



City of Nedlands


Planning and Development Reports

Committee Consideration – 11 November 2014
Council Resolution – 25 November 2014

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PD43.14	No. 25 (Lot 421) Martin Avenue Nedlands – Proposed Additions (Garage & Carport) to Single House
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Committee	11 November 2014
Council	25 November 2014
Applicant	F F Fernandes
Landowner	F F Fernandes
Officer	Mr Thomas Lindsay Geddes – Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/212
Previous Item	Nil

1.0 Executive Summary

This proposal is for a garage and carport to single house with variations to the planning requirements.

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

The current proposal is not considered to meet the requirements of the City's policies in relation to the setback of carports, however it is considered that if the structure were to be located 1m from the southern (side) property boundary it could be supported as this would reduce the impact of the structure upon the neighbouring property and the structure would be located in accordance with the City's policies. The proposal is recommended for approval, subject to the condition that the setback to the carport from the southern property boundary be increased to 1m.

1.1 Recommendation to Committee

Council approves the application for a garage and carport to a single house at (Lot 421) No. 25 Martin Avenue Nedlands, in accordance with the application received on 28 May 2014 and amended plans received on 25 August 2014, subject to the following conditions:

- 1. The development shall at all times comply with the approved plans.**
- 2. The proposed carport is to be set back 1m from the southern property boundary (side).**
- 3. All crossovers to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.**

4. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
5. A further planning application and approval from the City is required for any fill or retaining walls on the lot, other than that shown on the approved plans.

Advice Notes specific to this approval:

1. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.
2. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

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

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

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

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address	(Lot 421) No. 25 Martin Avenue Nedlands (the site)
Lot area	1012m ²
Zoning:	
Metropolitan Region Scheme	Urban

Town Planning Scheme No. 2	Residential R10
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The site features a single house, and additions to the rear of this dwelling were approved in July 2014 under a separate planning application (DA14/370). Refer to **Attachment 1** for the site context.

In May 2014, the City received an application for a garage, carport and front fence at 25 Martin Avenue, Nedlands. Following an assessment of the proposal and consultation with adjacent landowners, the proposal was amended to set the garage back 1m from the side boundary, remove the proposed front fence and relocate the proposed carport to be 0.2m from the southern site boundary.

The City has received an objection to the proposed carport being located 0.2m from the Southern site boundary in lieu of 1m as required under the City's '*Carports and Minor Structures Forward of the Primary Street Setback*' and as a result, the proposal has been referred to Council for determination.

2.1 Key Relevant Previous Council Decisions

N/A.

2.2 Legislation / Policy

- *Planning and Development Act 2005* (the **Planning Act**).
- Metropolitan Region Scheme (**MRS**).
- City of Nedlands Town Planning Scheme No. 2 (**TPS2** or **Scheme**).
- Residential Design Codes of WA 2013 (**R-Codes**).
- Council Policy – Fill and Fencing (**Fill and Fencing Policy**).
- Local Planning Policy 6.23 – Carports and Minor Structures Forward of the Primary Street Setback (**Carport Policy**).
- Council Policy – Neighbour Consultation.

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

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

3.2 How and when was the community consulted?

Community consultation period:	10 September - 24 September 2014
Response:	One (1) Objection

4.0 Budget / Financial Implications

N/A.

5.0 Risk Management

N/A.

6.0 Discussion

The proposal involves the demolition and reconstruction of an existing approved garage on site and the construction of a carport to be located 0.2m from the southern (side) property boundary and 1.5m from the eastern (front) property boundary on the site, as depicted in the submitted plans (**Attachment 2**). In addition, the Applicant's letter describes the proposal in more detail and provides further justification for the proposed variations to the planning requirements (**Attachment 3**).

Variations to the planning requirements are as follows:

- a. The proposed carport is to be set back 1.5m from the front boundary in lieu of 3.5m; and
- b. The proposed carport is to be set back 0.2m from the side boundary in lieu of 1m.

