



City of Nedlands

Planning and Development Reports

Committee Consideration – 11 June 2019

Council Resolution – 25 June 2019

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Council: 25 June 2019

PD20.19	No. 7 Marlin Court, Dalkeith - Two Storey Single Dwelling with Under Croft
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Committee	11 June 2019
Council	25 June 2019
Applicant	Building Corporation WA Pty Ltd T/A Giorgi Architects and Builders
Landowner	Mr R & Mrs T Tai
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil.
Report Type Quasi-Judicial	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Reference	DA19/33721
Previous Item	Nil.
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Site Photographs 2. Submission Table 3. Applicant's Justification

1.0 Executive Summary

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

A design principle assessment is sought in relation to lot boundary setbacks, building height, garage width and visual privacy. It is recommended that the application be approved by Council subject to conditions.

It is considered that the proposed development satisfies the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity due to the scale and the nature of the proposed development.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy – Consultation of Planning Proposals. One non-objection/comment and four objections were received during the advertising period.

2.0 Recommendation to Committee

Council approves the development application dated 21 December 2018 with amended plans dated 16 May 2019 to construct a two-storey single dwelling with under-croft at Lot 24, No. 7 Marlin Court, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval;**
- 2. This development approval only pertains to the proposed single dwelling, pergola, fencing, swimming pool and associated site works;**
- 3. The following conditions are applicable on the advice received from the Department of Biodiversity, Conservations and Attractions:**
 - a) The applicant shall take appropriate preventative measures during the works to ensure that no construction material, top soil, runoff or deleterious matter is allowed to enter the river, foreshore reserve and/or stormwater system;**
 - b) Stormwater runoff from constructed impervious surfaces generated by small rainfall events (i.e. the first 15 mm of rainfall) must be retained and/or detained at-source as much as practical and will not be permitted to enter the river untreated;**
 - c) Prior to the occupation of the dwelling, boundary fencing shall be installed delineating the boundary between the subject site and Crown Reserve 34384 (Lot 206 on Diagram 34215). The fence constructed on the boundary of Crown Reserve 34384 shall be open view style of a total height not exceeding 1.8 metres in accordance with the Department of Biodiversity, Conservation and Attractions' Corporate Policy Statement No. 48 Planning for Development Setback Requirements affecting the Swan Canning Development Control Area;**
 - d) No wastewater/backwash from the swimming pool is to be discharged onto the land or into the local government drainage system, as the treated water may contain chemicals that are detrimental to riverine ecology;**
 - e) In the event of any dewatering being required to be undertaken for any component of the works or development, prior to commencement of dewatering, the applicant shall submit for approval to the City of Nedlands and the Department of Biodiversity, Conservation and Attractions, a Dewatering Management Plan; and**
 - f) The applicant shall not access the site via the Parks and Recreation reserve unless authorised by the City of Nedlands to do so.**
- 4. Revised plans shall be submitted with the Building Permit application, incorporating the following modifications to the satisfaction of the City:**

- a) The sliding gate to the driveway being visually permeable above 0.75m as measured from natural ground level;
 - b) No solid fencing above 0.75m within 1m of the vehicle access point; and
 - c) External fixtures such as metre boxes for the dwelling are concealed from view from the primary street or integrated into the dwelling.
5. All structures associated with retaining walls and fences, shall be constructed wholly inside the site boundaries of the property's Certificate of Title;
6. All visual privacy screens and obscure glass panels to Major Openings and Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2018*. The visual privacy screens and obscure glass panels shall be installed prior to the development's practicable completion and remain in place permanently, unless otherwise approved by the City;
7. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite; and
8. The existing dwelling is to be demolished prior to the commencement of construction of the proposed dwelling.

Advice Notes specific to this proposal:

1. The following advice is in relation to condition no. 3:
- a) With regard to Condition 3 (b), the applicant is advised the stormwater management system shall be designed to prevent mobilisation of sediment, nutrients and contaminants from the site to the river. Stormwater from the proposed development should be managed in accordance with the Department of Biodiversity, Conservation and Attractions' Corporate Policy Statement No. 49 Planning for Stormwater Management Affecting the Swan Canning Development Control Area, the Department of Water and Environmental Regulation's Stormwater Management Manual for Western Australia and Decision Process for Stormwater Management in WA, and water sensitive urban design principles;
 - b) With regard to Condition 3 (e), the applicant is advised that the Department of Biodiversity, Conservation and Attractions has dewatering tailwater discharge standards that are required to be met if it is proposed to discharge directly or indirectly (e.g. via the stormwater system) into the river. The Department of Biodiversity, Conservation and Attractions should be contacted for further advice;

- c) Any unauthorised development within the Parks and Recreation reserve may attract a penalty under section 223 of the *Planning and Development Act 2005*. A person who commits an offence under this section is liable for a penalty of \$200,000 together with daily fines of \$25,000 for each day during which the offence continues. The maximum penalty for a corporation is \$1,000,000 with a daily penalty of \$125,000 for every day during which the offence continues;
 - d) The applicant is advised that the proposed works are located within a high to moderate acid sulphate soil (ASS) risk area. If any ASS is exposed during the works the Department of Water and Environmental Regulation should be contacted for further advice or the soils managed in accordance with Treatment and Management of Soils and Water in Acid Sulphate Soil Landscapes (DEC 2011) and the Department of Biodiversity, Conservation and Attractions, Rivers and Estuaries Branch notified; and
 - e) The use of local native vegetation species within the setback area including the garden bed, is recommended due to their low maintenance and fertiliser requirements and increased habitat values for native fauna.
- 2. The applicant is advised that a separate development application is required to be submitted to and approved by the City prior to erecting any fencing behind the primary street setback area which is more than 1.8m in height above natural ground level;
 - 3. The applicant is advised that 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;
 - 4. The applicant is advised that any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing;
 - 5. The applicant is advised that all swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well;
 - 6. The applicant is advised that all swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding;

7. The applicant is advised that all downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development;
8. The applicant is advised that all internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second;
9. The applicant is advised that 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;

10. The applicant is advised to consult the City's Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours;

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

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

11. 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

3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R12.5
Land area	819.5m ²
Land Use	Residential
Use Class	P

3.2 Locality Plan

The subject site has a very narrow street frontage to Marlin Court which is an existing cul-de-sac and has a substantial slope from the eastern boundary down to the western boundary, adjacent to the Swan River. The subject property also has a restrictive covenant on the certificate of title, this covenant is benefit neighbouring landowners and therefore is not a planning consideration and does not impact on the City's assessment of building height. Regardless, the covenant seeks to limit the height to 13.85 AHD (Australian Height Datum) which this development complies with.



The development application has been advertised twice to provide neighbouring landowners an opportunity to review the amendments to the plans conducted after the first round of advertising was complete and also due to the adoption of Local Planning Scheme No. 3 (LPS 3) which has modified the building height assessment

provisions. Following the second round of neighbour consultation, the plans were further amended and made available for public viewing for 1 week on the City's website so that submitters could review the amendments made which were undertaken by the applicant to address their concerns.

4.0 Application Details

The applicant seeks development approval for the construction of a two-storey single dwelling with under-croft, details of which are as follows:

- Single storey construction as viewed from eastern properties, two storeys as viewed from south and 2.5 storeys as viewed from the north;
- Pergola, swimming pool and pool pump store between the dwelling and the river reservation;
- Dividing fencing (less than 1.8m in height above natural ground level); and
- Site works to accommodate the development.

By way of justification in support of the development application the applicant has provided a design principles assessment provided as an attachment to this report (Attachment 3).

5.0 Consultation

The development application was recently advertised in accordance with the City's Local Planning Policy – Consultation of Planning Proposals after amended plans were submitted to address concerns raised from neighbouring landowners previously and also due to LPS 3 being adopted during the processing of the application.

The application was advertised requesting comment on the following matters which required assessment under the Design Principles of the R-Codes:

- Lot boundary setbacks;
- Open space;
- Building height;
- Garage width;
- Passive surveillance; and
- Visual privacy.

To address many of the concerns raised during the most recent consultation period, the applicant has amended the plans to ensure that the majority of the lot boundary setbacks and visual privacy setbacks meet the deemed to comply provisions. The applicant has also amended the plans and provided additional information to ensure that passive surveillance and open space meets the deemed to comply provisions of the R-Codes.

