



Planning and Development Services Reports

Committee Consideration – 11 September 2012
Council Resolution – 25 September 2012

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PD37.12	No. 3 (Lot 2) Betty Street, Nedlands – Proposed Garage Door to Existing Carport
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Committee	11 September 2012
Council	25 September 2012

Applicant	Lanie Byk
Owner	Lanie Byk
Officer	Laura Sabitzer - Planning Officer
Director	Peter Mickleson - Director Planning & Development Services
Director Signature	
File ref.	DA12/137 : BE8/3
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

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

Recommendation to Committee

Council refuses an application for a Garage Door to Existing Carport at No. 3 (Lot 2) Betty, Nedlands in accordance with the application dated 5 April 2012 and the plans dated 5 April 2012 and 30 July 2012 for the following reason:

- a. **the application is contrary to Clause 5.6.2(d) of the City of Nedlands Town Planning Scheme No.2 (TPS2) and there is no discretion under TPS2 for this provision to be varied.**

Strategic Plan

- KFA 3: Built Environment
 - 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.
- KFA 5: Governance
 - 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address: No. 3 (Lot 2) Betty Street, Nedlands
(Refer to attachment 1)
Zoning MRS: Urban
Zoning TPS2: Residential, R10 coding
Lot Area: 1017 m²

Proposal Detail

This proposal is for an addition of a solid garage door to an existing approved carport. The existing carport was approved in 1991 and is currently open on all sides.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

As variations are proposed, the application is required to be advertised to the adjoining landowners. The advertising can be undertaken by the City or alternatively the owner/applicant can obtain comments from the adjoining landowners.

The owner of No. 3 Betty Street Nedlands has obtained signed comments of non objection from the adjoining landowners.

Note: Full copies of the adjoining landowners' comments have been given to the City's Councillors prior to the meeting.

Legislation

- Residential Design Codes (RCodes).
- City of Nedlands Town Planning Scheme No.2 (TPS2)
- Policy 6.18 *Reduction of Front Setbacks* (Policy 6.18)
- Policy 6.23 *Carport and Minor Structures Forward of the Primary Street Setback* (Policy 6.23).
- *Policy Neighbour Consultation – Development Applications*

The RCodes define a carport as:

*“a roofed structure designed to accommodate one or more motor vehicles unenclosed except to the extent that it abuts a dwelling or a property boundary on one side, and being **without a door unless that door is visually permeable** (emphasis added)” and a garage as “any roofed structure, other than a carport, designed to accommodate one or more motor vehicles and attached to the dwelling”.*

Whilst Policy 6.23 defines a carport as:

*“a roof structure designed to accommodate a motor vehicle and **shall be open on all sides** (emphasis added) unless constructed adjoining a boundary fence or wall of a building”.*

The addition of solid garage door to a carport means that the structure can no longer satisfy the definition of a carport and now fits within the definition of a garage.

Please note: This property has a reduced front setback, as per TPS2 Clause 5.3.3 (b) and Policy 6.18. Where more than half of the lots on the same side of the street block have a setback less than 9 m and the property is coded R10, a minimum front setback of 7.5 m absolute applies.

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

1. TPS2 – Clause 5.6.2(d) and Policy 6.23 require carports in the primary street setback to be “...open on all sides...” unless constructed adjoining a boundary fence / wall. The addition of the garage door does not allow for the carport to be open on all sides.
2. Policy 6.23 requires that the side of the carport facing the street to be left open. The addition of the garage door does not allow the side of the carport facing the street to be open.

