation
----------------	--

Committee	10 March 2015
Council	24 March 2015
Applicant	Dale Alcock Home Improvement
Landowner	I F Kong & H S Wong
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/492 – BR9/49
Previous Item	Nil

1.0 Executive Summary

The application seeks approval to construct ancillary accommodation with a floor area of 60sqm.

A variation to the rear setback requirement stipulated under the Residential Design Codes (R Codes) is being sought.

The proposal was advertised to nearby landowners for comment and during the advertising period four objections were received, two of which were from the same owner and raised the same concerns.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received.

2.0 Recommendation to Committee

Council approves the application for ancillary accommodation at (Lot 173) No. 49 Bruce Street Nedlands, in accordance with the application received on 17 September 2014 subject to the following:

- 1. The development shall at all times comply with the approved plans.**
- 2. The ancillary accommodation building shall be occupied only by persons related to the occupiers of the main dwelling.**

3. The landowner shall execute and provide to the City a notification pursuant to section 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 ancillary accommodation building is subject to the restriction set out in this approval. The full costs of the notification shall be borne by the landowner; and this condition shall be fulfilled prior to occupying the ancillary accommodation.
4. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.

Advice Notes specific to this approval:

1. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

3.0 Background

Property address	(Lot 173) No. 49 Bruce Street Nedlands (the site)
Lot area	814m ²
Zoning / MRS	Urban
Reserve / TPS2	Residential at R12.5 density
Density Code	

The subject site contains a single dwelling and associated outbuildings on the rear boundary, one of which is to be removed. The topography of the land is relatively flat. Solid dividing fencing exists, with the fencing along the northern (side) boundary being upon an existing retaining wall of approximately 0.5m in height (refer to **Attachment 1**).

Surrounding properties contain single dwellings, associated outbuildings and mature vegetation as shown on the location plan below and the photograph of the ancillary accommodation's proposed location (**Attachment 2**):



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS 2).
- Council Policy – Neighbour Consultation.
- Residential Design Codes of WA 2013 (R Codes).

4.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation): Yes ☒ No ☐

3.2 How and when was the community consulted?

The proposal was advertised in accordance with clause 6.3.1 (Special Procedures) of TPS 2 for 21 days to nearby landowners for comment in January and February 2015. During the advertising period four objections were received, two of which were from the same owner and raised the same concerns.

Concerns were received with regard to the visual impact of the ancillary accommodation, the loss of privacy and noise emitted by those residing in the ancillary accommodation, due to the proposed reduced boundary setback

5.0 Budget / Financial Implications

Not applicable.

6.0 Risk Management

Not applicable.

7.0 Introduction

The application seeks approval to construct ancillary accommodation on the property, details of which are as follows:

- a. The ancillary accommodation is proposed to be constructed at the rear of the property where currently a pond, patio structure and shed exist.
- b. The ancillary accommodation is proposed to have a floor area of 60sqm.

- c. Family members of those residing in the existing dwelling are to reside in the proposed ancillary accommodation.
- d. The ancillary accommodation is proposed to be single storey in nature and setback 2m from both the side and rear boundaries.
- e. Two covered car parking spaces will be available in an existing garage located in the south western corner of the property, and there will be adequate space available on the driveway for additional vehicles to park. It should be noted that the garage is setback approximately 1m from the rear boundary.

Refer to the site plan (**Attachment 3**), internal floor plan (**Attachment 4**) and elevations (**Attachment 5**).

7.0 Statutory Requirements

7.1 Town Planning Scheme No. 2

The use 'Ancillary Accommodation' is not listed under Table 1 (Use Class Table) of TPS 2, therefore in accordance with clause 3.6 (Uses Not Listed) it is not permitted unless special approval is granted by Council in accordance with the procedures set out under Part 6 (Planning Approval Procedures) of TPS 2.

Clause 5.5.1 (Preservation of Amenity) of TPS 2 stipulates (emphasis added):

*“...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 considering any application Council is to have due regard to the following matters in accordance with clause 6.4 (Consideration of Applications) under TPS 2:

- (a) The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;
- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality; the form, layout, appearance and material of any building is in keeping with the existing character of the locality; and
- (c) any other matter considered relevant by Council.

7.2 Residential Design Codes

The following requirements apply under the R Codes to ancillary accommodation on properties with a density coding of R12.5:

	R Code Requirement	Proposed	Complies?
Boundary Setback:			
Northern (Side) Boundary	1m minimum	2.3m	Yes
Southern (Side) Boundary	1.5m minimum	7.3m	Yes
Western (Rear) Boundary	6m minimum	2m	No
Open Space	55% minimum	65%	Yes
Car Parking	2 covered bays for the existing dwelling and at least one bay for the ancillary accommodation.	2 covered bays and adequate space for at least one vehicle to park on the existing driveway.	Yes
Overshadowing	25% maximum of the adjoining property.	The location of the ancillary accommodation means that there will be no overshadowing onto the adjoining properties.	Yes

The proposal is compliant with the requirements of the R Codes with the exception of the rear boundary setback. In such cases where a variation is being applied for, development is to satisfy the Design Principles of the R Codes.

The Design Principles under clause 5.1.3 (Lot Boundary Setback) of the R Codes stipulate the following:

“Buildings setback from lot boundaries so as to:

- Reduce impacts of building bulk on adjoining properties;*
- Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”*

8.0 Consultation

The proposal was advertised in accordance with clause 6.3.1 (Special Procedures) of TPS 2 for 21 days to nearby landowners for comment in January and February 2015. During the advertising period four objections were received, two of which were from the same owner and raised the same concerns.