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

- Lot boundary setbacks;
- Building height;
- Garage width; and
- Visual Privacy.

The City sought comment on the above from three potentially impacted neighbouring landowners. A total of five submissions were received with two submissions from neighbouring landowners not consulted by the City. One of the submissions was of no-objection/comment and the other four were objections to various aspects of the development.

Refer to Attachment 2 for the submission table which outlines the comments received and administration's response to each of them.

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

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.4 Policy/Local Development Plan Consideration

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

The applicant is seeking assessment under the Design Principles of the R-Codes as addressed in the below table/s:

Clause 5.1.3 – Lot Boundary Setbacks

Proposed
The garage is proposed to have a nil setback to the eastern side lot boundary.
Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p><i>“P3.1 – Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <i>• reduce impacts of building bulk on adjoining properties;</i> <i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> <i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i> <p><i>P3.2 – Buildings built up to boundaries (other than the street boundary) where this:</i></p> <ul style="list-style-type: none"> <i>• makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;</i> <i>• does not compromise the design principle contained in clause 5.1.3 P3.1;</i> <i>• does not have any adverse impact on the amenity of the adjoining property;</i> <i>• ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and</i> <i>• positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.”</i>

Deemed to comply requirement
<p>“Walls may be built up to a lot boundary behind the street setback (9m as per LPS 3), within the following limits and subject to the overshadowing provisions of clause 5.4.2 and Figure series 11:</p> <p>i. Where the wall abuts an existing or simultaneously constructed wall of similar or greater dimension.”</p> <p>OR</p> <p>Building which are setback in accordance with Table 2A = 1m.”</p>
Administration Assessment
<p>Where the garage is within 1m of the eastern side lot boundary, it is proposed to be 1.8m in height above natural ground level which ensures that the dividing fence will conceal the portions of the garage which do not meet the deemed to comply criteria. The development will therefore appear no different than a development which meets the deemed to comply criteria when viewed from the adjacent neighbouring properties. Given this design feature it is considered that the boundary wall development will not have an adverse impact on the amenity of the adjoining properties nor the streetscape of which is development is barely visible.</p>

Clause 5.1.6 – Building height

Proposed
The maximum building height above natural ground level is 9.1m.
Design Principles
<p>The application seeks assessment under the design principle which are as follows:</p> <p><i>“P6 – Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves, and where appropriate maintains:</i></p> <ul style="list-style-type: none"> • <i>Adequate access to direct sun into buildings and appurtenant open spaces;</i> • <i>Adequate daylight to major openings into habitable rooms; and</i> • <i>Access to views of significance.”</i>
Deemed to comply requirement
As per Table 3, for concealed roof designs the maximum building height is 7m as measured from the natural ground level directly beneath the development.
Administration Assessment
<p>As previously outlined in this report, when this development application was lodged and first assessed, the building height was assessed and determined to be compliant with the City’s Town Planning Scheme No. 2.</p> <p>This scheme was repealed on 16 April 2019 with the gazettal of LPS 3 which does not contain building height provisions for single and grouped dwelling developments, hence the City is required to use the R-Codes for assessing residential building height. Until such time as a local planning policy is adopted which modifies the building height requirements, the City is required to use the R-Codes provisions. Council at its meeting of 2 May 2019 adopted for the purpose of advertising, a Local Planning Policy for Residential Development which includes that building height be assessed in accordance with Category B of the R-Codes, with height measured in accordance with Figure series 7 and Table 3 which specifies a wall height of 7m for concealed roof designs (flat or skillion roof) as measured above natural ground level directly below the wall.</p> <p>The proposed building height complies with a restrictive covenant over the land which was likely established to protect views to the river by neighbouring landowners. The restrictive covenant is not a planning consideration, and therefore not taken into consideration when assessing building height within the City of Nedlands. However, the height specified within the restrictive covenant is the height that this development and neighbouring dwellings are anticipated to build to, otherwise the height within the covenant would be lower. The building height proposed is therefore within the anticipated building height within the locality.</p>

The height proposed is single storey as viewed from Marlin Court and the eastern neighbouring property, two storeys as viewed from the south and 2.5m as viewed from the north. The only portion of the building which is over the 7m deemed to comply height requirement is a small section on the northern side of the lot closest to the river on the upper level. The orientation ensures that this height will not result in excessive overshadowing of the southern neighbouring lot (overshadowing well under 25% of lot area permitted).

The lot boundary setbacks to the northern, southern and rear lot boundaries and the open space provided for the lot also meets the deemed to comply requirements. The building height is therefore considered to be consistent with the context of the locality, address the topography of the land and meet other statutory requirements.

Clause 5.2.2 – Garage width

Proposed
The garage door occupies the entire frontage at the street setback line as viewed from the street.
Design Principles
The application seeks assessment under the design principles which are as follows: <i>“P2 – Visual connectivity between the dwelling and the streetscape should be maintained and the effect of the garage door on the streetscape should be minimised whereby the streetscape is not dominated by garage doors.”</i>
Deemed to comply requirement
A garage door not to occupy more than 50 percent of the frontage at the setback line as viewed from the street.
Administration Assessment
It is highly unlikely that a development would be able to comply with this requirement due to the bottle-neck of the street frontage compared to the lot area and the need for vehicle manoeuvring to comply with the relevant Australian standards (AS2890.1). Further to this, the property to the east has substantial amount of overlooking of the area proposed to be occupied by the proposed garage. As such the streetscape is mainly private in nature with only a few dwellings, solid walls and limited pedestrian amenity (no footpaths) and therefore the proposed garage location is within the context of the locality, appropriate for the lot configuration and will not have a detrimental impact on the streetscape. Further to this, there is one opening with passive surveillance of the approach to the dwelling to ensure CPTED (Crime Prevention Through Environmental Design) principles are somewhat maintained.

Clause 5.4.1 – Visual privacy

Proposed
The balcony is proposed to have a visual privacy setback of 2.7m to the northern side lot boundary from the western elevation.
The kitchen is proposed to have a visual privacy setback of 3.9m to the southern side lot boundary from the western elevation.
Design Principles
The application seeks assessment under the design principles which are as follows: <i>“P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</i> <ul style="list-style-type: none"> <i>• building layout and location;</i> <i>• design of major openings;</i> <i>• landscape screening of outdoor active habitable spaces; and/or</i>

- *location of screening devices.*

P1.2 Maximum visual privacy to side and rear boundaries through measures such as:

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

Deemed to comply requirement

Balconies setback 7.5m to lot boundaries.

Kitchens setback 6m to lot boundaries.

Administration Assessment

Visual privacy is measured at a 45-degree angle from unobstructed aspects of the room/area. With both the balcony and kitchen having screening to the respective northern and southern elevations, this prevents direct overlooking to adjoining neighbouring properties. The area proposed to be overlooked on the northern neighbouring lot is landscaped area which is not able to be used as outdoor living area due to the significant slope of the land. The area proposed to be overlooked on the southern neighbouring lot is similar to the northern neighbouring lot. This ensures that privacy will be maintained between neighbouring properties.

7.0 Conclusion

The proposed development is considered to satisfy the design principles of the R-Codes for lot boundary setbacks, building height, garage width and visual privacy. Considering the nature and the scale of the development, the site layout and the local development context, the development will conform to the anticipated development context and is unlikely to have a detrimental impact on the local amenity.