Budget/financial implications

Nil

Risk Management

Nil

Discussion

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

Issue: Addition of Garage Door

Requirement	<p>TPS2 Clause 5.6.2(d) states that “the carport shall be open on all sides unless constructed adjoining a boundary fence or wall of a building, in accordance with Council policy”.</p> <p>Policy 6.23 defines a carport as “a roof structure designed to accommodate a motor vehicle and shall be open on all sides unless constructed adjoining a boundary fence or wall of a building”.</p>
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	Policy 6.23 states <i>“carports may be constructed forward of the required primary street setback, but the side facing the street must be left open”</i> .
Applicants Proposal	The addition of a solid garage door to the SE (front) side of the existing carport. The other sides of the carport are proposed to remain open. Refer to attachments 2 – 4.
Applicant justification Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.	<p><i>The proposed garage door for the carport at 3 Betty Street Nedlands is required to:</i></p> <ul style="list-style-type: none"> • <i>Provide improved security for cars, bicycles stored inside (27/6/12 car was broken into);</i> • <i>Enable bins to be stored out of sight from the street; and</i> • <i>Affordable when compared to alternatives, including permeable gates.</i> <p>Photos showing other garages in the immediate vicinity are provided.</p>
Assessment under TPS2	<p>Clause 5.6.2 of TPS2 allows Council to have discretion and impose conditions on the approval of a carport to be constructed in the front setback area. However the conditions must meet the design requirements of Clause 5.6.2 (a)-(d).</p> <p>Therefore it is deemed that Council has no discretion to vary Clause 5.6.2(d) in TPS2.</p>
Assessment under Policy 6.23	Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on <i>“either the relevant adjoining property or the streetscape”</i> .
Officer technical comments	<p>TPS2 Clause 5.6.2 (d) In regard to assessment under TPS2 Clause 5.6.2(d), the officers comments are as follows:</p> <p>It is considered that Council does not have discretion to vary this Clause. The addition of the solid garage door does not allow for the carport to be open on all sides</p> <p>Policy 6.23 In regard to assessment under Policy 6.23, the officers comments are as follows:</p>

	<p>The carport is not constructed parallel to the street. The proposed side of the carport with the garage door is not directly facing the street, but due to the angle of the structure the garage door will be visible from the street. The majority of the carport as viewed from the street will be open. Refer to attachments 2- 4.</p> <p>The carport is located NE of the existing residence. Referring to attachment 2, the carport is not directly in front of the residence and views of the residence from the street and vice versa, are not obstructed.</p> <p>The streetscape of Betty Street differs from the surrounding streetscapes which have an open 9m front setback. As per TPS2 and Policy 6.18 a reduced 7.5 m front setback is allowed. The adjoining properties on Betty Street are screened by existing high walls and/or dense vegetation. Policy 6.23 allows carports and other minor structures within the primary street setback, whilst ensuring the open character and street amenity of the City is not compromised. In this instance, the streetscape differs from surrounding open streetscapes and therefore is not compromised by the proposal.</p> <p>It is considered that the solid garage door will not impact the streetscape or the adjoining properties. However the provisions in TPS2 override Policy 6.23.</p>
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Conclusion

Under the City of Nedlands TPS2 at Clause 5.6.2 (d), a carport located within the 9 m front setback area, “...shall be open on all sides unless constructed adjoining a boundary fence or wall of a building...”. In this instance the installation of a solid garage door does not allow the carport to be open on all sides. Therefore, it is deemed that the proposal to convert an existing carport into a garage does not satisfy the above TPS2 provision.

For the reason set out above, the application is recommended for refusal.

Please note: in accordance with Policy 6.23, Council can approve 1.8 m high wrought iron or tube steel (visually permeable) gates along the sides facing the street for security purposes.

Attachments

1. Locality Plan
2. Pictorial Representation of Carport with Garage Door
3. Site Plan
4. Floor Plan

PD38.12	No. 12 (Lot 188) Brockman Avenue, Dalkeith – Retrospective Additions (Alfresco, Loft, Patio, Enclosure of Carport, Retaining Walls, Fill and Over-height Dividing Wall) to Single House
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Committee	11 September 2012
Council	25 September 2012

Applicant	TPG Town Planning and Urban Design
Owner	David and Sara Breen
Officer	Laura Sabitzer - Planning Officer
Director	Peter Mickleson - Director Planning & Development Services
Director Signature	
File ref.	DA12/279 : BR3/12
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This application is referred to Council for determination as the proposal does not meet the provisions in the City of Nedlands Town Planning Scheme No. 2 (TPS2), Council Policy 'Carports and Minor Structures Forward of the Primary Street Setback', Council Policy 'Fill and Fencing' or the Acceptable Development Provisions in the Residential Design Codes.

Recommendation to Committee

1. **Council approves an application for Retrospective Additions (Alfresco, Loft, Patio, Retaining Walls, Fill and Over-height Dividing Wall) to Single House at No. 12 (Lot 188) Brockman Avenue, Dalkeith in accordance with the application and plans received 16 July 2012 the following conditions:**
 - a. **The applicant/owner shall make application to the Manager Property Services for a Building Certificate, to acknowledge the unauthorised works.**
 - b. **This planning approval does not pertain to the unauthorised enclosures to the carport. The unauthorised enclosures to the carport are to be removed within 42 days of the date of this decision.**