Below is a summary of comments received from the neighbour consultation:

Summary of comments received	Officer's technical comment
<p>Objection</p> <ul style="list-style-type: none"> a) I do not believe that such a major concession should be approved on a case by case basis. b) Considering the existing buildings on the property (a house and double garage at the rear) there will be very little green space, leading to a significant degrading of the environment. c) How will Council ensure that only family members will live in the ancillary accommodation? 	<ul style="list-style-type: none"> a) Noted. b) The proposal will comply with the open space and outdoor living area requirements of the R Codes. c) If the application is approved by Council it will be a condition that a notification be included on the property's Title restricting occupancy to those related to the persons occupying the main dwelling on the property. If it comes to the City's attention that this requirement is not being adhered to it will be investigated by the City as a compliance matter.
<p>Objection</p> <ul style="list-style-type: none"> a) The required 6 metre setback maintains the character of the neighbourhood and protects residents' rights and privacy. Either apply the rule or change the rule. 	<ul style="list-style-type: none"> a) It should be noted that the boundary setback requirement comes from the R Codes, which allows for variations to be considered subject to neighbour comment being sought. TPS 2 requires Council to have due regard to comments received

<p>b) Windows along the back of the building will overlook our garden and will have a direct view into our family room, bedrooms and entertaining area.</p> <p>c) The proposed building is 4.4m tall and 10.1m wide, this will spoil our outlook and block morning sunlight.</p> <p>The subject property is higher than ours which will increase the relative height of both the building and of its windows.</p> <p>d) The bathroom/laundry and occupants maybe noisy. The plan does not show any air conditioning unit but if there is one it will add to the noise.</p>	<p>when determining Planning applications.</p> <p>b) The visual privacy provisions of the R Codes only apply where the finish floor level is proposed to be more than 0.5m above the natural ground level. The ancillary accommodation is proposed to have a floor area of 0.4m above the natural ground level and therefore comply with the visual privacy requirements of the R Codes.</p> <p>c) The building's location and size means that it will comply with the overshadowing requirements of the R Codes. Solid dividing fencing and mature vegetation on the submitter's property will minimise any visual impact the proposal may have.</p> <p>d) There is no evidence to suggest that noise from those residing at the property will be an issue. Activities conducted on the property will be required to comply with the <i>Environmental Noise Regulations 1997</i>.</p>
<p>Objection</p> <p>a) The proposal will impact on the peaceful enjoyment of our garden.</p> <p>b) The existing outbuilding will have to be removed thus affecting our retaining wall, fence and gardens.</p>	<p>a) Noted.</p> <p>b) If the application is approved by Council the landowners will be responsible for having a Structural Engineer sign off on the plans. Consideration will have to be given as to what impact, if any, the removal of any structure will</p>

<p>c) There are currently 5 cars at the property. The proposal may result in more cars on site.</p> <p>d) Will the proposal affect our chances of getting Planning permission for one in future?</p> <p>e) Noise and light impacts from the proposal.</p>	<p>have on the retaining wall prior to the structure's removal. This is a separate matter and will be dealt with under the building approval process.</p> <p>c) The proposal is compliant with the car parking requirements of the R Codes. If vehicles illegally park then the submitter is to notify the City's Rangers.</p> <p>d) No.</p> <p>e) There is no evidence to suggest that noise from those residing at the property will be an issue. Activities conducted on the property will be required to comply with the <i>Environmental Noise Regulations 1997</i> and the <i>Health Act 1911</i>.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.</p>	

9.0 Conclusion

The proposal is compliant with the requirements of the R Codes and TPS 2 with the exception of the rear setback of 2m in lieu of 6m.

Having inspected the subject property and that adjoining the rear boundary, it is noted that if the application was approved by Council there will be screening in the form of mature vegetation, solid fencing which in some places is higher than the standard 1.8m due to being upon a retaining wall, and outbuildings on the subject property and those adjoining. The finish floor level of the development will also not be in excess of 0.5m above natural ground level.

The orientation, location and scale of the proposed development means that no overshadowing onto the adjoining properties will occur due to the proposal, and there


will be adequate ventilation for all dwellings on the subject property and those surrounding.

Considering the above, the proposal will not have an unacceptable impact on the amenity of the area and is in keeping with the character of the area. As such, the design principles of the R Codes and TPS 2 provisions are satisfied, and it is recommended that the application be approved by Council.

10.0 Attachments

1. Photograph of dividing fencing on northern boundary (A4)
2. Photograph of ancillary accommodation's proposed location (A4)
3. Site Plan (A3)
4. Floor Plan (A3)
5. Elevations (A3)

PD12.15	(Lot 412) No. 109 Stirling Highway Nedlands –Proposed Change Of Use (Office And Lunch Bar)
----------------	---

Committee	10 March 2015
Council	24 March 2015
Applicant	Rowe Group
Landowner	Errichetti Nominees Pty Ltd
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/639 – ST6/109
Previous Item	Nil

1.0 Executive Summary

The application seeks approval to change the existing non-conforming use at the property, being a showroom, to another non-conforming use, being an office and a lunch bar.

A variation to the car parking requirements stipulated under Town Planning Scheme No. 2 (TPS 2) is also being sought.

The proposal was advertised to nearby landowners for comment and during the advertising period one objection and one non-objection were received.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received.

1.1 Recommendation to Committee

Council approves the application for a change of Use (Office and Lunch Bar) at (Lot 412) No. 109 Stirling Highway Nedlands, in accordance with the application received on 12 December 2014, subject to the following conditions:

- 1. The development shall at all times comply with the approved plans.**
- 2. No loading or unloading of vehicles is to occur that interferes with the parking of vehicles in the car park by visitors and employees. All car parking bays in the car park are to be made available at all times for the parking of vehicles by visitors and employees.**

3. The operating hours of the lunch bar are restricted to between Monday and Sunday 6.00am to 6.00pm.
4. The operating hours of the offices are restricted to between Monday and Friday 8.30am to 5.30pm
5. The car-parking bays shall be sealed, drained and marked as indicated on the approved site plan prior to the use commencing, and maintained thereafter by the landowner to the City's satisfaction.

Advice Notes specific to this proposal:

3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.
4. A separate Planning application is required to be lodged and approved prior to the erection/installation of any signage on the lot.
5. Prior to the City issuing a development approval, an applicant shall lodge with the City an *Application for Food Premises Alteration / Fit-out* which an Environmental Health Officer at the City is satisfied demonstrates food safety outcomes.
6. Prior to commencing a Food Business, the premises shall receive an inspection from an Environmental Health Officer at the City which cites the Food Business may commence operation.
7. Upon commencement of a Food Business, a Food Safety Program which meets the requirements of the *Australian New Zealand Food Standards Code Standard 3.2.1 Food Safety Programs* shall be implemented and maintained.
8. Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.
9. The landowner is advised that all mechanical equipment (e.g. air-conditioners) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.
10. Noise from service and/or delivery vehicles should be mitigated and such vehicles should not service the premises before 7.00 am or after 7.00 pm Monday to Saturday, or before 9.00 am or after 7.00 pm on Sundays and Public Holidays.