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

No. 7 Marlin Court, Dalkeith



Photo 1 – Entry to property facing east



Photo 2 – existing dwelling proposed to be demolished (also height of new dwelling)



Photo 3 – side setback to the northern side facing west



Photo 4 – Area of overlooking on southern neighbouring property (occupied by vegetated area)



Photo 5 – area of overlooking on northern neighbouring property occupied by vegetated area

Submission	Officer Response	Action Taken
We would prefer the building is set back further from the river and in turn comply with the height and setback requirements set by City of Nedlands standards and policies.	The plans have been amended to ensure that the lot boundary setbacks provided to the rear, northern and southern lot boundaries meet the deemed to comply provisions of the R-Codes. The building height is compliant with the restrictive covenant on the lot and the City's previous building height provisions within TPS2 (revoked during the assessment of this development application) and therefore it is considered that the height is within the context and expectation of the locality.	No action required.
The upper floor living room to the north exceeds compliance setback requirements and does not have a compliant visual privacy setback.	The upper floor living room now has a privacy screen which ensures that the lot boundary setbacks and visual privacy setback provided to the northern side lot boundary meets the deemed to comply requirements.	No action required.
We would like the upper floor balcony to be removed from the proposal to satisfy the requirements of the visual privacy setback to the northern side lot boundary and eliminating the requirement of screening.	The upper floor balcony has a reduced visual privacy setback from the western elevation to the northern side lot boundary. There is no direct overlooking proposed and the area proposed to be overlooked is heavily landscaped area not used for outdoor living area ensuring privacy is maintained between properties.	No action required.
The garage lot boundary setback to south – we are ok with the setback, just wonder what the boundary material is?	Building material is proposed to be white rendered brick construction	No action required.
The pool equipment store should have the setback increased to 6m from the rear lot boundary.	The applicant has submitted amended plans demonstrating an increased setback of 6m to the rear lot boundary ensuring compliance with the deemed to comply provisions of the R-Codes.	No further action required.
We believe that 9.1m building height is unacceptable as the increased height will have excessive overshadowing.	The building height provided is a maximum and as viewed from the south will be less than 7m above natural ground level. The additional height is only visible from the northern neighbouring lot. The overshadowing proposed to the southern neighbouring lot is 16% which is less than the permitted 25%.	No further action required.

Upper floor visual privacy setbacks should be increased to avoid overlooking into habitable rooms and outdoor living areas of our property	The wet kitchen has been modified to be a pantry to remove the deemed to comply requirement for a visual privacy setback from the doorway. The kitchen has been provided with a privacy screen to prevent any direct overlooking	
In the event that the owners decide to erect solar panels on the roof we request that they not be erected on the garage roof. The light reflected from the solar panels will have a negative impact on our property.	Solar panels are permitted to be located on the garage roof as of right without requiring further development approval.	No action taken.



Our Ref: J000205
Your Ref: DA19/33721

20 May 2019

Ms Kate Bainbridge
Coordinator Statutory Planning
City of Nedlands
PO Box 9
NEDLANDS WA 6909

PO Box 538, Inglewood
Western Australia 6932

0411 445 031
peter@ptsplanning.com.au

www.ptsplanning.com.au

Dear Kate

ABN - 32 603 168 850

DA19/33721 – 7 MARLIN COURT, DALKEITH – AMENDED PLANS AND RESPONSE TO SUBMISSIONS

We refer to the public comment notice, the variations proposed and the submissions received. We provide the below justification to the variations from the Deemed to Comply provisions as they appear in the notice and have attached our response to the submissions received.

We have enclosed amended plans to address many of the matters raised. The amendments are identified in the following commentary.

Lot Boundary Setbacks

Garage Setback to Eastern Boundary

The garage is located on the boundary, however, the height of the garage at the boundary is 1.8 metres, which is the same height as a boundary wall/fence. The additional height to the garage, beyond the boundary wall/fence, is setback 1 metre from the boundary. Therefore, the height above the boundary fence/wall would meet the deemed to comply provisions with only the height at the boundary requiring consideration under the design principles.

In considering the design principles, the proposed boundary wall does not impact building bulk as the height is the same as the boundary fence/wall, does not impact direct sun or ventilation to the adjoining properties given the difference in levels and the orientation of the lots, does not result in the loss of privacy as the garage is not a habitable space, makes effective use of the space on site and does not impact the amenity of the adjoining property. It is noted that it would appear that the owner to the east does not have any objection to the proposed wall.

Upper Floor Setback of Living Room to Northern Boundary

The plans have been amended to include screening to the northern portion of the living room. The result is that the living room window is now not considered a major opening to the northern boundary and therefore the living room setback meets the deemed to comply provisions.

Upper Floor Setback of Kitchen to Southern Boundary

The plans have been amended to include screening to the southern portion of the kitchen. The result is that the kitchen window is not considered a major opening to the southern boundary. Therefore, based on a height of

less than 6 metres and a wall length of less than 12 metres, the required setback is 1.5 metres. The screens are setback 1.5 metres and therefore the setback meets the deemed to comply requirements.

Upper Floor Balance Wall to Southern Boundary

The upper floor balance wall has a length over 25 metres and a height of less than 6 metres, which requires a setback of 2.8 metres. The balance wall is setback 4.3 metres and therefore meets the deemed to comply provisions.

Pool Equipment Store setback to Western Boundary

The plans have been amended to setback the pool equipment store 6 metres from the western boundary and therefore meets the setback provisions.

Conclusion

Therefore, with the exception of the garage setback to the eastern boundary, the other setbacks meet the deemed to comply provisions. With respect to the garage wall, it meets the design principles.

Open Space

We note the City's assessment of the open space at 53.7% as opposed to the deemed to comply requirement of 55%. This represents a difference of 10m² over the 819.5m² lot. The variation is considered very minor. In considering the design principles, the proposed dwellings provide suitable open space for its context given that:

- The dwelling responds to the streetscape and is actually lower than would be permitted as a result of the restrictive covenant limiting height on the subject site;
- The dwelling is provided with a high level of access to natural light;
- The design minimizes building bulk on the site when viewed from the street and the side setbacks meet the deemed to comply provisions;
- The dwelling is provided within an attractive setting for the area and responds to the parks and recreation reserve. Additionally, while not part of the subject site, the parks and recreation reserve adds to the open space context of the site when viewed from the Swan River;
- The dwelling provides significant external space for the residents; and
- Services have been well considered in the proposed design with the service provision not impacting the functional open space of the dwelling.

Therefore, the variation to open space is minor and meets the design principles. The fact that the site abuts a parks and recreation reserve adds to the level of open space for the site.

Building Height

It is noted that the proposed development was considered by the City to meet the previous height provisions as is evident in the Committee report dated 9 April 2019. It is also noted that this application was lodged in December 2018.

It is acknowledged that as a result of the gazettal of the LPS3 that the consideration of height reverted back to the R-Codes and consequently the height needs to be considered in the context of the design principles.

It is also important to note that the site contains a restrictive covenant limiting the height and therefore the height towards Marlin Court is well below the height that would normally be permitted at the street. Additionally, the typography of the site needs to be considered as the height variation relates to the portion of dwelling where the land slopes away from the upper level of the dwelling. In considering the design principles:

- The additional height does not create any adverse impacts on the amenity of the adjoining properties through overshadowing with the building bulk complying with the deemed to comply side setback provisions and overshadowing.
- The additional height does not impact the streetscape as the restrictive covenant limits the height at the street to below the deemed to comply height requirement of the R-codes;
- The building height and form is consistent with the height of other dwellings along the foreshore noting that the other dwellings would have complied with the previous height provisions;
- The development is provided with access to direct sunlight to both the subject site and the adjoining properties and provides daylight to major openings;
- The proposed dwelling as a result of the restrictive covenant ensures the protection of access to views of significance from the east.

Therefore, in considering the height, the proposed development meets the design principles.

Garage Width

The garage doors are setback 10.946 metres from the Marlin Court boundary. While the garage is located to the side of the dwelling, it is not located at the street setback line and therefore the width is not relevant to the deemed to comply provisions.

In terms of the design principles, the setback of the garage from the street boundary with the entry court located between Marlin Court and the dwelling means that there is a high level of visual connectivity between the dwelling and the streetscape. Additionally, the garage doors are setback 10.946 metres from Marlin Court meaning that the garage doors are barely visible from the street and do not dominate the streetscape. Therefore, as a result of the setback of the garages from Marlin Court, the development achieves the design principles.

Street Surveillance

The plans have been amended to include a major opening from the master bedroom facing the street and the pedestrian and vehicular approach to the dwelling. Therefore, the proposed dwelling meets the deemed to comply provisions.

Visual Privacy

Upper Floor Living Room to the Northern Lot Boundary

The plans have been amended to include screening to the northern portion of the living room window. This prevents views directly north to the adjoining property and meets the deemed to comply visual privacy provisions.

Upper Floor Balcony to the Northern Boundary

The plans have been amended to recess the balcony balustrade into the balcony, which prevents views directly to the north to the adjoining property. The balcony does not meet the deemed to comply provisions as a portion of the view cone extends into the site to the north. The consideration of the privacy under the design principles is appropriate given that:

- The screening prevents direct overlooking of the adjoining property with only the oblique view;
- The active habitable space of the adjoining property is on the northern side of the lot, near the swimming pool, and therefore is not impacted by the proposed dwelling;
- The adjoining property has mature trees at the boundary minimizing any overlooking;
- The screening prevents overlooking into any major openings of the adjoining property; and
- The view is to the rear portion of the site which forms part of the landscaped rear setback/parks and recreation interface and therefore is open to public view along the reserve and from the water.