- c. The patio, as marked in red on the approved plans shall have permanent vertical screening to prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes of WA (RCodes)*. The screening(s) shall be installed within 42 days from the date of this approval and remain in place permanently, unless otherwise approved by the City.
 - d. All stormwater from the development which includes permeable and non-permeable areas shall be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event; and soak-wells shall be a minimum capacity of 1 m³ for every 80 m² of calculated surface area of the development.
 - e. All footings and structures to retaining walls and dividing fences shall be constructed wholly inside the site boundaries of the Certificate of Title.
 - f. The use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building / roof has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building / roof to reduce the reflectivity to a level acceptable to Council.
 - g. Any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.
2. Council refuses an application for Retrospective Additions (Enclosure of Carport) at No. 12 (Lot 188) Brockman Avenue, Dalkeith in accordance with the application and plans received 16 July 2012 the for the following reasons:
- a. The application is contrary to Clause 5.6.2(d) of the City of Nedlands Town Planning Scheme No.2 (TPS2) and there is no discretion under TPS2 for this provision to be varied.
 - b. The application does not comply with Council's Policy 6.23 '*Carports and Minor Structures Forward of the Primary Street Setback*'.
 - c. The proposal will not be orderly and proper planning.

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 1.8 m from any building, and at least 1.8 m from the boundary of the block.
2. The City does not recommend any air-conditioner or mechanical equipment is installed near a property boundary where it is likely noise from such mechanical equipment in these locations will intrude on neighbouring properties. Prior to selecting a location to install an air-conditioner, applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as a guide on air-conditioner placement so as to prevent noise affecting neighbouring properties. Prior to installing an air-conditioner or mechanical equipment, the applicant is advised to consult residents of neighbouring properties and if necessary take measures to prevent noise affecting neighbouring properties.

Strategic Plan

KFA 3: Built Environment

- 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

KFA 5: Governance

- 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address: No. 12 (Lot 188) Brockman Avenue, Dalkeith
(Refer to attachment 1)

Zoning MRS: Urban

Zoning TPS2: Residential, R10 coding

Lot Area: 1012 m²

A development application was submitted in March 2012 for proposed intergenerational housing at the address. Upon assessing the application, it was identified that the existing property exceeded the allowable site coverage. A file check and site visit determined that additions which differ from the approved plans in 1998, have been constructed without receiving planning approval or a building licence.

A compliance letter was sent to the landowners in May 2012 requiring the landowners to alter the unauthorised structures to bring them into conformity with the previously approved plans, or submit a retrospective application for planning approval. A retrospective planning application was received by the City in July 2012.

Key Previous Decisions:

The planning approval issued for alterations and additions to single storey residence in 1998, was granted subject to conditions. The unauthorised fill and enclosure to carport does not meet two conditions of the previous approval:

(iii) *fill at any boundary must not exceed 500 mm above natural ground level;*

(vii) *carport not to be enclosed greater than 50 % of its perimeter;*

The fill which abuts the corner of the south and east boundary is up to 780 mm above natural ground level in lieu of the conditioned maximum 500 mm above natural ground level.

The carport is enclosed at the front, rear and side (S). The front of the carport has a solid garage door, a portion of the rear abuts the walls of the residence and the side (S) has a solid rendered brick wall. The carport is currently enclosed 71 % of its perimeter in lieu of the conditioned maximum 50 % of its perimeter.

Proposal Detail

This proposal is for the following retrospective additions to a single house:

- Alfresco at the rear of the dwelling;
- Patio at the south (side) of dwelling;
- Loft in roof space;
- Over-height dividing walls at the south (side) and east (rear) boundaries of the property;
- Retaining walls at the south (side) and east (rear) boundaries of the property;
- Fill in the south east corner of property; and
- Enclosure of the southern side of the carport and the addition of a solid garage door.

Consultation

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

Notification period: 30 July 2012 – 13 August 2012

Comments received: Nil

Legislation

- City of Nedlands Town Planning Scheme No.2 (TPS2)
- Residential Design Codes (RCodes)
- Council Policy *Carport and Minor Structures Forward of the Primary Street Setback* (Carport Policy)
- Council Policy *Fill and Fencing* (Fill & Fencing Policy)
- Council Policy *Neighbour Consultation – Development Applications*

The application includes the following variations to the TPS2, RCodes, Carport Policy and Fill & Fencing Policy:

1. The additions of the garage door and side (S) brick wall do not allow the carport to be open on all sides. TPS2 Clause 5.6.2(d) requires carports in the primary street setback to be "...open on all sides..." unless constructed adjoining a boundary fence / wall.
2. The dividing wall (E) & (S) is up to 2.9 m above natural ground level. TPS2 Clause 5.6.4 requires that no fence or screen wall shall be greater than 1.8 m above natural ground level within 0.9 m of the dividing boundary.
3. The rear (E) and side (S) retaining wall (up to 0.8 m above NGL) are setback nil. RCodes Clause 6.3.3 A3 requires a minimum setback of 1.5 m. *Please note: this only applies where retaining walls are above 0.5 m above NGL.*
4. The open space is 56 %. RCodes Clause 6.4.1 A1 requires at minimum 60 % open space for properties coded R10.
5. Fill is up to 0.78 m within 1 m of a common boundary in the SE corner of the lot. RCodes Clause 6.6.1 A1.4 requires fill to not exceed 0.5 m within 1.0m of a common boundary.
6. The patio is setback 1.7 m and 2.7 m within the cone of vision. RCodes Clause 6.8.1 A1 requires the patio to be setback at 7.5 m within the cone of vision.
7. The additions of the garage door and side (S) brick wall do not allow for the carport to be open on all sides. The Carport Policy requires carports in the primary street setback to be open on all sides unless constructed adjoining a boundary fence / wall.
8. The addition of the garage door does not allow the side of the carport facing the street to be open. The Carport Policy requires that the side of the carport facing the street to be left open.

9. The dividing fence is up to 2.9 m high above approved fill, noting that the unauthorised fill is being considered as part of this application. Fill & Fencing Policy states dividing fences are acceptable have a maximum height 1.8 m above any approved fill.

Budget/financial implications

Nil

Risk Management

Nil

Discussion

Issue: Enclosure of Carport

Requirement	<p>TPS2 Clause 5.6.2(d) states that <i>“the carport shall be open on all sides unless constructed adjoining a boundary fence or wall of a building, in accordance with Council policy”</i>.</p> <p>Carport Policy defines a carport as <i>“a roof structure designed to accommodate a motor vehicle and shall be open on all sides unless constructed adjoining a boundary fence or wall of a building”</i>.</p> <p>Carport Policy states <i>“carports may be constructed forward of the required primary street setback, but the side facing the street must be left open”</i>.</p>
Applicants proposal: (Retrospective)	<p>The side of the carport facing the street has had a solid garage door installed. The southern side of the carport has been enclosed by a brick wall. The rear of the carport abuts a wall of a building and the northern side is open. Refer to attachments 5, 7 & 8.</p>
Assessment under TPS2	<p>Clause 5.6.2 of TPS2 allows Council to have discretion and impose conditions on the approval of a carport to be constructed in the front setback area. However the conditions must meet the design requirements of Clause 5.6.2 (a)-(d).</p> <p>Therefore it is deemed that Council has no discretion to vary Clause 5.6.2(d) in TPS2.</p>

<p>Assessment under Carport Policy</p>	<p>Where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on “<i>either the relevant adjoining property or the streetscape</i>”.</p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City’s Councillors prior to the meeting.</p>	<p>The enclosure of the southern side of the carport is not considered to have an impact as it adjoins a boundary fence.</p> <p>The carport is setback greater than the required 3.5 m as per LPP 6.23, occupies approx. 30 % of the lot frontage, designed in keeping with the dwelling and the bulk is minimal. Therefore enclosure of carport is not considered to have an adverse impact on the streetscape or adjoining properties.</p>
<p>Officer technical comment:</p>	<p>TPS2 Clause 5.6.2 (d)</p> <p>In regard to assessment under TPS2 Clause 5.6.2(d), the officers comments are as follows:</p> <p>It is considered that Council does not have discretion to vary this Clause. The addition of the solid garage door and the enclosure of the southern wall does not allow for the carport to be open on all sides. As a result, it is recommended that the enclosure of the carport is refused by Council.</p> <p>Carport Policy</p> <p>In regard to assessment under Carport Policy, the officers comments are as follows:</p> <p><i>Adjoining property</i></p> <p>It is considered that the installation of a solid garage door will not impact the adjoining properties.</p> <p><i>Streetscape</i></p> <p>Carport Policy allows carports and other minor structures within the primary street setback, whilst ensuring the open character and street amenity of the City is not compromised. The conversion of an open carport structure to an enclosed garage disrupts the predominately open and spacious nature of the streetscape.</p>

	<p>The 9 m minimum front setback as required in TPS2 has specifically tried to prevent development (such as garages) in the front setback area to in order to maintain the streetscape and character of the locality. It is not orderly and proper planning to impact the streetscape by approving the enclosures to the carport.</p> <p><i>Applicant's Justification</i> In response to the applicant's justification:</p> <p>TPS2 and Carport Policy state that "<i>the carport shall be open on all sides unless constructed adjoining a boundary fence or wall of a building...</i>" The southern side of the carport is setback approx. 0.7m from the boundary wall, and is adjacent rather than adjoining the boundary wall. Nevertheless, the solid garage door has been constructed contrary to the requirements of TPS2 Clause 5.6.2 (d) and Carport Policy.</p> <p>As discussed above, the City considers that the enclosure of the carport will impact the open and spacious nature of the streetscape.</p>
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Issue: Open Space Variation