In addition, community consultation has resulted in one (1) objection being received to the proposal.

6.1 Specific Planning Considerations

6.1.1 Variation clauses

a. Carport in the front setback area

Under the Carport Policy, carports located in the front setback are to be located 3.5m from the front boundary of a property and 1m from the side boundary.

The proposed carport is to be setback 1.5m from the front boundary and 0.2m from the side boundary.

With regard to the setback of the carport from the front boundary, it is considered that this aspect of the proposal can be supported as there is not space for a double carport set back at 3.5m due to the location of the existing dwelling. It is considered that the proposed 1.5m setback will not be detrimental to the streetscape of Martin Avenue as there are several examples of carports located at a similar setback from the front boundary, specifically No's 26, 32, 34 and 35 Martin Avenue. Accordingly it is considered that this aspect of the proposal can be supported.

It is considered that the proposed setback to the side boundary (0.2m) is not able to be supported and the proposed carport should be amended to be 1m from the side boundary in accordance with the Carport Policy. This is due to the fact that sufficient sightlines have not been provided for vehicle movement when leaving the property.

Under the R-Codes, within 1.5m of a vehicle crossover point, all fencing is to either be truncated or reduced to no higher than 0.75m from ground level. The sightline area of the carport currently crosses the southern property boundary due to the proposed 0.2m side setback and sightlines are limited by the fence of the adjacent property owner. If the setback of the carport were to be increased to 1m from the boundary, adequate sightlines are able to be provided to the carport in accordance with the City's Fill and Fencing Policy.

In this instance, it is considered that this section of the proposal does not comply with the policy, and therefore is not supported. If the proposal is to be approved in accordance with the recommended conditions, it is considered that this issue will be resolved to the satisfaction of the City.

6.2 General Planning Considerations

6.2.1 Preservation of amenity

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

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

In response, it is considered that aspects of this proposal that are not supported (the reduced side setback to the proposed carport) will adversely affect the amenity of the surrounding area as the proposal constitutes a traffic hazard, as sufficient sightlines have not been provided for vehicle movement.

Accordingly, this section of the proposal is not supported unless suitably modified via recommended conditions to increase the side setback to the carport and thereby provide adequate sightlines.

6.2.2 Orderly and proper planning

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

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

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

Accordingly, it is considered that this section of the proposal does not represent orderly and proper planning, and is not supported unless suitably modified via recommended conditions to provide adequate sightlines.

6.3 Submissions

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

Summary of comments received
<p>Issue: A setback of 0.2m will impact the quiet enjoyment of the adjacent property.</p> <p>Administration Response: It is considered that the proposed reduced setback to the side boundary may have a detrimental effect upon the adjacent property and the recommended conditions will increase this setback to meet the requirements of the City's Carport Policy.</p>
<p>Issue: A setback of 1m (<i>Officer note: the proposed carport is set back 1.5m from the front boundary</i>) from the primary street will impact the appearance of the adjacent property and its resale value.</p> <p>Administration Response: The proposed setback to the carport is consistent with several other examples along this section of Martin Avenue. The resale value of properties is not a valid planning consideration. Due to the location of the existing residence, a setback of 3.5m to a double carport cannot be achieved without the demolition of a portion of the dwelling. As the carport is to be located behind the neighbours ~2m high dividing fence, it is considered that this will ameliorate the impact of the structure upon the adjacent property and streetscape.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.</p>

7.0 Conclusion


This proposal is for the addition of a garage and carport to a dwelling on Martin Avenue in Nedlands. The proposed replacement garage meets all of the listed planning requirements and is therefore recommended for approval. The setback of the proposed carport to the primary street (1.5m) is considered to be in accordance with the development context of this section of Martin Avenue and is therefore supported, providing the carport be relocated to be 1m from the southern boundary to allow for adequate sightlines for vehicle movement.