Therefore, it is considered that the privacy achieves the design principles.

Upper Floor Kitchen to the Southern Boundary

The plans have been amended to include screening to the southern portion of the kitchen window. This prevents views directly south to the adjoining property. The kitchen window does not meet the deemed to comply provisions as a portion of the view cone extends into the site to the south. The consideration of the privacy under the design principles is appropriate given that:

- The screening prevents direct overlooking of the adjoining property to the south with only the oblique view;
- The overlooking is to the terraced planting of the adjoining property;
- The screening prevents overlooking into any major openings of the adjoining property; and
- The view is to the rear portion of the site which forms part of the landscaped rear setback/parks and recreation interface and therefore is open to public view along the reserve and from the water.

Therefore, it is considered that the privacy achieves the design principles.

Upper Floor Wet Kitchen Door to the Southern Boundary

The plans were incorrectly labelled a wet kitchen as part of the original plans and should have been labelled a walk-in pantry. The walk-in pantry does not include any cooking facilities and only includes storage. The walk-in pantry is not a habitable room, the door is not a major opening and the service court is not an active habitable space.

Conclusion

The applicant has positively responded to the planning assessment of the City and the submissions received in terms of setbacks to the sides and rear, provision of privacy screening and passive surveillance of the entrance to the site.

We look forward to your favourable consideration of the amended plans.

Ms Kate Bainbridge
City of Nedlands

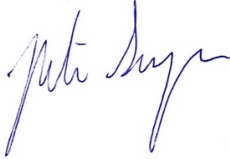
City of Nedlands
Received
20 May 2019

DA19/33721 – 7 MARLIN COURT, DALKEITH – AMENDED PLANS AND RESPONSE TO SUBMISSIONS

Should you have any questions or require any additional information, please do not hesitate to contact the undersigned on 0411 445 031 or peter@ptsplanning.com.au.

Yours sincerely

PTS Town Planning Pty Ltd



Peter Simpson
Director

Submitter No.	Submission	Action required.	Applicant Response
1	We have no further concerns regarding the above proposal. We agree to the garage being reduced to 1800mm in height above natural ground level.	No action required.	Noted
	However, in the event that the owners decide to erect solar panels on the roof we request that they not be erected on the garage roof. The light reflected from the solar panels will have an impact on us as the garage is now very close to our property with nil setback.	More information to be provided in relation to any potential solar panels.	No solar panels are proposed by this application and the landowner is aware of the submission received.
2	Our concerns with this proposal relate to the location of the building on the site, the setback of the building in relation to the river, and the overall bulk of the building, particularly in its features and width to the northern lot boundary.	Noted.	The plans have been amended to ensure that the setback to the river complies. The plans have also been amended to ensure that the setbacks to the northern boundary meet the deemed to comply provisions.
	We would prefer the building is set back further from the river and in turn comply with the height and setback requirements set by City of Nedlands standards and policies. The proposed building is above required height in relation to natural ground level. We would like to see the proposed building comply with building height. This may be achieved should the building be set further away from the river.	Amended plans or response to be provided addressing design principles.	We note that the setbacks to the river and to the north comply with only the height being subject to a design principle assessment, which is included in the covering letter. It is also noted that under the previous height provisions, which most of the existing dwellings have used, the City identified that height complied. The additional height is a function of the restrictive covenant and topography of the site at the point where the height exceeds the provisions. Overall the height is lower than permitted as a result of the restrictive covenant which protects views of significance from the east.
	The upper floor living room to the north exceeds compliance setback requirements and may also be		It is noted that the amended plans result in complying setbacks to the north and to the river.

	adding to the reduction in open space. We would like to see the open space and northern lot boundary setbacks comply and may comply if the house is set back further away from the river.		The open space is determined at the ground level and therefore the upper level does not impact open space. The variation to open space has been addressed in the letter and is very minor.
	We have met with owners of number 7 Marlin Court who have agreed to delete the upper floor balcony, thus satisfying the requirements of the visual privacy setback to the northern side lot boundary and eliminating the requirement of screening.	Amended plans to be submitted if this is true. Otherwise considered to be objection and hence design principle justification to be submitted.	The landowner has advised that the discussion with the adjoining owner was about the possibility of moving the balustrade position back (not to remove the balcony completely). The amended plans relocate the balustrade back 500mm in order to satisfy this request. It now only allows a sight line forward towards the river. A design principle assessment is included in the covering letter.
	The upper floor living room to the northern lot boundary also does not comply, however may comply should the building be set further away from the river setback. We would like the Owners of number 7 to consider this option, thus avoiding screening. We will consider some overlooking of visual privacy if the house is positioned further away from the river frontage.	Amended plans or justification to be provided.	It is noted that only the fireplace is within the setback as the glass line of the living room meets the deemed to comply setback requirements. Therefore the landowner owner would prefer not to setback the living area and consequently has included screening which addresses both the setback and direct visual privacy to the adjoining dwelling.
3	The garage lot boundary setback to south – we are ok with the 1m setback, just wonder what the boundary material is	Please advise of material of construction.	The material has not been identified on the plans and can be the subject to a planning condition which can be agreed, within reason, with the adjoining landowner.
	Upper floor kitchen lot boundary setback to south – consolidate with both boundary and visual privacy, we still request to comply with 2.8m setback. We have one major bedroom and the open laundry area which are exactly adjacent to the north-side boundary, the major bedroom has full window face to north, if their upper floor kitchen is designed on the south-side which will be directly faced to our	Amended plans or justification required.	The kitchen has been provided with screening to prevent direct overlooking to the adjoining property windows. The setback complies and the screens prevent direct overlooking with only oblique views towards the river.

	major bedroom window and open laundry area. It will be terrible for the noise and smell generated by this kitchen everyday. The kitchen exhaust will also impact our daily life		The kitchen is a domestic kitchen and therefore is not likely to result in any significant noise or odours.
	The bulk of upper floor lot boundary setback to south: we are good with 2.75m to the southern side lot boundary.	No action required.	The amended plans result in the southern setback meeting the deemed to comply provisions.
	The pool equipment store – objection provided. We'd like to understand the materials of pool and if there is any mechanical equipment installed which will generate vibration or mechanical noise.	Advise submitter that noise to be less within building than open which is permitted as of right.	The pool equipment is to be located in an enclosed room under the basement plan alfresco.
	Building height - we insisted that the design could not exceed 7M height. 9.1M is unacceptable as we have both bedroom and Balcony on our Northern side, the increased height will be seriously impacted our daily life. Besides, we have one Open laundry area at the northern side, the increased height will block the sunshine several hours everyday.	Amended plans or design principle justification to be submitted.	Refer to discussion regarding design principle assessment of height.
	Upper floor kitchen visual privacy setback to southern side lot boundary – we requested to keep the 6m setback, as described in above-mentioned reason: too close to our major bedroom and open laundry area.	Amended plans or design principle justification to be submitted.	The kitchen has been provided with screening to prevent direct overlooking to the adjoining property windows. The setback complies and the screens prevent direct overlooking with only oblique views towards the river.
	Upper floor wet kitchen visual privacy setback to southern side lot boundary – we requested to keep the 6m setback, as described in above-mentioned reason: too close to our major bedroom and open laundry area.	Amended plans or design principle justification to be submitted.	The wet kitchen was incorrectly labelled and is actually a walk-in pantry as there are no hot plates, ovens etc within the area. As a result, the walk-in kitchen is not a habitable room and therefore privacy is not impacted.
4	We are close neighbours of the above property and have the benefit of a Restrictive Covenant over the height of any erection on Lot 24. We have checked the height of the proposed dwelling and are satisfied that as shown on the current plans lodged with	No action required.	Noted

	Council the development does not breach the height covenant.		
	We have examined the draft plans lodged with Council and are overwhelmed by the size of the proposed development. We object to the minor reductions in setbacks which whilst they may be deemed to comply with the R-Codes spread the bulk of the building far too close to lot boundaries.	Amended plans or justification to be submitted.	The setback meets the deemed to comply provisions. It is also noted that as a result of the restrictive covenant, the height has to be limited which results in the spread of the building form.
	Specifically, we object to the reduction in setback on the Northern Boundary which moves the house far too close to its neighbour No. 5 Marlin Court significantly affecting the overall amenities of that property. More importantly it has a deleterious effect on the street scape provided by the house at No. 5 which is as a prime example of the work of the late celebrated architect Mr. Marshall Clifton who specifically designed and located the house on the block. The house itself is delightful and is angled on the block quite deliberately. The imposition of an over 10-metre-high wall so close to No. 5 is unacceptable and should be rejected.	Amended plans or justification to be submitted.	Refer to above with respect to the northern setbacks.
	After consideration of our views expressed in this letter, we look forward to constructive discussion with Council Representatives and the owners of No. 7 and their builder prior to the meeting of the Committee so that all parties can reach a solution which allows the erection of a new house to go ahead.	Any changes to the plans as a result of these discussions to be provided to the City.	The plans have been amended to respond to a number of matters raised by the adjoining owners.
5	Submitter raised same concerns as above,	This submitter was not consulted by the City and is not within proximity of the development site.	As above.