Requirement	Table 1 of the RCodes requires a minimum of 60 % open space for properties zoned R10.
Applicants proposal (Retrospective)	The application proposes 56 % open space, an additional 40.5 m ² of site cover.
Performance criteria	<p>RCodes Clause 6.4.1 (Open space provision)</p> <p><i>"Sufficient open space around buildings:</i></p> <ul style="list-style-type: none"> • <i>To complement the building;</i> • <i>To allow attractive streetscapes; and</i> • <i>To suit the future needs of residents, having regard to the type and density of the dwelling."</i>

<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>Variation is due to the definition of open space which states that patios more than 0.5 m above natural ground level is not classed as open space. The alfresco is approx. 0.9 m above natural ground level.</p> <p>The alfresco has existed for approximately 14 years with no complaint, therefore a common sense approach is warranted.</p> <p>There is no impact on the streetscape as the works are mostly internal or to the rear of the dwelling.</p> <p>The alfresco is a high quality outdoor living area without any adverse impact on adjoining properties for over 14 years...</p> <p>A structure engineering report has been provided, confirming the structural integrity and quality of the unauthorised works.</p>
<p>Officer technical comment</p>	<p>RCodes Clause 6.4.1</p> <p>In regard to assessment under RCodes Clause 6.4.1 the officer's comments are as follows:</p> <p>The open space variation is due to the RCodes' definition of open space.</p> <p><i>"Generally that area of a lot which is not occupied by any building and includes:</i></p> <ul style="list-style-type: none"> • <i>open areas of accessible and useable flat roofs and outdoor living areas above natural ground level;</i> • <i>areas beneath eaves overhangs, verandahs or patios not more than 0.5m above natural ground level unenclosed on at least two sides and covering no more than 10 per cent of the site area or 50 m² whichever is the lesser..[emphasis added]."</i> <p>For the assessment, the alfresco at the rear of the residence is classed as a patio. The alfresco finished floor level is approximately 0.9 m above natural ground level and it covers 56.7 m² (refer to attachment 4). As the finished floor level of the alfresco is greater</p>

than 0.5 m above natural ground level and the site area is greater than 50 m², it cannot be assessed as open space.

Furthermore, the patio at the south side of the residence has a finished floor level of approximately 0.9 m above natural ground level, and combined with the portico, patio, alfresco areas beneath eaves, would have a site area greater than 50 m² (refer to attachment 5). The patio cannot be classed as open space.

Hypothetically, if the alfresco and patio were classed as open space the residence would comply with Acceptable Development Provisions, as the open space would be 61.8% of the site area.

The retrospective additions are considered to comply with the above performance criteria.

The following comments are in relation to the Performance Criteria under Clause 6.4.1 of the RCodes:

To complement the building

The retrospective additions are designed to complement the building. The overall built form meets the expectations of a single house in the locality.

To allow attractive streetscapes

The retrospective additions which contribute to the open space variation cannot be viewed from the street and are at the rear of the existing residence. Therefore the additions will not detrimentally impact the streetscape.

To suit the future needs of residents, having regard to the type and density of the dwelling

The retrospective additions have regard to the future needs of current and future residents.

The design allows for the functions of open space to be met. The explanatory guidelines of the RCodes states that functions of open space include; "a setting for buildings, access to...car parking spaces, opportunities for a range of domestic activities... and space for

	<p><i>utilitarian purposes, such as clothes drying and storage</i>". The alfresco and patio provide covered roof areas for weather protection and shade. The open space variation does not restrict any of the functions of open space. Whilst providing areas for outdoor entertaining, the property also has adequate car parking spaces, outdoor leisure activities and adequate space for utilitarian purposes (i.e. clothes drying area).</p>
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Issue: Over-height Dividing Wall