Accordingly, the application is recommended to the Council for approval, subject to the proposed carport being located 1m from the southern (side) property boundary.

8.0 Attachments

1. Locality Plan
2. Proposal Plans
3. Applicant's Submission

PD44.14	No. 20 (Lot 84) Burwood Street Nedlands – Proposed Primary & Secondary Street Fence to Single House
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Committee	11 November 2014
Council	25 November 2014
Applicant	D Chen
Landowner	D Chen
Officer	Mr Thomas Lindsay Geddes – Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2013/460 – BU2/20
Previous Item	Nil

1.0 Executive Summary

This proposal is for solid primary street fence and an over-height secondary street fence to a new dwelling which proposes variations to the relevant planning requirements.

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

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

1.1 Recommendation to Committee

Council:

- 1. Refuses the application for a primary street fence to single house at (Lot 84) No. 20 Burwood Street Nedlands, in accordance with the application received on 18 October 2013 and amended plans received on 31 August 2014, for the following reasons:**
 - a. The proposed primary street fencing does not meet the requirements of the City’s Fill & Fencing policy, as it is solid to a height greater than 1.2m within the front setback area. This fencing is not considered to meet the design criteria of the City of Nedlands Fill and Fencing Policy.**
 - b. The proposal does not comply with the amenity considerations of cl. 5.5.1 of Town Planning Scheme No. 2 as it is considered to adversely impact upon the appearance of the Burwood Street Streetscape.**

- c. The proposal does not represent orderly and proper planning, in accordance with of cl. 6.5.1 of Town Planning Scheme No. 2.

Advice Notes specific to this refusal:

- a. This refusal applies only to the proposed primary street fencing shown on the plans along the Burwood Street boundary of the property and for a distance of 9m along the Verdun Street Boundary from Burwood Street (as shown hatched in red on the proposal plans).
2. Approves the proposed secondary street fence at No. 20 (Lot 84) Burwood Street, Nedlands in accordance with the application received on 18 October 2013 and the plans received on 31 August 2014, subject to the following conditions:
- a. This approval applies only to the proposed secondary street fencing (as clouded in red on the approved plans).
- b. The development shall at all times comply with the approved plans.
- c. All footings and structures of the fencing shall be constructed wholly inside the site boundaries of the Certificate of Title.

Advice Notes specific to this approval:

- a. The landowner is advised to limit construction noise and hours as per the *Environmental Protection (Noise) Regulations 1997*.
- b. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address	(Lot 84) No. 20 Burwood Street Nedlands (the site)
Lot area	1252m ²
Zoning:	
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential R10

The subject site has frontages to Burwood Street to the west and Verdun Street to the south as depicted in the attached locality plan (**Attachment 1**). Hollywood Private Hospital is located to the south of the subject site across Verdun Street.

The site previously featured a single house, however it is currently a vacant lot. The photographs in **Attachment 3** depicting the development, and its relationship with the surrounding built environment.

In September 2013, the City received an application for a two storey dwelling and Ancillary Accommodation unit on the site. As the proposal complied with the relevant planning requirements, the application was approved under delegated authority.

2.2 Legislation / Policy

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

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

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

3.2 How and when was the community consulted?

Community consultation period:	29 October – 12 November 2013
Response:	The City received one (1) letter which objected to the proposed solid primary street fencing (to the Burwood Street frontage) but supported the height of the secondary street fence (to the Verdun Street frontage) and one (1) letter which supported the secondary street fencing.

4.0 Budget / Financial Implications

N/A

5.0 Risk Management

N/A

6.0 Discussion

The proposal involves the construction of a primary & secondary street fence to the new dwelling on the subject site, as depicted in the submitted plans (**Attachment 2**).

In addition, the Applicant's letter describes the proposal in more detail (**Attachment 4**).