PD21.19	No. 51 Hobbs Avenue, Dalkeith – Additions to Single Dwelling
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Committee	11 June 2019
Council	25 June 2019
Applicant	Alana John Design
Landowner	V A Flynn
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil.
Report Type	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Reference	DA18/33527
Previous Item	Nil.
Delegation	In accordance with Clause 7 of the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Site Photographs

1.0 Executive Summary

The purpose of this report is for Council to determine a development application received from the applicant on 17 December 2018, for a proposed addition to the existing single dwelling at No. 51 Hobbs Avenue, Dalkeith.

The additions include a single garage accessed from the primary street, four-car garage accessed from the rear laneway, master suite addition and floor plan modifications on the ground floor, new balcony and other minor modifications to the upper floor and modifications to the rear laneway fencing.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy – Consultation of Planning Proposals as the development requires assessment under the Design Principles for lot boundary setbacks, building height and vehicle access. One objection has been received relating to the proposed rear setback. Other comments and objections which were received during the advertising period have been addressed through the provision of amended plans and additional information.

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

2.0 Recommendation to Committee

Council approves the development application dated 17 December 2018 with amended plans received 27 March 2019 for additions to the existing single dwelling at Lot 83, No. 51 Hobbs Avenue, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval;**
- 2. This development approval only pertains to the additions to the existing single dwelling as shown on the approved plans;**
- 3. All footings and structures to retaining walls and fences, shall be constructed wholly inside the site boundaries of the property's Certificate of Title;**
- 4. The proposed pergolas shall remain without permanent roof cover unless further development approval is obtained; and**
- 5. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

Advice Notes specific to this proposal:

- 1. The applicant is advised that a separate development application is required to be submitted to and approved by the City prior to erecting any fencing within the street setback area(s) which is not compliant with the deemed-to-comply provisions of the Residential Design Codes, and/or erecting any fencing behind the primary street setback area which is more than 1.8m in height above natural ground level;**
- 2. The applicant is advised that any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing;**
- 3. The applicant is advised that all street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Works approval;**
- 4. The applicant is advised that all swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well;**
- 5. The applicant is advised that all swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding;**

6. The applicant is advised that all downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development;
7. The applicant is advised that all internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second;
8. The applicant is advised that 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;

9. The applicant is advised to consult the City's Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours;

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

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

10. The applicant is advised that 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

3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R10
Land area	1381m ²
Land Use	Residential (Single Dwelling)
Use Class	P – Permitted

3.2 Locality Plan

The subject property is relatively flat and accommodates an existing two storey single house, swimming pool and dividing/street boundary fencing. The property is located with Cormorant Lane to the rear and Sadlier Street to the north-eastern boundary.



The development application assessment has been delayed due to the gazettal of Local Planning Scheme No. 3 (LPS 3). The gazettal of LPS 3 required that the development application be re-advertised to potentially impacted neighbouring landowners due to the building height requiring assessment under the Design Principles of the R-Codes rather than the previously in force Town Planning Scheme No. 2 (TPS 2) building height provisions (which the development was compliant with).

4.0 Application Details

The applicant seeks development approval for additions to the existing single house, details of which are as follows:

- Single garage accessed from Hobbs Avenue;
- Four-car garage accessed from Cormorant Lane;
- Master suite, decking and verandah addition to the ground floor;

- Modifications to the floor plan on the ground floor (namely internal);
- Upper floor balcony addition;
- Internal floor plan modifications to the upper floor;
- Changes to the roof heights of the upper floor; and
- Modifications to dividing fencing to secondary street and rear laneway for repairs and to create new access to the laneway.

By way of justification in support of the development application the applicant has provided a design principles assessment below:

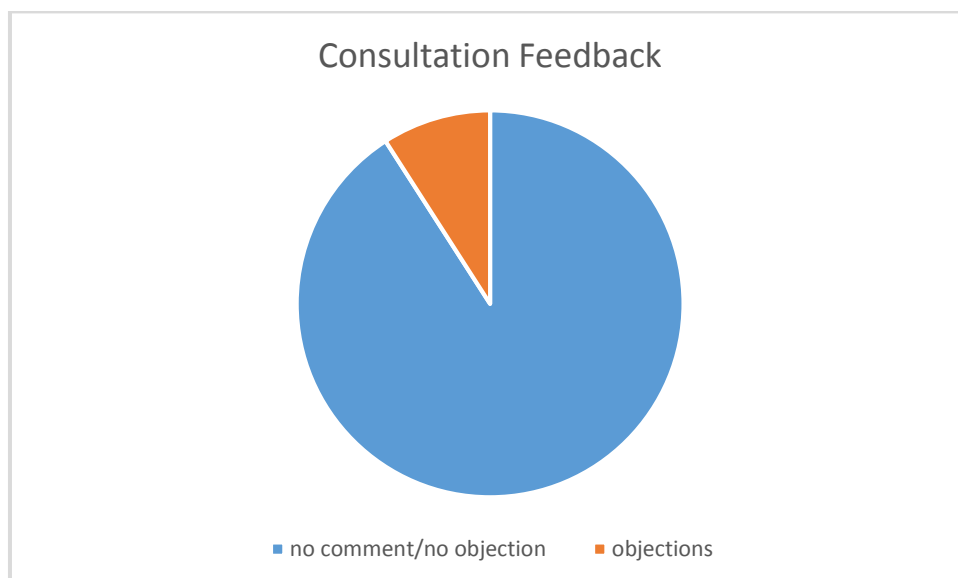
“We seek approval for a setback of 1.5m in lieu of 4.0m. The wide ROW allows comfortable manoeuvrability of a vehicle and has no immediate impact on the neighbour adjacent to Cormorant Lane. We refer to multiple residences along Cormorant Lane, in particular the adjacent property that has taken advantage of the ROW and reduced setbacks for garaging and storage access. A garage on the ROW boundary ensures there is no interference to the streetscape and vegetation of Sadlier Street.”

5.0 Consultation

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

- Lot boundary setbacks;
- Building height; and
- Vehicle access.

The development application was therefore advertised in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals to 11 residents and landowners. 1 objection was received to the rear setback proposed. Other submissions received were able to be addressed through the submission of amended plans and additional information.