<p>Requirement</p>	<p>TPS2 Clause 5.6.4 states that: <i>"no fence or screen wall shall be erected within 0.9 m of a dividing boundary to a height greater than 1.8 m above natural ground level without the approval of Council. The Council may refuse to grant approval of a screen wall of fence higher than 1.8 m above natural ground level if in the opinion of Council would adversely affect the amenity of the occupants of the adjoining lot"</i>.</p> <p>Fill & Fencing Policy states that dividing fences are acceptable where:</p> <p><i>" a) have a maximum height of 1.8 m above any approved or permitted fill or retaining; or</i></p> <p><i>b) have a maximum height of 1.8 m above the lot with the higher level."</i></p>
<p>Applicants proposal (Retrospective)</p>	<p>The dividing wall (E) & (S) is up to 2.9 m above natural ground level and is 1.8 m high from the retained level.</p> <p><i>Please note: that the unauthorised fill and retaining are being considered as part of this application (see below for Discussion).</i></p>
<p>Assessment under TPS2</p>	<p>Dividing fences higher than 1.8 m above natural ground level can be refused where the proposal, <i>"...would adversely affect the amenity of the occupants of the adjoining lot"</i>.</p>

<p>Assessment under Fill & Fencing Policy</p>	<p>Where a dividing fence does not comply with the policy requirements, the proposal is only considered if <i>"the development will not have a likely impact upon neighbouring amenity"</i>.</p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>Whilst the existing fence is up to 2.9 m, when measured from the NGL of the adjoining property it is only 1.8 m high.</p> <p>Given that the fence has been existing for some time, the adjoining owners consent has been obtained.</p>
<p>Officer technical comment:</p>	<p>TPS2 Clause 5.6.4 and Fill & Fencing Policy</p> <p>In regard to assessment under TPS2 Clause 5.6.4 and Fill & Fencing Policy the officer's comments are as follows:</p> <ul style="list-style-type: none"> • The dividing fence is up to 2.9 m above natural ground level, however the dividing fence is 1.8 m high when measured from the retained ground level on-site. • TPS2 requires measurement of fences from natural ground level. The Fill and Fencing Policy provides guidance to Council exercising discretion to vary TPS2 Clause 5.6.4. The Fill and Fencing Policy permits dividing fences to be maximum height of 1.8 m above approved fill. The fill at the rear of the property is unauthorised, however is being considered with this application. Due to the elevated ground levels of 12 Brockman Avenue Nedlands, the over-height dividing fence acts a screening to prevent overlooking to the adjoining property. <p>It is considered that the over-height dividing fence is suitable for the following reasons:</p> <ol style="list-style-type: none"> 1. The over-height dividing fence prevents overlooking to the neighbouring property. Thus, the fence increases privacy between the properties. 2. The visual impact of the fence is screened from the adjoining property's view by existing vegetation (refer to attachment 1).

	<p>3. The neighbouring property will not be adversely affected by the over-height dividing fence.</p> <p>4. The height of the dividing fence would be permitted under the Fill and Fencing Policy, if the level of fill is approved with this application.</p> <p>5. The adjoining owner has consented to the over-height dividing fence. As per the Fill & Fencing policy requirements, an agreement for an overheight dividing fence has been completed between the owner/s of No.12 & No.14 Brockman Avenue Nedlands.</p>
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Issue: Setback of Retaining Wall

Requirement	<p>The RCodes at Clause 6.3.3 A3 requires a minimum setback of 1.5 m for retaining walls.</p> <p><i>Please note: this requirement only applies where retaining walls are above 0.5 m above natural ground level.</i></p>
Applicants proposal (Retrospective)	The rear (E) and side (S) retaining walls are setback nil.
Performance criteria	<p>RCodes Clause 6.3.3 (Setback of retaining walls)</p> <p><i>"Retaining walls designed or setback to minimise impact on adjoining properties".</i></p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>There is only a small portion of retaining wall along the eastern and southern boundaries that exceeds 0.5 m.</p> <p>It would be impractical to stagger the retaining wall to comply with the required setbacks.</p> <p>The retaining wall and fence has been existing for some time, it is not considered to adversely impact the adjoining properties.</p>

<p>Officer technical comment</p>	<p>RCodes Clause 6.3.3 Please refer to attachment 10 to view portions of retaining walls which are 0.5 m high above natural ground level.</p> <p>The retaining walls are considered to comply with the relevant performance criteria for the following reasons:</p> <ol style="list-style-type: none"> 1. The retained area is screened by a dividing fence 1.8 m high above top of wall. The dividing fence prevents overlooking to the neighbouring property. 2. It is consider that the retaining walls will have little impact to the adjoining properties or the rear laneway.
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Issue: Over-height Fill