Variations to the planning requirements are as follows:

- a. The proposal involves solid fencing to 1.8m within the 9m front setback area in lieu of solid fencing to 1.2m (with visually permeable infill above to 1.8m);
- b. The proposal involves 2m high solid fencing to the secondary street in lieu of a maximum height of 1.8m; and

In addition, community consultation has resulted in one objection to the proposal being received.

6.1 Specific Planning Considerations

6.1.1 Solid front fences

The proposed fencing does not meet the requirements of the City of Nedlands Fill and Fencing Policy, as the proposed fencing is to be solid above 1.2m (to a maximum of 2m along the southern boundary) in the front setback area. Under clause 2 of the City's Fill & Fencing Policy, fencing which does not meet the requirements of the Policy is to be assessed against the following requirements:

"Any fencing which does not meet these requirements shall:

- a) *meet the performance criteria (now design principles) of Clause 6.2.5 (Street walls and fences – now clause 5.2.4) of the R Codes;*

Administration Comment: Burwood Street is not a designated as a primary or district distributor or integrator arterial street and therefore does not meet this requirement. It is noted that Verdun Street is likewise not designated as a higher-intensity street. The R-Codes only provide for higher solid fencing to be permitted on these higher-intensity streets to improve privacy and noise screening and not on local access roads such as Burwood Street and Verdun Street.

It is therefore considered that the proposed fencing does not meet the requirements of this R-Codes and the City's Policy,

- b) *be assessed in terms of the developments likely impact upon streetscape; and*

Administration Comment: An assessment has been completed of the Burwood Street streetscape and it has been found that no property along Burwood Street exhibits solid primary street fencing as proposed (refer to **attachment 3**). It is therefore considered that the proposal represents a significant departure from the expected streetscape of Burwood Street and should not be supported as it will adversely impact upon the character of the streetscape.

- c) *be advertised in accordance with Council's Neighbour Consultation – Policy 6.4."*

Administration Comment: The proposal was advertised to surrounding landowners in accordance with the Consultation Policy and the City received an objection which raised the issue that the approval of the proposed fencing may set a precedent thereby impacting the streetscape.

Further to this, design principle P3 of the R-Codes (street surveillance) requires the following (emphasis added):

“Buildings designed to provide for surveillance (actual or perceived) between individual dwellings and the street and between common areas and the street, which minimise opportunities for concealment and entrapment.”

Administration Comment: It is considered that the proposed solid fencing surrounding the entire property (excluding vehicle access ways) will limit the ability for the dwelling to survey the street and provide opportunities for concealment on the property. Surveillance of the street will be limited from the ground floor of the dwelling.

6.1.2 Over-Height Secondary Street Fence

Under the City of Nedlands Fill and Fencing policy, secondary street fences are to be a maximum of 1.8m from natural ground level. The proposal involves secondary street fencing to a height of 2m. Under the Fencing Policy, fencing which does not meet this requirement is to be assessed against its likely impact upon the streetscape and be advertised in accordance with the City’s Neighbour Consultation Policy.

With regard to the impact of the proposal upon the Verdun Street streetscape, it is considered that the proposed fencing will be in accordance with other fences along the Verdun Street and is able to be supported. It is not considered that the proposed variation will have a notable effect upon the streetscape of Verdun Street.

Following consultation undertaken with the surrounding landowners, both of the responses that the City received were supportive of the proposed height of the secondary street fencing.

6.2 General Planning Considerations

6.2.1 Preservation of amenity

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

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

In response, it is considered that the proposed solid fencing to the primary street setback will adversely affect the amenity of the surrounding area; and the external appearance of the development is unacceptable (for the aforementioned reasons). With regard to the proposed over-height secondary street fence, it is considered that

this would not have a significant negative effect upon the amenity of the locality due to the proliferation of similarly over-height secondary street fences in the area.

Accordingly, the proposed front fencing is not supported and the secondary street fence is supported.