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

Submission	Officer Response	Action Taken
<p>The new garage is proposed to be setback 1.5m to the laneway and is also proposed to be constructed opposite another garage. The proposed garage setback to the laneway boundary should be 2.6m, the same as no. 2 Sadlier Street, 56 Hobbs Ave and 56 Browne Ave, Dalkeith.</p> <p>A setback of 2.6m provides only just enough space to manoeuvre in and out of the garage. The use of neighbouring lot's driveway to manoeuvre in and out of the garage with only a 1.5m setback is not supported.</p>	<p>The deemed to comply setback requirement for a garage to a rear lot boundary which is a laneway is 4m. The garage is proposed to be setback 1.5m. The garage setback of 1.5m to the rear laneway provides 6.5m of manoeuvring space in front of the garage to the other side of the laneway. This will comply with the Australian standards with an additional 0.5m length to spare. Further to this, if the garage was not attached to the dwelling, the setback provided to the rear laneway would comply with the deemed to comply provisions.</p> <p>The applicant will therefore not rely on the neighbour's driveway for manoeuvring. The truncated fencing and extra width provided in the garage door will ensure that access in and out of the garage will be convenient for residences.</p> <p>Further to this, there is no regulation within the City of Nedlands which prevents garages being opposite one another either side of a laneway.</p>	No action required.
They are better off having a new garage accessed from Sadlier Street, as they have plenty of land to use.	Access to the secondary street is only supported where access to a laneway is not available. Further to this, a new vehicle access for a four-car garage to a secondary street would need to be setback a considerable distance to ensure that the width of the driveway is no more than 6m at the street frontage to ensure the width and access at 90-degree angle at the street frontage complies with the R-Codes. The driveway would also need to be setback from the laneway a minimum of 3m for safe sightlines. There are also several street trees on Sadleir Street and an existing swimming pool on the property which prevents access to the secondary street. For these reasons, access to the rear laneway is encouraged and is more compliant with the R-Codes.	No action required.

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

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.4 Policy/Local Development Plan Consideration

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

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

Clause 5.1.3 – Lot Boundary Setbacks

Proposed
The rear garage is proposed to be setback 1.035m to the western side lot boundary.
The bulk of the ground floor is proposed to be setback 1.65m to the western side lot boundary.
The rear garage is proposed to be setback 1.5m to the rear lot boundary.
Design Principles
The application seeks assessment under the design principles which are as follows:
<p><i>“P3.1 – Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <i>• reduce impacts of building bulk on adjoining properties;</i> <i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> <i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i>
Deemed to Comply requirement
Table 2A specifies a 1.1m setback to lot boundaries for wall lengths less than 9m which are less than 4.0m in height above natural ground level.
Table 2A specifies a 1.8m setback for wall lengths over 25m which are 4.0m in height above natural ground level.
Clause 5.1.3 also specified that eaves and other minor projections shall encroach into the setback area no more than 0.75m.
Table 1 specifies a 6m setback to rear lot boundaries in the R10 density code. Clause 5.1.3 permits this to be reduced by up to 2m if adjacent to a laneway 4m or more in width. Hence the rear setback deemed to comply requirement is 4m.
Administration Assessment
The difference between the proposed and deemed to comply setback to the western side lot boundary for the proposed rear garage will not be evident to the untrained eye.
Further to this, the setback provided is a minimum as the dwelling is orientated at a slight angle to the lot boundary (not exactly adjacent) and therefore the average setback provided for this portion of wall is over 1.1m. this ensures that the bulk and scale of the building is the same as a wall length which meets the deemed to comply criteria.
The only portion of the ground floor within the deemed to comply setback area (1.8m) is eave area. This ensures that building bulk is reduced. Further to this, there are no major openings in the length of wall ensuring no impact on privacy.
The setback of the remainder of the ground floor (also known as the 'bulk') is measured 0.75m from the edge of the eave as the eave is over 0.75m in widths however, the actual

wall is setback 2.25m which is more than the 1.8m deemed to comply requirement. Additionally, the lot orientation ensures minimal overshadowing to the western neighbouring landowner.

The setback to the rear lot boundary is similar to other developments within the locality as specified below:

- No. 55 Hobbs Avenue (also determined by Council) has a rear setback of 1.45m.
- No. 49 Hobbs Avenue has a minimum rear setback of 0.895m.
- No. 39 Hobbs Avenue has minimum rear setback of 0m (nil).
- No. 65 Birdwood Avenue has a minimum rear setback of 1.5m.

The northern neighbour on the opposite side of the laneway has a different deemed to comply requirement than the subject property as the laneway intersects with the primary street and hence is a secondary street as per the definition within the R-Codes which has a deemed to comply setback of 3m. Therefore, the northern neighbour's garage setback is also less than the deemed to comply requirement with a 2.6m setback provided to the laneway.

The setback provided to the rear lot boundary would be compliant with the deemed to comply provisions if the garage was not attached to the main dwelling as the building would be classified as an outbuilding which is permitted to have a 1.5m setback to a rear lot boundary within the R-Codes. From the above, it is demonstrated the reduced setbacks (especially for garages) has been established within the locality and provides for a more landscaped and open streetscape.

Clause 5.1.6 – Building height

Proposed
The maximum wall height above natural ground level is 7.5m.
The maximum building height above natural ground level is 10.2m.
Design Principles
The application seeks assessment under the design principles which are as follows:
<i>“P6 – Building height that creates no adverse impact on the amenity of adjoining properties or the streetscape, including road reserves and public open space reserves; and where appropriate maintains:</i>
<ul style="list-style-type: none"> • Adequate access to direct sun into buildings and appurtenant open spaces; • Adequate daylight to major openings into habitable rooms; and • Access to views of significance.”
Deemed to comply requirement
For pitched roof designs, the maximum wall height is 6m as measured from natural ground level directly beneath the wall.
For pitched roof designs, the maximum building height is 9m as measured from natural ground level directly below the top of the roof.
Administration Assessment
TPS 2 was repealed on 16 April 2019 with the gazettal of LPS 3 which does not contain building height provisions for single and grouped dwelling developments, hence the City is required to use the R-Codes for assessing residential building height.
Until such time as a local planning policy is adopted which modifies the building height requirements, the City is required to use the R-Codes provisions. Council at its meeting of 2 May 2019 adopted for the purpose of advertising, a Local Planning Policy for Residential Development which includes that building height be assessed in accordance with Category B of the R-Codes, with height measured in accordance with Figure series 7 and Table 3 which specifies a wall height of 6m and roof height of 9m for pitched roof designs as measured above natural ground level directly below the wall and roof pitch.

The dwelling is existing with the modifications to the upper floor somewhat minor in nature. In addition to the above design principles, the draft Local Planning Policy – Residential Development specifies that streetscape context and topography can be taken into consideration when assessing building height against the design principles. The wall and roof heights proposed are assessed as being within the context of the locality and were designed to comply with the previously permitted building heights as per previously applicable TPS 2. This had been in place prior to the R-Codes coming into effect and therefore the 8.5m wall height and 10m roof height are well established throughout the locality. It is considered that a Design Principles Assessment is therefore appropriate in this instance and that height assessment is not restricted by the Category B height controls as stipulated in the R-Codes.

The additions are assessed to be in context within the streetscape, will not result in any additional overshadowing of neighbouring properties (due to the lot orientation), and will not block any views of significance.

Clause 5.3.5 – Vehicle Access

Proposed
New vehicle access is proposed to the rear laneway with existing vehicle access retained to the primary street.
Design Principles
The application seeks assessment under the design principles which are as follows: <i>“P5.1 – Vehicles access provided for each development site to provide:</i> <ul style="list-style-type: none"> • <i>Vehicle access safety;</i> • <i>Reduced impact of access points on the streetscape;</i> • <i>Legible access;</i> • <i>Pedestrian safety;</i> • <i>Minimal crossovers; and</i> • <i>High quality landscaping features.”</i>
Deemed to comply requirement
C5.1 – Access to on-site car parking spaces to be provided where available from a right-of-way available for lawful use to access the relevant lot and which is adequately paved and drained from the property boundary to a constructed street.
Administration Assessment
The proposed development seeks to retain an existing vehicle access point to the primary street and proposes a new vehicle access to the laneway. The vehicle access to the laneway is compliant in terms of sightlines and manoeuvring and will mitigate the impact on the streetscape. The existing vehicles access being retained does not change the appearance of the streetscape and will provide a legible access point for visitors to park on the subject property. There are no pedestrian conflicts as there are no footpaths in the verge adjacent and the several street trees in the verge adjacent to the property (namely the secondary street) can be retained as a result of the design, ensuring high quality landscape features are provided.

7.0 Conclusion

The proposed development is considered to satisfy the design principles of the R-Codes for lot boundary setbacks, building height and vehicle access. Considering the nature and the design of existing development within the locality, the development is unlikely to have a detrimental impact on the local amenity and will ensure the open streetscape is maintained without compromising vehicle safety.