11. All street trees in the nature-strip / verge are to be retained and shall not be removed without prior written approval from the Manager Parks Services.
12. Prior to commencing a Food Business* a proprietor shall lodge with the City a ***Food Business Registration / Notification Form***.
**A food business is any business or activity that involves the sale of food or the handling of any type of food for sale in Australia*
13. The following advice was provided by Main Roads Western Australia:
 - a) Lot 412 (109) Stirling Highway is affected by a reduced land requirement as described by the current Metropolitan Region Scheme amendment 1210/41 as shown on the land requirement plan 1.7145 available from Main Roads Western Australia.
 - b) The project for the upgrading of Stirling Highway is not in Main Roads current 4 year Estimated Construction Program and any project not listed is considered to be long term. Please be advised that the timing information may change and that Main Roads accepts no liability for the timing information provided.

1.2 Strategic Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

2.0 Background

Property address	(Lot 412) No. 109 Stirling Highway Nedlands (the site)
Lot area	1012m ²
Zoning / MRS	Urban and Primary Regional Reserve
Reserve / TPS2 Density Code	Residential at R35 density

The subject site has frontages to Stirling Highway and Baird Avenue, with on street car parking bays available within the immediate vicinity. Nearby properties contain dwellings and small scale commercial activities such as offices and showrooms as seen in the location plan below.



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

Under Town Planning Scheme No. 1 the land was zoned Special Use (Health Studio). Under this zoning the use of the premises as a health, beauty and fashion club was approved.

The land was rezoned to Residential R35 when TPS 2 was gazetted in April 1985. As a consequence, the previously approved use became a non-conforming use.

Approval has since been granted by the City for a showroom to exist on the land.

In December 2013, approval was granted for the showroom to be refurbished. This is currently being carried out to the building.

Road widening upgrades are proposed to be made to the section of Stirling Highway immediately adjoining the property.

2.2 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Neighbour Consultation.

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation): Yes ☒ No ☐

3.2 How and when was the community consulted?

The proposal was advertised in accordance with clause 6.3.1 (Special Procedures) of TPS 2 for 21 days to nearby landowners for comment in January and February 2015. During the advertising period one objection and one non-objection were received.

Concerns were received with regard to the availability of on-street car parking if the proposal was approved by Council.

Further to the neighbours' consultation, the application was referred to Main Roads Western Australia (MRWA) as the property is affected by a Regional Road Reservation. MRWA have provided comment in support of the application, subject to the following advice notes being applied to any approval issued by the City:

- a) Lot 412 (109) Stirling Highway is affected by a reduced land requirement as described by the current Metropolitan Region Scheme amendment 1210/41 as

shown on the land requirement plan 1.7145 available from Main Roads Western Australia.

- b) The project for the upgrading of Stirling Highway is not in Main Roads current 4 year Estimated Construction Program and any project not listed is considered to be long term. Please be advised that the timing information may change and that Main Roads accepts no liability for the timing information provided.

It is recommended that these advice notes be applied to any approval issued by Council.

4.0 Budget / Financial Implications

Not applicable.

5.0 Risk Management

Not applicable.

6.0 Introduction

The application seeks approval to change the existing non-conforming use at the property, being a showroom, to another non-conforming use, being an office and a lunch bar, details of which are as follows:

- f. Internal alterations are proposed to be made which will allow for offices, a meeting room and lunch bar (lunch bar) to exist on the ground floor, and offices on the first floor. No changes are proposed to the existing building footprint.
- g. Existing landscaping within the Stirling Highway street setback area is to be replaced due to not being well maintained previously.
- h. Twenty three (23) car parking bays exist in the basement, access to which will continue to be obtained from Baird Avenue. On street car parking bays exist within the immediate vicinity of the building.
- i. A total of 12 staff will be on site at anyone time.
- j. The offices will operate between Monday and Friday 8.30am to 5.30pm.
- k. The lunch bar will operate between Monday and Sunday 6.00am to 6.00pm.
- l. A seating area within the lunch bar will be able to accommodate up to 10 people.

- m. No on site cooking of foodstuffs is to occur within the lunch bar. Food provided will be limited to items such as cakes, sandwiches and the like which are generally prepared off site. There will be some reheating of food on the premises.
- n. Signage is proposed within the street setback area which will show the street number of the property and be dealt with as part of a separate application.
- o. The offices are proposed to be occupied by BPG Australia Pty Ltd.

Refer to the site plan (**Attachment 1**), landscaping plan (**Attachment 2**), basement floor plan (**Attachment 3**), ground floor plan (**Attachment 4**) first floor plan (**Attachment 5**) and photograph of the building (**Attachment 6**).

A Traffic Impact Statement submitted by the applicant concludes that the proposal will have no significant adverse impact on the amenity of safety of the surrounding road network. The onsite parking shortfall for the lunch bar is readily catered for by available existing on street parking within walking distance of the property.

7.0 Statutory Requirements

Under section 1.8 (Interpretation) of TPS 2 the proposed offices are deemed to be the use 'Office - Professional' which is defined as being the following:

“Means a building used for the purpose of conducting the professional work of an accountant, architect, artist, author, barrister, consular official, engineer, land surveyor, quantity surveyor, solicitor, teacher (other than a dancing teacher or a music teacher), or town planner of a person having in the opinion of the Council, an occupation of a similar nature, and professional person has a corresponding interpretation.”

The use 'Lunch bar' is defined as being the following:

“Means premises used for the preparation and/or sale of take-away sandwiches and similar foodstuffs within industrial and commercial areas in a form ready to be consumed without further preparation off the premises.”

The uses 'Office – Professional' and 'Lunch bar' are not permitted on land zoned Residential under TPS 2, however as a non-conforming use previously operate on the premises consideration can be given to allowing an alternative non-conforming use to operate. With regard to this clause 4.2 (Change of Non-Conforming Use' of TPS 2 stipulates the following:

“The Council may permit the use of any land to be changed from one non-conforming use to another non-conforming use if the proposed use is in the opinion of the Council less detrimental to the amenity of the neighbourhood than the existing use or is in the opinion of the Council closer to the intended uses of the zone.”