6.2.2 Orderly and proper planning

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

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

It is considered that the proposed solid front fencing does not represent orderly and proper planning, and the fencing will have a negative effect upon the Burwood Street streetscape and is not supported.

6.3 Applicants Justification

The applicant has provided the following justification for the proposed solid fencing (for the full text of this submission, refer to **Attachment 4**):

1. The illegal dumping of sand/soil on the subject site and front verge.

Administration Comment: A front fence which complied with the City’s fencing requirements would stop illegal dumping on the site. The dumping of materials on the property verge would not be limited by the establishment of property fencing.

2. Littering from pedestrians on the property and verge.

Administration Comment: As with point (1) above, a compliant fence would limit the ability of pedestrians to leave litter on site.

3. Trespassing.

Administration Comment: As per point (1) above, a compliant fence would also directly limit trespassing on site.

4. High traffic of vehicles and pedestrians.

Administration Comment: The R-Codes only provide for the consideration of over-height fences along roads which are designated as high-traffic roads. Burwood Street and Verdun Street are both Access Roads, which are primarily considered to be for property access only.

5. The site is located close to sites of ongoing construction and is directly exposed to noise and dust.

Administration Comment: Once this construction has been completed, this issue will be resolved. It is considered that a compliant fence would likewise limit noise and dust.

6. Corner properties in neighbouring streets have full front and side brick walls.

Administration Comment: These walls appear to predate the current fencing requirements. The City is required to assess proposals against the current requirements, which the proposal is not considered to comply with.

6.4 Submissions

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

Summary of comments received
<p>Issue: All fences along Verdun Street should be 2m high. Administration Comment: It is considered that due to the proliferation of over-height secondary street fences along Verdun Street that the proposed fencing can be supported, noting that the fencing within the primary street setback area (9m) should comply with the City's Fill and Fencing Policy.</p>
<p>Issue: The front fencing will create a precedent which will adversely impact the streetscape of Burwood Street. Administration Comment: It is considered that the proposed fencing to the front setback represents a substantial departure from the current fencing along Burwood Street, which consists of either low walls or fencing with visually permeable infill to meet the City's Policy requirements.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.</p>

7.0 Conclusion

The proposal is for a Primary & Secondary Street Fence to the approved two storey house and ancillary accommodation unit at 20 Burwood Street Nedlands.

The proposed solid front fencing constitutes a significant departure from the expected development context along Burwood Street and it is considered that the structures will negatively affect the amenity of the locality and is therefore recommended for refusal.


The proposed secondary street fencing is considered to be supported when considering the development context of other similar fencing along Verdun Street.

Accordingly, the part of the application for the primary street fencing is recommended to the Council for refusal and the part of the application for secondary street fencing is recommended for approval.

8.0 Attachments

1. Locality Plan
2. Proposal Plans
3. Photographs of the site and surrounds
4. Applicant's Submission

PD45.14	No. 2a (Lot 2) Archdeacon Street, Nedlands – Retrospective Change of Use (Use Not Listed - Short Stay Accommodation)
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Committee	11 November 2014
Council	25 November 2014
Applicant	A Giambazi
Landowner	B E & A Giambazi
Officer	Andrew Gizariotis – Planning Consultant
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/396 – AR1/2A
Previous Item	Nil

1.0 Executive Summary

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

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

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

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

1.1 Recommendation to Committee

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

- 1. The short stay accommodation does not satisfy the amenity considerations of cl. 5.5.1 and cl. 6.4.1 of Town Planning Scheme No. 2, as the land use is inappropriate within the suburban site context.**
- 2. The short stay accommodation does not satisfy the amenity considerations of cl. 5.5.1 and sub-cl. 6.4.2 (a), as the unpredictable hours of vehicular trips**

and entertaining is considered to impact on the amenity of the surrounding properties.