<p>Requirement</p>	<p>The RCodes at Clause 6.6.1 A1.4 requires fill to not exceed 0.5 m within 1.0m of a common boundary.</p>
<p>Applicants proposal (Retrospective)</p>	<p>Fill is up to 0.78 m within 1 m of a common boundary in the SE corner of the lot.</p>
<p>Performance criteria:</p>	<p>RCodes Clause 6.6.1 (Excavation or fill)</p> <p><i>“Development that retains the visual impression of the natural level of a site, as seen from the street or other pubic place, or from an adjoining property”.</i></p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City’s Councillors prior to the meeting.</p>	<p>Not considered to have an undue impact on the adjoining property or the laneway as the levels within the site generally reflect the natural slope of the land down towards the laneway.</p>
<p>Officer technical comment:</p>	<p>RCodes Clause 6.6.1 The fill is considered to comply with the relevant performance criteria for the following reasons:</p> <ol style="list-style-type: none"> 1. The over-height fill is at the rear (SE) corner of the property and cannot be viewed from the street.

	<p>2. The dividing fence is 1.8 m high from the top of the filled level (refer to attachment 9). This means that the over-height fill does not result in overlooking to the adjoining property or the rear laneway.</p> <p>3. The height of the dividing fence prevents one site being viewed as being higher than another. The visual impression of the site's natural levels are retained.</p> <p>4. It is considered that the impact of the level of fill will not negatively impact the visual impression of the natural ground level. Nor will it negatively impact the neighbouring properties or view of the property from the rear laneway.</p>
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Issue: Overlooking from Patio

Requirement	A patio which has a floor level more than 0.5m above the natural ground level is required to provide a 7.5 m setback within the cone of vision.
Applicants proposal (Retrospective)	There is direct overlooking when looking to the south and east from the patio. The patio is setback 1.7 m from the south and 2.7 m from the east within the cone of vision.
Performance criteria	<p>RCodes Clause 6.8.1 (Visual privacy)</p> <p><i>“Direct overlooking of active habitable spaces and outdoor living areas of other dwellings is minimised by building layout, location and design of major openings and outdoor active habitable spaces, screening devices and landscaping, or remoteness.</i></p> <p><i>Effective location of major openings and outdoor active habitable spaces to avoid overlooking is preferred to the use of screening devices or obscure glass.</i></p> <p><i>Where these are used, they should be integrated with the building design and have minimal impact on residents’ or neighbours’ amenity.</i></p>

	<p><i>Where opposite windows are offset from edge of one window to the edge of another, the distance of the offset should be sufficient to limit views into adjacent windows."</i></p>
<p>Applicant justification summary:</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p>Whilst the adjoining owners have not objected to the variation, the matter can be addressed via a condition of approval requiring appropriate screening in accordance with the RCodes.</p>
<p>Officer technical comment:</p>	<p>RCodes Clause 6.8.1</p> <p>The variation is due to the finished floor level of the patio being raised more than 0.5 m from natural ground level.</p> <p>The applicant's justification recommends a condition is included to require appropriate screening. If sufficient permanent vertical screening is provided, the Acceptable Development Provisions of RCodes Clause 6.8.1 are satisfied and a variation is no longer posed.</p> <p>It is therefore recommended a condition be placed on the approval requiring the south and east sides of the patio to be screened, in accordance with the RCodes. Refer to Condition (3).</p>

Amenity and Other Considerations under the Scheme

Preservation of Amenity

TPS2 clause 5.5.1 under section 5.5 *Preservation of Amenity* states:

'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 other factor inconsistent with the use for which the lot is zoned.'

Consideration of Applications

TPS2 clause 6.4.1 under section 6.4 *Consideration of Applications* states:

'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.'

The retrospective additions (minus the enclosure of the carport) are considered to be appropriate and will not adversely impact the amenity of the surrounding area. The retrospective additions are to a single house. A single house use is a use consistent for which the land is zoned.

In assessing this requirement, it is considered that the retrospective additions are appropriate, subject to the recommended conditions.

Conclusion

The variations relating to the over-height fill, retaining walls, dividing fence and open space meets the applicable performance criteria of the Residential Design Codes and Fill Fencing Policy and satisfies the relevant provisions of TPS2.

However under the City of Nedlands TPS2 at Clause 5.6.2 (d), a carport located within the 9 m front setback area, "...shall be open on all sides unless constructed adjoining a boundary fence or wall of a building...". The enclosures to the carport do not allow the structure to be open on all sides. It is deemed that the retrospective addition to enclose the approved carport does not satisfy the above TPS2 provision. In addition, the variations to the Council's Policy 6.23 are considered to adversely impact the streetscape. It is not orderly and proper planning to further disrupt the existing streetscape by approving the retrospective additions to the carport. Therefore it is recommended that the Council includes a condition on approval, to remove the unauthorised enclosures to the carport.