Clause 5.5.1 (Preservation of Amenity) of TPS 2 stipulates (emphasis added):

*“...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 Schedule 3 (Car Parking Requirement by Use Class) of TPS 2 the following car parking requirements apply:

Land Use	TPS 2 Requirement	Car Bays Required	Car Bays Proposed
Office	4.75 per every 100sqm of gross leasable area	21 bays minimum	23
Lunch bar	At Council's discretion		

As there is no car parking requirement stipulated under TPS 2 for the use Lunch Bar it is deemed appropriate that this be based on the number of staff on site for the use. There will be 2 staff in the lunch bar at any one time. Taking into consideration the amount of bays required by the office, 23 bays are required and 23 bays will be available on-site.

It should also be noted that 3 on street car parking bays exist in the immediate vicinity of the property.

With regard to the TPS 2 car parking requirements please note the following clauses:

“3.9 Cash in Lieu of Providing Car Parking

The Council may agree with an applicant for approval to commence development to accept a cash payment in lieu of the provision of paved car parking spaces, but subject to the requirements of this subclause:

- (a) a cash in lieu of payment shall be not less than the estimated cost to the owner of providing and constructing the parking spaces required by this Scheme, plus the value of that area of land which would have been occupied by the parking spaces and manoeuvring area;*

- (b) *before the Council agrees to accept a cash payment in lieu of the provision of parking spaces, the Council must either have provided a public parking station nearby, or must have firm proposals for providing a public station nearby within a period of not more than twenty four months from the time of agreeing to accept the cash payment;*
- (c) *payments under this Clause shall be paid into a special fund to be used to provide public parking stations anywhere in the District.”*

“5.4.1 Application of Standards

5.4.1.3 *The Council may on application by a person seeking planning approval agree to vary a standard in Table 2 or Table 3.*

5.4.1.4 *Without limiting the generality of paragraph 5.4.1.3 in the case of development for any purpose other than residential the Council may on application by a person seeking planning approval vary the parking requirements in Schedule 3 hereto, or impose conditions on the location and design of car parking spaces, taking into account:*

- (i) *the number to be roofed or covered and the manner of roofing or covering;*
- (ii) *the number to be below natural ground level;*
- (iii) *the means of access to each space and the adequacy of vehicular manoeuvring areas;*
- (iv) *the effect on the amenity of adjoining premises, including potential effects if spaces should later be roofed or covered and the suitability or adequacy of proposed screening or natural planting;*
- (iv) *the provision of suitable pick up and setting down bays.”*

Clause 5.5.1 (Preservation of Amenity) of TPS 2 stipulates (emphasis added):

*“...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 considering any application Council is to have due regard to the following matters in accordance with clause 6.4 (Consideration of Applications) under TPS 2:

- (a) *The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;*
- (b) *the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;*

- (c) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger;
- (d) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;
- (e) that any traffic generated must be capable of being accommodated within existing streets; and
- (f) any other matter considered relevant by Council.

8.0 Consultation

The proposal was advertised in accordance with clause 6.3.1 (Special Procedures) of TPS 2 for 21 days to nearby landowners for comment in January and February 2015. During the advertising period one objection and one non-objection were received:

Below is a summary of comments received from the neighbour consultation:

Summary of comments received	Officer's technical comment
Objection Concerned that car parking may spill out into the side streets. At times these streets are already difficult to find convenient parking when required.	The proposal is deemed to comply with the car parking requirements of TPS 2.
No objection I look forward to having a lunch bar in the area. The one in the shopping centre only opens during business hours.	Noted.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.	

9.0 Conclusion

If the application is approved by Council there will be a surplus of 2 car bays for the proposed office use based on TPS 2 requirements and the number of staff which will be on site at any one time. A cash in lieu payment will therefore not be necessary as a condition if approved by Council.

It is likely that those using the lunch bar will either live or work in close proximity to the property and therefore the use of private vehicles will not be required. It should also be noted that the property is easily accessible using public transport and other means (walking, cycling etc.). If customers for the lunch bar do use private vehicles then the

time in which the on street car bays will be occupied will be relatively low considering the nature of the use.

There is an adequate amount of space available on nearby residential properties for both residents and visitors to those properties, not to require use of the on street car parking bays on a frequent basis.

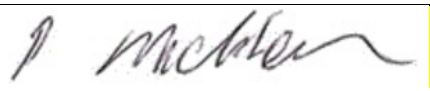
A Traffic Impact Statement submitted by the applicant concludes that the proposal will have no significant adverse impact on the amenity of safety of the surrounding road network.

Considering the nature of the proposed uses, the number of staff, the availability of car parking bays, the outcome of the Traffic Impact Statement and that the building footprint and access arrangements will remain unchanged, the proposed uses will have little impact on the amenity of the area. It is therefore recommended that the application be approved by Council.

10.0 Attachments

1. Site Plan (A3)
2. Landscaping Plan (A3)
3. Basement Floor Plan (A3)
4. Ground Floor Plan (A3)
5. First Floor Plan (A3)
6. Photograph of the building (A4)

PD13.15	(Lot 761) No. 16 Circe Circle North Dalkeith – Two Storey Single Dwelling
----------------	--

Committee	10 March 2015
Council	24 March 2015
Applicant	Homes by Dalessio
Landowner	Steve and Susan Martin
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/658 – C11/16
Previous Item	Nil

1.0 Executive Summary

The application seeks approval to demolish an existing single storey dwelling and in its place construct a two storey single dwelling.

A variation to the visual privacy and side setback requirements of the Residential Design Codes (R Codes) is being sought.

The proposal was advertised to nearby landowners for comment and during the advertising period two objections were received.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received.

1.1 Recommendation to Committee

Council approves the application for a two storey single dwelling at (Lot 761) No. 16 Circe Circle North Dalkeith, in accordance with the application received on 7 January 2015, subject to the following conditions:

- 1. The development shall at all times comply with the approved plans.**
- 2. Amended plans being submitted to and approved by the City prior to the building permit being issued, showing screening being provided in accordance with the Residential Design Codes where the swimming pool area is to be more than 0.5m above natural ground level.**
- 3. The visual privacy screening shown on the elevations being installed within 28 days of the development's completion and maintained thereafter by the landowner to the City's satisfaction.**

4. All street trees in the nature-strip / verge are to be retained and shall not be removed without written approval from the Manager Parks Services.
5. All crossovers to the street(s) shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
6. The existing crossover(s) shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
7. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
8. The proposed basement being used for private purposes only in accordance with clause 5.11(i) of Town Planning Scheme No. 2.