- 3. The short stay accommodation does not satisfy the amenity considerations of sub-cl. 6.4.2 (h), as the use is not necessary to service the needs of the district's residential population and is not in keeping with the City's intentions for the locality.**
- 4. The short stay accommodation does not represent the orderly and proper planning of the City and conflicts with cl. 6.5.1 of Town Planning Scheme No. 2.**
- 5. The approval of the short stay accommodation could establish an adverse planning precedence which could lead to the erosion of the local suburban character and detract from the amenity of the locality.**

1.2 Strategic Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address	(Lot 2) No. 2a Archdeacon Street Nedlands ('subject site')
Lot area	443m ²
Zoning:	
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential at R12.5 density

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



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan



Figure 3 – Street View

2.2 Legislation / Policy

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

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

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

3.2 How and when was the community consulted?

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

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

1. Management/Maintenance - As the owner does not reside at the property, there are concerns regarding the management of guests and the ongoing maintenance of the property (e.g. collecting mail, rubbish bins, lawn mowing etc.).

2. Safety/Security - Short stay accommodation would introduce many unknown people into the neighbourhood. Plus, not collecting mail shows that the property is vacant which creates security concerns.
3. Appropriateness of land use - Archdeacon Street is a residential zone and the proposed use is unsuitable.
4. Noise - There have been instances where parties have caused noise nuisance.
5. Parking - Tenants park illegally on the east side of Archdeacon Street. This causes traffic and safety concerns.

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

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

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

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

4.0 Budget / Financial Implications

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

5.0 Risk Management

N/A.

6.0 Discussion

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

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

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

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

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

6.1 Requirements

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

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

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

Cl. 6.4 - Consideration of applications:

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

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

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

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

...

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

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

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

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

..."

Other relevant TPS2 provisions include:

Cl. 5.5.1:

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

Cl. 6.5.1:

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

6.2 Consultation

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

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

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

6.3 Assessment

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

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

6.3.1 - Management/Maintenance

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

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

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

This approach is recommended by the WAPC guidelines.

6.3.2 - Safety/Security

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

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

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

This approach is recommended by the WAPC guidelines.

6.3.3 - Appropriateness of land use

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

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

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

Regarding the above, administration considers the following:

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

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

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

boundary and 2.8m from the southern (side) boundary. The close proximity to other residential lots, results in greater noise and behavioural impacts.

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

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

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

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

It is considered that each of these criteria is met.

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

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

Adverse precedent is therefore considered relevant.

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

6.3.4 - Noise

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

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

6.3.5 - Parking

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

The four off-street parking bays provided are considered sufficient, as one parking bay has been provided for each bedroom.

7.0 Conclusion

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

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


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

Accordingly, the application is recommended to the Council for refusal.

8.0 Attachments

1. Plans (floor plans and strata plans)
2. Applicant's Justification

PD46.14	Naked Fig Café – 278 Marine Parade Swanbourne – Landlord Approval to apply for Extended Trading Permit – Liquor without a meal
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Committee	11 November 2014
Council	25 November 2014
Applicant	Naked Fig Pty Ltd
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	CAP-LB-00034
Previous Item	Item 13.5 – 22 July 2014

1.0 Executive Summary

Further to Council’s initial consideration of this item on 22 July 2014 in which Council resolved as landlord not to endorse an application by the Naked Fig Pty Ltd for an extended trading permit to serve liquor without a meal this item is now presented with further information to support the sublessee’s request for landlord approval.

1.1 Recommendation to Committee

Council

As Sublessor of the premises at 278 Marine Parade, Swanbourne approves Naked Fig Pty Ltd as sublessee applying to the Department of Racing Gaming and Liquor for an extended trading permit to serve liquor without a meal.

1.2 Strategic Community Plan

KFA: Governance and Civic Leadership

This item requires Council as Sublessor of the premises to consider terms of a tenants application relating to activities onsite and to ensure an appropriate response is determined.