To prevent direct overlooking from the patio it is recommended that permanent vertical screening is installed. The above is a suggestion from the applicant and the City recommends Council requires a condition on approval requiring permanent vertical screening on the south and east sides of the patio.

Accordingly, the application is recommended for approval subject to the recommended conditions.

Attachments

1. Locality Plan
2. Site, Floor and Elevation Plans Approved in 1998
3. Block Plan: Existing
4. Floor Plan : Existing Residence (rear)
5. Floor Plan: Existing Residence (front)
6. Floor Plan: Upper Floor Loft
7. Elevation Plan: East & West Elevation
8. Elevation Plan: North & South Elevation
9. Elevation Plan: Fencing & Retaining Wall
10. Elevation Plan: Showing Retaining Walls
(over 0.5 m high above NGL)

PD39.12	Dedication of portions of land within West Coast Highway reserve between Rochdale Road and Alfred Road as Road Reserve
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Committee	11 September 2012
Council	25 September 2012

Applicant	Main Roads Western Australia
Owner	State of Western Australia
Officer	Michael Swanepoel - Senior Strategic Planner
Director	Peter Mickleson - Director Planning & Development Services
Director Signature	
File ref.	WE3
Previous Item No's	N/A
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is for Council to agree to the dedication of certain portions of land within the West Coast Highway road reserve area in the City of Nedlands shown as items 11, 15, 19, and 21 in attachment 1 as 'Road Reserve' under Section 56 of the *Land Administration Act 1997*.

Recommendation to Committee

Council concurs with the dedication of the portions of land as West Coast Highway shown as items 11, 15, 19, and 21 in attachment 1 as 'Road Reserve' under Section 56 of the *Land Administration Act 1997*.

Strategic Plan

- KFA 5: Governance
 - 5.8 Establish and actively manage a range of partnerships with government, private and not-for-profit sectors.

Background

Property Address: Section of West Coast Highway from Rochdale Road to Alfred Road
 Zoning MRS: Primary Regional Roads
 Zoning TPS2: Public Purpose

At its Ordinary Meeting held in July 2012, Council resolved:

Council Resolution

That this item be referred back to Administration for further clarification of boundaries and consultation with landowners.

The maps in the previous report have been replaced with a map that aligns with Main Roads WA's request.

As the adjoining landowners are State Government no additional consultation with landowners is required.

Proposal Detail

- There are four (4) portions of land within the West Coast Highway road reserve in the City of Nedlands that are currently held on title to the State of Western Australia and have not been dedicated as 'Road Reserve'.
- These four (4) portions of land are currently being used as a road and Main Roads Western Australia (the State Government agency that manages and controls the road) wants to dedicate this land as 'Road Reserve'.
- The *Land Administration Act 1997* requires the local authority to give its concurrence to the dedication of land as 'Road Reserve'.
- To satisfy the requirements of the Lands Division of the Department of Regional Development & Lands the following needs to occur:
 - Council is required to consider the matter at an Ordinary Meeting and concur with land within the City being dedicated (as per the recommendation in this report).
 - Administration is to send a letter of concurrence (with an accompanying set of minutes of the Council Meeting) to Main Roads Western Australia.
- Main Roads Western Australia has stated that it will indemnify Council against all costs and charges relating to the dedication.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type: Not applicable

Legislation

- *Land Administration Act 1997*

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

- This proposal has no financial impact for the City.

Risk Management

- There does not appear to be any risk for Council.

Discussion

The purpose of this proposal is to finalise in an administrative sense what is currently happening on the ground with West Coast Highway. The identified portions of land within the West Coast Highway reserve are currently owned by the State of Western Australia. They have yet to be dedicated as 'Road Reserve'. Dedicating these portions of land as 'Road Reserve' needs to be completed in order to allow Main Roads Western Australia to take control and care for the land.

The *Land Administration Act 1997* outlines the process for dedicating a portion of land as road reserve. To have each section of land dedicated as road reserve, Council concurrence to the dedication is needed.

All costs and charges related to the dedication will be covered by Main Roads Western Australia. There are no other negative impacts related to the dedication that can be applied to the City. It is recommended that Council support the dedication process.

Conclusion

It is recommended that Council concurs to the dedication of the land shown as items 11, 15, 19, and 21 in attachment 1 as 'Road Reserve' under Section 56 of the *Land Administration Act 1997*.

Attachments

1. Relevant Map - Sections of West Coast Highway from Rochdale Road to Alfred Road held on title to the State of Western Australia.