Advice Notes specific to this approval:

1. 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.
2. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a Workplace*, and any Department of Commerce Worksafe requirements.

Where there is over 10m² of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.

3. Any fencing in the primary street setback area requires further development approval from the City.
4. 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.

1.2 Strategic Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of Town Planning Scheme No. 2 (TPS 2) and the R Codes, contributing to well-planned and managed development in the City of Nedlands.

2.0 Background

Property address	(Lot 761) No. 16 Circe Circle North Dalkeith (the site)
Lot area	1011m ²
Zoning / MRS	Urban
Reserve / TPS2	Residential at R10 density
Density Code	

The subject property currently contains a single storey dwelling which is to be demolished, direct access to which is obtained from Circe Circle. The topography of the land slopes down towards the southern (rear) boundary. Surrounding properties contain one and two storey dwellings as seen in the location plan below.

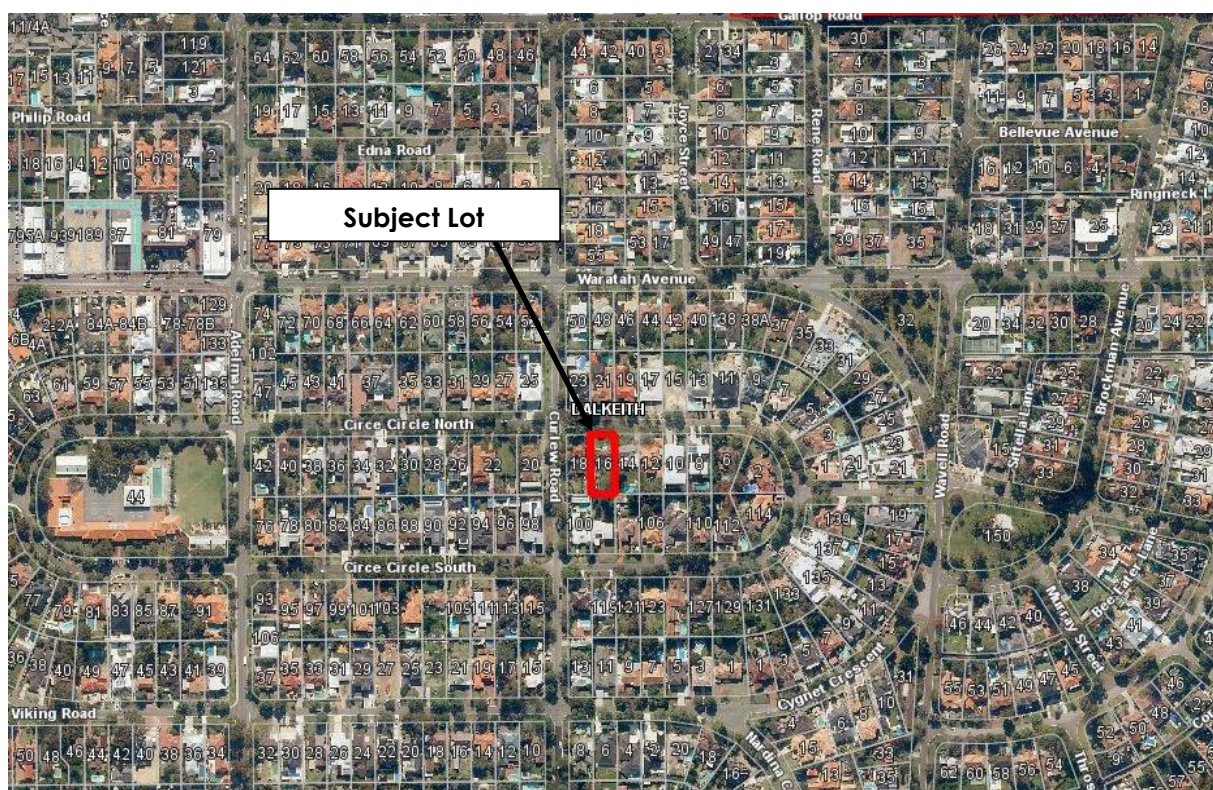


Figure 1 – Location Plan

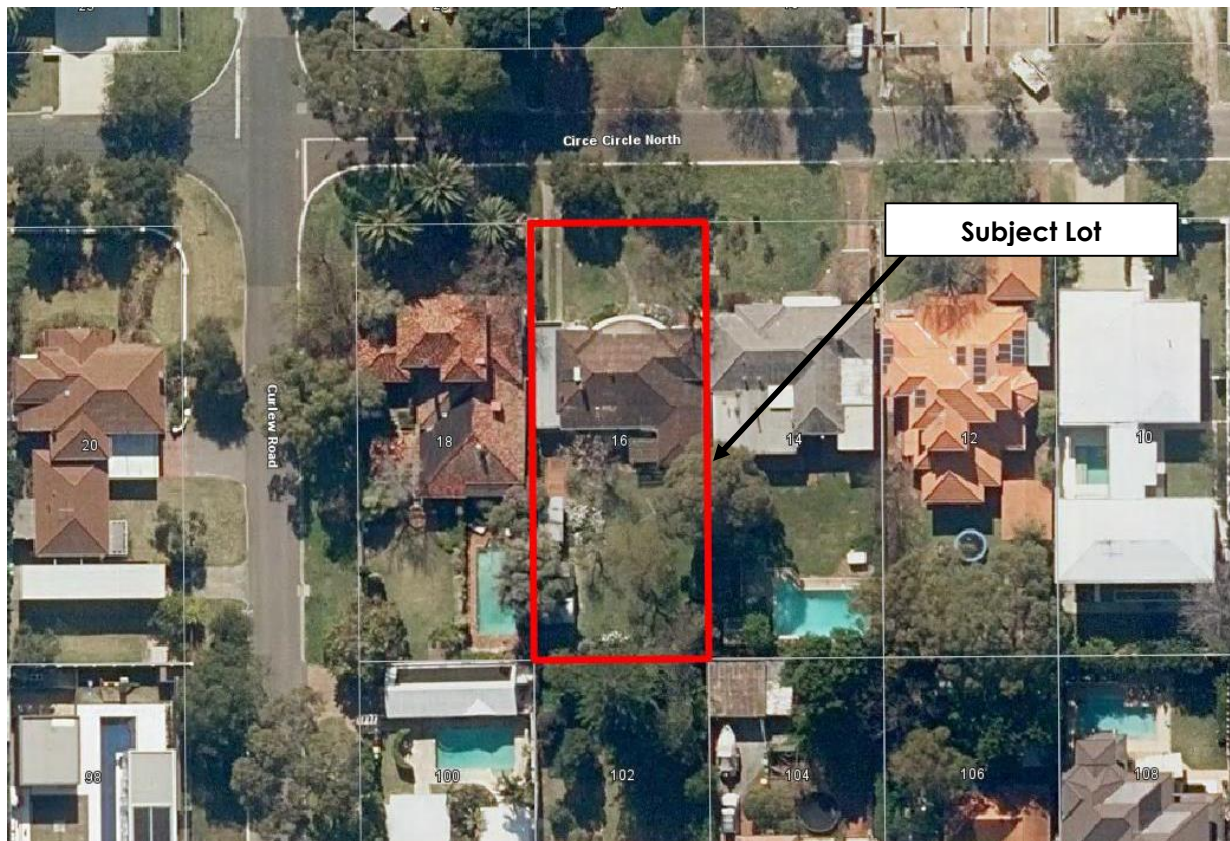


Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Neighbour Consultation.
- Residential Design Codes of WA 2013 (R Codes).

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation): Yes ☒ No ☐

3.2 How and when was the community consulted?

The proposal was advertised in accordance with Council Policy – Neighbour Consultation for 21 days to nearby landowners for comment in January and February 2015. During the advertising period two objections were received.

Concerns were received with regard to overlooking and the building's height.

4.0 Budget / Financial Implications

Not applicable.

5.0 Risk Management

Not applicable.

6.0 Introduction

The application seeks approval to construct a two storey single dwelling, details of which are as follows:

- a. An existing single storey dwelling on the property is to be demolished and replaced with a two storey dwelling, a swimming pool and associated 'pool room'.
- b. Balconies are proposed to the front and rear of the dwelling, and a triple car garage with a wall on the western (side) boundary.
- c. In addition to the ground and first floor, a basement used as a wine cellar is also proposed which will only be used for private purposes. If approved by Council, an appropriate condition to this effect will be recommended for inclusion.
- d. Existing street trees along the adjoining portion of verge are to be retained.

Refer to the site plan (**Attachment 1**), undercroft floor plan (**Attachment 2**), ground floor plan (**Attachment 3**), first floor plan (**Attachment 4**), North and West elevations (**Attachment 5**) and South and East elevations (**Attachment 6**).

7.0 Statutory Requirements

7.1 Town Planning Scheme No. 2

Under Table 1 (Use Class Table) of TPS 2 the use 'Dwelling – Single' is permitted on properties zoned Residential.

The proposal is compliant with the provisions of TPS 2 with the exception of the following:

- Clause 5.11 (Maximum Building Height) of TPS 2 stipulates that no site shall be or building constructed:

- a) to contain more than two storeys directly above each other in the case of residential use or three storeys in the case of other uses, excluding areas for plant and equipment, storage, toilets and the parking of wheeled vehicles.

A basement level is proposed which is to be used for wine tasting.

In considering any application Council is to have due regard to the following matters in accordance with clause 6.4 (Consideration of Applications) under TPS 2:

- (a) The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;
- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;
- (c) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger;
- (d) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;
- (e) that any traffic generated must be capable of being accommodated within existing streets; and
- (f) any other matter considered relevant by Council.

7.2 Residential Design Codes

The following requirements apply under the R Codes to single dwellings on properties with a density coding of R10:

	R Code Requirement	Proposed	Complies?
Driveway width	3m minimum, 6m maximum or 9m in aggregate	5.1m	Yes
Car Bays	2 covered bays	2 covered bays	Yes
Garage Width	50% maximum	48%	Yes
Open Space	60% minimum	60%	Yes
Boundary Setbacks (from the nearest boundary)			
Lounge, Home Theatre and Games Room	1.5m	2m	Yes
Family Room	1.1m	1.5m	Yes

Pool Room	6m	6m	Yes
Pool Room and Bathroom	1m	1.5m	Yes
Scullery, Bedroom 5 and Laundry	1.7m	2m	Yes
Garage	1m	1m	Yes
Bedroom 4 and Ensuite	1.2m	3.6m	Yes
Ensuite	1.2m	2.4m	Yes
Bedroom 1	1.2m	2.9m	Yes
Bedroom 2	1.2m	4.5m	Yes
Bathroom and Bedroom 3	3m	3.1m	Yes
Study	1.2m	6m	Yes
Visual Privacy			
Front Balcony	7.5m or 1.6m high screening provided	3.6m from eastern façade 7m from northern façade 1.6m high screening provided along eastern edge of balcony which complies with R Codes. However, overlooking possible from front of balcony into street setback area of adjoining property.	No
Bedroom 4	1.2m	3.6m	Yes
Bedroom 1	1.2m	2.9m	Yes
Rear Balcony	7.5m or 1.6m high screening provided.	4.4m from eastern façade. 7.5m from southern façade. 8.1m from western façade. 1.6m high screening provided along	Yes

		eastern edge of balcony	
Outbuilding (Pool Room)			
Maximum Floor Area	60sqm	35sqm	Yes
Maximum Wall Height	2.4m	2.4m	Yes
Maximum Roof Height	4.2m	4m	Yes

The proposal is compliant with the requirements of the R Codes with the exception of the visual privacy setback of the front balcony onto 14 Circe Circle North. In such cases where a variation is being applied for, development is to satisfy the Design Principles of the R Codes.

The Design Principles under clause 5.4.1 (Visual Privacy) of the R Codes stipulate the following:

“Maximum visual privacy to side and rear boundaries through measures such as:

- *Offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;*
- *Building to the boundary where appropriate;*
- *Setting back the first floor from the side boundary;*
- *Providing higher or opaque and fixed windows; and/or*
- *Screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).”*

Clause 2.5.4 of the R-Codes stipulates that a Council shall not refuse to grant approval to an application in respect of any matter where the application complies with the relevant acceptable development provision and the relevant provisions of the Scheme or a local planning policy.