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

51 Hobbs Avenue, Dalkeith



Photo 1 – location of proposed garage from the primary street (Hobbs Ave)



Photo 2 – location of proposed upper floor balcony



Photo 3 – front of dwelling as taken from intersection of Hobbs Ave and Sadlier Street



Photo 4 – rear of dwelling as taken from Sadlier Street



Photo 5 – Sadler Street verge (well landscaped)



Photo 6 – Photo of laneway facing towards Sadler Street



Photo 7 – Photo of existing outbuilding which is proposed to be demolished to make way for the proposed garage.

PD22.19	No. 8 Colin Street, Dalkeith – Single Storey Single Dwelling
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Committee	11 June 2019
Council	25 June 2019
Applicant	Daniel Cassettai Design
Landowner	H and S Cranston
Director	Peter Mickleson – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995	Nil
Report Type Quasi-Judicial	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
Reference	DA19/34691
Previous Item	Nil.
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Site Photographs

1.0 Executive Summary

The purpose of this report is for Council to consider a development application received from the applicant on 1 March 2019 for a proposed single storey single house at 8 Colin Street, Dalkeith.

The application requires an assessment under the Design Principles of the Residential Design Codes (R-Codes) for lot boundary setbacks and site works.

The application was advertised to neighbouring landowners and residents in accordance with the City's Local Planning Policy – Consultation of Planning Proposals. One objection was received during the advertising period. The concerns raised were regarding the potential visual impact of the proposed development due to the reduced rear setback.

It is recommended that the application be approved by Council subject to modification to the fill proposed within the front setback area, as the nature and the scale of the development is considered to satisfy the design principles of the R-Codes and is unlikely to have a significant adverse impact on the local amenity.

2.0 Recommendation to Committee

Council approves the development application dated 27 February 2019 with amended plans received on 8 March 2019 to construct a single storey single dwelling at (Lot 4) No. 8 Colin Street, Dalkeith subject to the following conditions and advice:

- 1. The development shall always comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval;**
- 2. This development approval only pertains to the proposed single storey single house, swimming pool, swimming pool fencing and associated site works;**
- 3. Revised plans shall be submitted prior to the lodgement of the Building Permit application incorporating the following amendments to the satisfaction of the City of Nedlands:**
 - a) reducing the fill and retaining to no more than 0.5m in height within 3m of the primary street boundary; and**
 - b) reducing the width of the driveway at the primary street boundary to be 6m.**
- 4. The proposed dwelling not being used as ancillary accommodation nor short term accommodation without further development approval;**
- 5. The existing dwelling is to be demolished prior to the commencement of construction of the proposed dwelling;**
- 6. This development approval only pertains to the proposed single dwelling;**
- 7. All fencing, retaining and other structures shall be constructed wholly inside the site boundaries of the property's Certificate of Title; and**
- 8. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

Advice Notes specific to this proposal:

- 1. The applicant is advised that a separate development application is required to be submitted to and approved by the City prior to erecting any fencing within the street setback area(s) which is not compliant with the deemed-to-comply provisions of the Residential Design Codes, and/or erecting any fencing behind the primary street setback area which is more than 1.8m in height above natural ground level;**
- 2. The applicant is advised that any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.;**

3. The applicant is advised that 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;
4. The applicant is advised that the redundant crossover(s) are required to be removed and the nature-strip (verge) reinstated;
5. The applicant is advised that all street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Works approval;
6. The applicant is advised that all downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development;
7. The applicant is advised that all swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding;
8. The applicant is advised that all swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well;
9. The applicant is advised that all internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second;
10. The applicant is advised to consult the City's Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours;

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

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

11. The applicant is advised that 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; and

12. 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

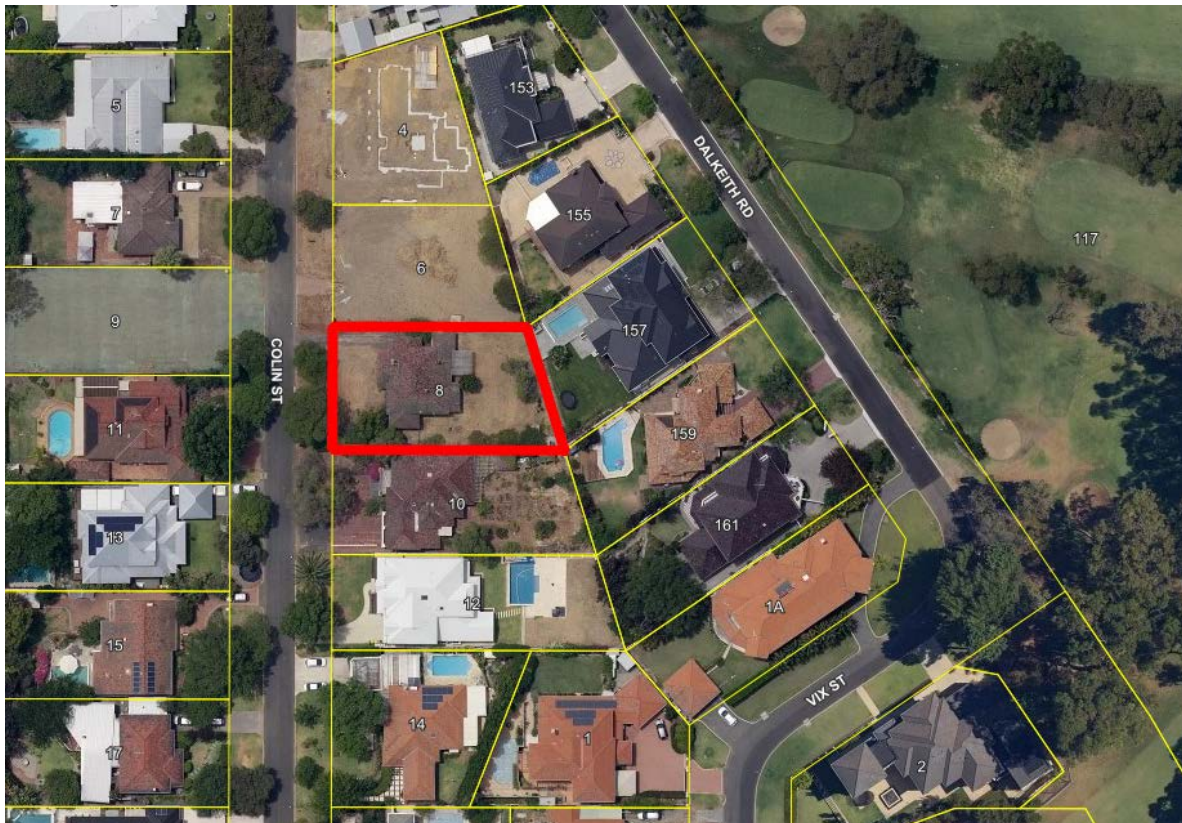
3.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R12.5
Land area	1012m ²
Land Use	Residential – Single Dwelling
Use Class	P

3.2 Locality Plan

The subject property is within proximity to the intersection with Melvista Avenue and currently contains a single storey single house which is proposed to be demolished. The topography of the land slopes from east to west (front of the property is lower than the rear).

Surrounding properties contain single and double storey houses with the exception of the 2 lots immediately to the north (4 and 6 Colin Street), both of which have two-storey single dwellings currently under construction which have had development applications determined by Council previously. The single dwelling at No. 4 Colin Street was approved with a reduced rear setback by Council.