2.0 Background

On 22 July 2014 Council considered an item requesting landlord approval for the Naked Fig Pty Ltd, sublessee of premises at 278 Marine Parade, Swanbourne Beach, in its application for an Extended Trading Permit (ETP) to serve liquor without a meal.

Council as landlord resolved not to permit such activity onsite noting insufficient information to consider matter in full. Further to Council's resolution and at the request of the sublessee, City administration staff have met with the sublessee to further understand the sublessee's desire for and resulting impact of the café operating on such an ETP. The sublessee has now provided information to support its application for the ETP. This information is contained in attachment 1 and explains the purpose of and requirements of such an ETP.

2.1 Key Relevant Previous Council Decisions

Item 13.5 – 22 July 2014 – see paragraph above with explanation.

2.2 Legislation / Policy

The relevant framework for Council considering this item is the Deed of Sublease of premises at 278 Marine Parade Swanbourne by Naked Fig Pty Ltd.

3.0 Consultation Process

3.1 What consultation process was undertaken?

Public consultation involved with Naked Fig Pty Ltd receiving such an ETP will form part of the Department of Racing Gaming and Liquor's processes for such an application.

Consultation to date has been with the representatives of the sublessee and City Administration officers, reporting to Council and telephone communication with officers at the Department of Racing Gaming and Liquor.

4.0 Budget / Financial Implications

Within current approved budget: Yes No
 Requires further budget consideration: Yes No

This proposal involves the sublessee, Naked Fig Pty Ltd, at their expense making an application to the Department of Racing Gaming and Liquor. There is no foreseeable financial impact for the City.

5.0 Risk management

Potential risks associated with this proposal are those associated with negative impact on local amenity from antisocial behaviour resulting from the consumption of alcohol. Any such risk associated with this proposal is mitigated through both - provisions of the Deed of Sublease of premises by Naked Fig Pty Ltd as well as the liquor licensing framework managed by the Department of Racing Gaming and Liquor. Specific provisions of the Sublease relevant to risk management are those relating to the requirement for Sublessee to adhere to the Noise Management Plan; to not cause a nuisance to Sublessor or owner of adjoining property; and compliance in general with Liquor licensing regulations and other statutory regulations (Noise etc).

6.0 Discussion

In discussion with the operators of the Naked Fig – Lorna Marns and Russell Morris two specific examples were noted of instances in which they wished for café to have such an ETP. Examples were – where a group of women came to the Naked Fig for an afternoon ‘catch-up’ over a glass of wine. On the current liquor licence they could only do so if they intended to consume a substantial meal. Another example offered was a family attending the Naked Fig where the children have a snack while parents just want a beer or glass of wine. Again they could only do so on current licence if they intended to consume a substantial meal. The Naked Fig operators state that they want to have the flexibility in terms of liquor licensing to accommodate patrons wishes.

On communication with the Department of Racing Gaming and Liquor it was noted that the standard requirement imposed on all restaurants with an ETP for service of liquor without a meal is the necessity for all patrons consuming alcohol to be seated at a dining table and that table service is required. Other conditions that may be imposed on such licensees are that the premises may only ever be advertised as a restaurant; the kitchen must be open at all times when operating on such an ETP and the full menu available; tables can’t be removed or shifted in order to create a dance floor; the permit does not apply to an area trading under an “al fresco” ETP.

The attached information provided by the Naked Fig shows that such an ETP will likely have no notable effect on alcohol sales and that their primary focus remains, the provision of food.

6.3 Conclusion

Following consultation with the operators of the Naked Fig café at Swanbourne it is now understood their intention for the operations of the café on such an Extended Trading Permit – Liquor without a meal. The café is to remain as such with added flexibility to cater to its patrons’ social requirements. Such flexibility in allowing the ETP will likely have a nil effect on local amenity as the operations must still comply with liquor licensing and Sublease requirements to ensure no further negative impact is experienced.

7.0 Attachments

1. Information provided by the Naked Fig