7.3 Liveable Neighbourhoods

Liveable Neighbourhoods is a State Government sustainable cities initiative which aims to improve personal safety through increased street surveillance.

8.0 Consultation

The proposal was advertised in accordance with Council Policy – Neighbour Consultation for 21 days to nearby landowners for comment in January and February 2015. During the advertising period two objections were received.

Below is a summary of comments received from the neighbour consultation:

Summary of comments received	Officer's technical comment
Objection Object to the visual privacy setback variation of 7m in lieu of 7.5m as I intend to rebuild on my property at some point in the future.	Noted, however with no Planning application received to date it is difficult to determine what level of impact, if any, the proposal visual privacy setback variation may have on the submitter's property. Overlooking will only be possible into the front setback area of the submitter's property.
Objection All development in the locality have conformed with the City's maximum two storey requirement.	Noted. The development is considered to be two storey in nature with a basement level.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.	

10.0 Conclusion

The proposal is compliant with TPS 2 and the R Codes with the exception of the basement being used as a wine tasting area, and overlooking being possible into the front setback area of an adjoining property.

Clause 5.11 (Maximum Building Height) of TPS 2 stipulates that no site shall be or building constructed to contain more than two storeys directly above each other in the case of residential use or three storeys in the case of other uses, excluding areas for plant and equipment, storage, toilets and the parking of wheeled vehicles.

A third storey (a basement) used for wine tasting is proposed which is not permitted by this clause. As such, if the application is approved by Council it will be recommended that a condition be included which restricts the basement to being used for private purposes only.

In cases where a visual privacy (overlooking) variation is being applied for, development is to satisfy the Design Principles under clause 5.4.1 of the R Codes which stipulate the following:

"Maximum visual privacy to side and rear boundaries through measures such as:

- *Offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;*
- *Building to the boundary where appropriate;*
- *Setting back the first floor from the side boundary;*
- *Providing higher or opaque and fixed windows; and/or*
- *Screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters)."*

No overlooking will be possible into the neighbours' outdoor living area or habitable rooms due to the use of 1.6m high screening, obscure glazed windows and windows with a sill height of 1.6m above floor level.

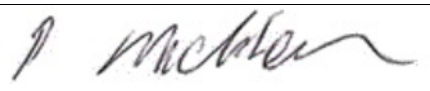
Having a front balcony is also consistent with the aims of the Liveable Neighbourhoods Policy in terms of providing additional surveillance of the street.

Considering the above, the proposal is compliant with TPS 2 and the design principles of the R Codes therefore; it is recommended that Council approve the application.

11.0 Attachments

1. Site Plan
2. Undercroft Floor Plan
3. Ground Floor Plan
4. First Floor Plan
5. North and West elevations
6. South and East elevations

PD14.15	(Lot 753) No. 11 Circe Circle North Dalkeith Additions (Gazebo) to Single House
----------------	--

Committee	10 March 2015
Council	24 March 2015
Applicant	Delstrat Pty Ltd
Landowner	L G Cross & J Feng
Officer	Mr T L Geddes – Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/564 – CI1/11
Previous Item	Nil

1.0 Executive Summary

This proposal is for a gazebo to be set back 2m from the rear property boundary in lieu of a 6m setback. A similar structure was previously approved at a 5.5m setback from the rear boundary with the dwelling in 2011.

The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where specific objections have been received to a proposed variation.

It is considered that the proposed structure satisfies the relevant design principles of the R-Codes in relation to building bulk, access to sunlight, access to ventilation and the impact of the structure upon privacy. Additionally, it is considered that the proposed structure is in keeping with the expected development context of the locality, which exhibits several similar structures located in the rear setback of other properties.

1.1 Recommendation to Committee

Council approves the application for Gazebo To Single House at (Lot 753) No. 11 Circe Circle North Dalkeith, in accordance with the application received on 27 October 2014, subject to the following conditions:

- 1. The development shall at all times comply with the approved plans.**
- 2. This planning approval applies only to the proposed gazebo.**
- 3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of**

adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.

Advice Notes specific to this proposal:

1. 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.
2. 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.

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address		(Lot 753) No. 11 Circe Circle North Dalkeith (the site)
Lot area		1260m ²
Zoning /	MRS	Urban
Reserve /	TPS2	Residential at R10 density
Density Code		

The subject site has frontage to Circe Circle to the south, and is otherwise surrounded by other residential properties at R10 density. In 2011, Administration approved a two storey dwelling, pool and gazebo on site. The approved gazebo had a setback of 5.5m from the rear property boundary.

It is noted that the original planning application for the dwelling (received 15 June 2011) involved a gazebo at a 2m setback from the rear boundary. This setback was subsequently increased to 5.5m as the proposed 2m setback was identified as a variation to the R-Codes '*Acceptable Development Criteria*' (now deemed-to-comply requirements).

In October 2014, the City received an application for planning approval proposing a gazebo at a 2m setback from the rear property boundary. Further to advertising undertaken by the City, an objection was received to this proposed setback.

2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (**TPS2** or **Scheme**).
- Residential Design Codes of WA 2013 (**R-Codes**).

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes ☒ No ☐

Required by City of Nedlands policy (Neighbour Consultation): Yes ☒ No ☐

3.2 How and when was the community consulted?

Community consultation period:	4 November 2014 – 18 November 2014
Response:	One (1) objection

4.0 Budget / Financial Implications

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

5.0 Risk Management

Not applicable.

6.0 Discussion

The proposal involves the construction of gazebo on the site, as depicted in the submitted plans (**Attachment 2**).

The proposed gazebo is to be located 2m from the rear property boundary. Under the R-Codes, unenclosed structures, such as the proposed gazebo are subject to the standard rear setback requirements of the R-Codes, in this case 6m. This proposed variation was advertised to surrounding landowners, and the City received one (1) objection (discussed below).

The following assessment of the variations is based upon the relevant design principles of the R-Codes in relation to lot boundary setback. Namely, the impact of building bulk, impact upon privacy, and the impact of the structure upon access to light and ventilation for adjacent properties.