4.0 Application Details

The applicant seeks approval to construct a single-storey single dwelling, details of which include the following:

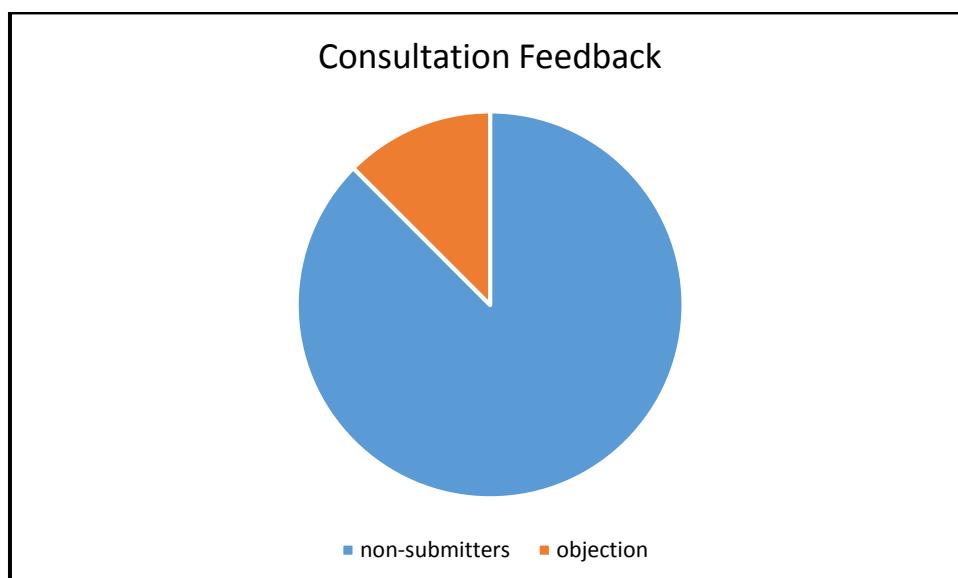
- Single storey dwelling constructed of brick with colorbond roof (either monument, windspray or basalt colour proposed);
- Retaining walls for fill within the front setback area;
- Planters in front of the dwelling for landscaping;
- Swimming pool and decking;
- Swimming pool fencing around the pool;
- An existing crossover adjacent to the northern lot boundary is proposed to be removed and a new crossover is proposed to be constructed adjacent to the property's southern lot boundary; and
- Rear and side retaining walls for excavation towards the rear of the property.

5.0 Consultation

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

- Lot boundary setbacks; and
- Site works

The development application was therefore advertised in accordance with City's Local Planning Policy – Consultation of Planning Proposals to 8 residents and landowners. One objection was received.



The table below includes a summary of concerns raised, office response and any action taken or required to be taken.

Submission	Officer Response	Action Taken
The potential visual impact of the proposed development due to the reduced rear setback.	The City notes concerns regarding the rear setback; however, the assessment has determined that the setback provided complies with the Design Principles. Please see administration assessment under lot boundary setbacks.	No action required.
The amount of excavation proposed potentially resulting in dividing fencing being impacted.	Excavation behind the lot boundary setback and damage to other properties as a result is not an issue which is covered by planning legislation. Under the building legislation, development is required to not impact on the development on neighbouring properties including dividing fencing, otherwise there is a process of permission required from neighbouring landowners.	No action required.

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

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.2 Policy Considerations

6.2.1 Residential Design Codes (State Planning Policy 3.1)

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

Clause 5.1.3 – Lot Boundary Setbacks

Proposed
Setback to northern side lot boundary for portion of wall length (bed 3 to ensuite) = 1.5m.
Setback to the southern side lot boundary for the 'bulk'/entire wall length = 5.0m.
Setback to rear lot boundary = 4.3m.
Design Principles
The applicant seeks assessment under the design principles which are as follows:
<i>"P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</i>
<ul style="list-style-type: none"> <i>• reduce impacts of building bulk on adjoining properties;</i> <i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> <i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i>
Deemed-to-Comply Requirement
Setback to the northern side lot boundary for a portion of the wall length (bed 3 to ensuite) = 1.203m.
Setback to the southern side lot boundary for the 'bulk'/entire wall length = 1.5m.
Setback to rear lot boundary = 6m.
Administration Assessment
<u>Impacts of Building Bulk on Adjoining Properties</u>
The lot is an irregular shape. This contributes to the requirement for a reduced rear setback variation which seeks to maximise space for a rear outdoor living area within the north-eastern portion of the lot.
Considering the nature and the scale of the development, the setback provided to the northern and southern side lot boundaries are unlikely to be evident when viewed from the adjoining properties, particularly when dividing fencing is erected along the lot boundaries in future as the dividing fencing will screen all major openings on the ground floor.
The portion of the house which is proposed to encroach into the rear setback area equates to approximately 9m ² . Nearby properties have larger sections of buildings already encroaching into the rear setback area (e.g. 4 Colin Street and 153 Dalkeith Road). A portion of the dwelling has a much larger setback which averages the setback, reducing the impact of the reduced setback to the rear lot boundary.
The setbacks to the sides and rear provided are unlikely to cause a significant impact on the amenity of the streetscape or neighbouring properties.
<u>Provision of adequate direct sun to building and open spaces on site and adjoining properties</u>

The development shall result in approximately 15% of the adjoining lot to the south being overshadowed which is under the 25% permitted under the deemed to comply criteria.

The development proposes 57.3% open space shall exist on site which is in excess of the deemed to comply criteria which specifies a minimum of 55% open space on properties coded R12.5.

Extent of overlooking and loss of privacy on adjoining properties

The finished ground levels proposed for the house and behind the street setback will not be greater than 0.5m above natural ground level.

The only area proposed to be more than 0.5m is on the northern side of the driveway however the area is not deemed to be an active habitable space under the definition within the R-Codes and any overlooking possible is restricted to only the street setback areas of the adjoining properties. As such the visual privacy requirements are complied with.

Clause 5.3.7 – Site Works

Proposed
Up to 1.1m of fill and retaining is proposed within 3m of the street alignment which is not necessary for pedestrian or vehicle access, drainage works or natural light for a dwelling.
Fill up to 0.74m in height above natural ground level is proposed to the northern side lot boundary in front setback behind 3m street alignment.
Fill up to 0.62m in height above natural ground level is proposed to the southern side lot boundary in front setback behind the 3m street alignment.
Retaining over 0.5m in height with nil setback proposed to northern and southern side lot boundaries.
Design Principles
The applicant seeks assessment under the design principles which are as follows:
<i>“P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i>
<i>P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.”</i>
Deemed-to-Comply Requirement
Excavation or filling between the street and building or within 3m of the street alignment, whichever is the lesser, shall not exceed 0.5m except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling.
All excavation or filling behind a street setback line and within 1m of a lot boundary, not more than 0.5m above the natural ground level at the boundary.
Retaining walls greater than 0.5m in height setback from lot boundaries in accordance with the setback provisions of Table 1 = 1m
Administration Assessment
<u>Development that considers and responds to the natural features of the site and requires minimal excavation/fill</u>
Due to the topography of the land falling towards the front of the property, the flat area in front of the dwelling proposed over 1m of fill and retaining above natural ground level within 3m of the primary street boundary.
The additional fill is not characteristic of the streetscape with many of the dwellings along the eastern side of Colin Street having build-up (retaining) under the dwelling or a gradual

slope from the front of the property to the dwelling rather than providing retaining walls to the lot boundaries. Therefore, it is recommended that the fill and retaining is reduced to no more than 0.5m in height above natural ground level. This can be achieved through a terracing of the retaining walls with planting provided between the retaining to minimise the impact of the site works proposed. A condition of development approval has been recommended accordingly to address this issue.

Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.

The areas of additional fill and retaining over 0.5m in height are also within the front setback area but behind the 3m setback alignment from the primary street. This fill and retaining is proposed to be located up to the northern and southern side lot boundaries, however it is only marginally over 0.5m in height above natural ground level (max 0.24m over). With the proposed modification to the levels within 3m of the primary street boundary, the fill and retaining to the northern and southern side lot boundaries may be reduced, however if they are not, the additional fill is unlikely to negatively impact neighbouring landowners as there is a balance of cut and fill across the site and no visual privacy implications.

7.0 Conclusion

The applicant seeks assessment under the design principles of the R-Codes in terms of lot boundary setbacks and site works.

The setbacks provided to the southern side and rear lot boundaries are considered not to have a detrimental impact on the amenity of the neighbouring properties and the setbacks provided are considered to satisfy the design principles of the R-Codes.

The fill and retaining over 0.5m in height above natural ground level within the front setback area is not considered to be characteristic of the locality and will not positively contribute to the streetscape. Therefore, it is recommended that the fill and retaining within the front setback is reduced to comply with the deemed to comply provisions of the R-Codes.

Accordingly, it is recommended that the application be approved by Council subject to conditions including an amendment condition to reduce the amount of fill and retaining within 3m of the street alignment.

8 Colin Street



Photo 1 – subject property from the street facing North (note – existing build up under the dwelling)



Photo 2 – no. 4 and no. 6 Colin Street currently under construction (note – build up under dwelling)



Photo 3 – no. 110 Melvista Avenue (no retaining in front of dwelling to Colin Street)



Photo 4 – No. 10 Colin Street (no retaining within front setback area with build up used in split level home)



Photo 4 – No. 12 Colin Street (no build up, instead slope from front of property to front of dwelling)