6.1 Specific Planning Considerations

6.1.1 Wall Setbacks

Design principle P3.1 of the R-Codes requires the following (emphasis added):

“Buildings set back from lot boundaries so as to:

- reduce impacts of building bulk on adjoining properties;*
- provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and*
- minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”*

The following is considered in response to the abovementioned design principle:

Building Bulk – Administration Response

The structure is single storey in nature, and with regard to its height, is consistent with an outbuilding which could be approved in this location. The rear of the gazebo will be screened by the existing rear fencing.

The proposed gazebo does not directly abut the primary outdoor living area area of the property to the rear, which is located on the western side of the property, approximately 13m from the rear property boundary (alfresco).

It is also noted that the adjacent property to the east (9 Circe Circle) exhibits an open cabana structure to the rear of the property (approved at a minimum 1.5m setback from the rear boundary).

Direct Sun & Ventilation – Administration Response

The proposed structure is located to the south of the adjacent lot and accordingly there will be no loss of winter sunlight to adjacent properties. With regard to year-round sunlight access, the majority of the shadow cast by this structure will fall on the subject site.

With regard to ventilation between properties, the open nature of the structure will permit adequate ventilation to the subject site and adjacent properties.

Overlooking & Loss of Privacy – Administration Response

The proposed structure is built ~150mm above the ground level of the site, which is consistent with the adjacent property to the north. Accordingly, the existing rear fencing will directly limit overlooking from this structure.

In this instance, it is considered the proposal complies with the listed design principles, and therefore is supported by the City.

6.3 Submissions

Below is a summary of comments received from the neighbour consultation, which have been taken into account in the Discussion section of the report.

Summary of comments received
<p>Issue: The structure will loom over the adjacent property.</p> <p><i>Administration Comment:</i> It is considered that the form of the structure is less than could be approved at a 1m setback from the property boundary under the outbuilding provisions of the R-Codes. In accordance with these provisions, an enclosed 9m long shed/outbuilding could be constructed at a 1m setback, with an overall height of 4.2m from ground level.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.</p>

7.0 Conclusion


The proposal involves a gazebo to be constructed at No. 11 Circe Circle Dalkeith, with a setback of 2m to the rear (northern) boundary in lieu of 6m as the structure is unenclosed. It is considered that the proposed structure is consistent with the design principles of the R-Codes in relation to lot boundary setback, as discussed above.

Accordingly, the application is recommended to the Council for approval with conditions.

8.0 Attachments

1. Locality Plan
2. Proposal Plans

PD15.15	Tresillian Arts Centre Leases – Delegated Authority
----------------	--

Committee	10 March 2015
Council	24 March 2015
Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Leased Assets Co-ordinator
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	SharePoint
Previous Item	25 September 2012 (Report CP42.12)

1.0 Executive Summary

This report relates to a prior delegation of authority from Council authorising the chief executive officer to accept leases negotiated at Tresillian in accordance with the Local Government Act 1995. Further to a recent review of the Delegated Authority Manual this report is presented to Council to re-affirm this delegation to ensure administrative efficiency with regard to leasing at the Tresillian Arts Centre.

1.1 Recommendation to Committee

Council

1. Re-affirms the previously delegated authority relating to Tresillian Arts Centre Leases and amends to read as follows:

The chief executive officer is authorised to accept leases negotiated at Tresillian Arts Centre in accordance with Section 3.58 of the Local Government Act 1995, up to an annual rental income of \$10,000.

2. Delegates authority to the chief executive officer to sign the associated Deeds of Lease as a deed following a negotiation process in accordance with that noted in (1) above.

1.2 Strategic Community Plan

KFA: Governance and Civic Leadership

The recommendation for this item will ensure compliance with statutory requirements and guidelines. This re-affirmation of a previously delegated authority with amendment to reflect current market conditions will assist with the efficient administration of the City.

2.0 Background

By resolution of Council on 23 March 1999 Council delegated authority to the Chief Executive Officer to accept leases negotiated at the Tresillian on the basis of direct negotiation in accordance with Sections 3.58(3) and (4) of the Local Government Act and up to an annual rental income of \$5,000.

McLeods Barristers and Solicitors has drafted a template of a standard lease agreement for the City to use for each artist studio lease.

With reference to the City's current Register of Delegations of Authority and Authorisations it would seem apparent that there is requirement for this previous delegation to be re-affirmed and amended to reflect movements in the market since inception of this delegation in 1999.

2.1 Key Relevant Previous Council Decisions

25 September 2012 (Report CP42.12)

2.2 Legislation / Policy

With regard to the process of disposition of local government property, in this situation that is the leasing of City of Nedlands premises at the Tresillian - section 3.58 of the Local Government Act 1995 applies. This section makes requirements of a local government in formalising a lease arrangement for its property. The section details the various processes that a local government must comply with, with a strong focus on transparency and fair value, determined by the market. There are three options for disposing of property (leasing in this matter) outlined in the section which are: public auction, tender or advertising. The section has been referenced in the original delegated authority and continues to be in the proposed delegation, subject of this report.

Section 9.49A of the Local Government Act 1995 prescribes process for duly executing a document, either through the application of the common seal under authority of the local government and in the presence of the mayor and chief executive officer or a senior employee authorised by the chief executive officer or alternatively where it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so. Section 9.49A (4) states that a local government may, by resolution, authorise the chief executive officer to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation. Section 9.49A (5) states that a document executed by a person

under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Required by City of Nedlands policy:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

4.0 Budget / Financial Implications

Not applicable.

5.0 Risk management

Not applicable.

6.0 Discussion

In order to maintain consistency in process and more for the purpose of administrative efficiency this prior delegated authority with minor amendments to reflect current market conditions is now presented to Council with a recommendation to retain and re-affirm. By delegating this authority Council is requiring the City to continue to adhere to the legislated process of leasing of local government property but at the same time recognising the efficiency of Administration to fulfil this obligation. It also affords Council more time to consider more substantive matters. The process by which Tresillian leases have been negotiated for at least the last decade and a half will be maintained. The legislation has remained the same regarding requirements for the process of leasing local government property such as at the Tresillian Arts Centre so it follows that internal processes would do the same.

6.3 Conclusion

This proposed retention of previous delegation of authority is to maintain processes considered to be assisting administrative efficiency. Through the recommendation for delegation of authority legislated processes are consistent and integrity of City of Nedlands procedures preserved.