



City of Nedlands

Planning and Development Reports


Committee Consideration – 12 May 2015

Council Resolution – 26 May 2015

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PD24.15	(Lot 385) No. 2 Bruce Street, Nedlands – One Grouped Dwelling
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Committee	12 May 2015
Council	26 May 2015
Applicant	J Salim
Landowner	J Salim
Officer	Andrew Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/424– BR9/2
Previous Item	Nil

1.0 Executive Summary

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

Comment was sought from nearby landowners and during the advertising period one objection and one submission which provided comment on the proposal were received.

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

1.1 Recommendation to Committee

Council approves the application for a two storey grouped dwelling at (Lot 385) No. 2 Bruce Street, Nedlands, in accordance with the application received on 31 July 2014, subject to the following conditions:

1. **The development shall at all times comply with the approved plans.**
2. **All street trees in the nature-strip / verge are to be retained and shall not be removed without written approval from the Manager Parks Services.**
3. **The crossover to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for the crossover from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.**
4. **The existing crossover(s) shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.**

5. 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.
6. A separate development application being submitted to and approved by the City prior to the building being used for any other use, such as, but not limited to, short term accommodation and as a 'Residential Building'.

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. With regard to Condition 6, the applicant is advised that a separate development application is required to be submitted to and approved by the City prior to commencing such a use.
3. 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.

4. Any fencing in the primary street setback area and/or the installation of air conditioning units require further development approval from the City.
5. This approval is not an approval for the purposes of the *Strata Titles Act 1985*, which may require you to obtain further approvals prior to constructing.
6. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

1.2 Strategic Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address	(Lot 385) No. 2 Bruce Street, Nedlands (the site)
Strata Lot area	437m ²
Zoning / MRS	Urban
Reserve / TPS2	Residential at R12.5 density
Density Code	

The subject property currently contains a duplex consisting of two grouped dwellings, which are setback between 2.3m and 6.2m from the Bruce Street boundary. The grouped dwelling on the northern portion of the parent lot has an average front setback of 3.9m.

The grouped dwellings have separate crossovers and driveways, and the topography of the land is relatively flat.

Street trees exist along the Bruce Street verge and on street car parking bays exist within the same Road Reserve.

Surrounding properties contain single storey dwellings and commercial uses. The commercial building on the property adjoining the northern boundary is setback 1m from Bruce Street as seen in the location plans on the next page.



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

3.0 Legislation / Policy

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

4.0 Consultation Process

4.1 What Consultation Process Was Undertaken?

Required by legislation: Yes No

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

4.2 How And When Was The Community Consulted?

The proposal was advertised in accordance with Council Policy – Neighbour Consultation for 21 days to nearby landowners for comment in March and April 2015.

During the advertising period one objection and one submission which provided comment on the proposal were received.

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

5.0 Budget / Financial Implications

Not applicable.

6.0 Risk Management

Not applicable.

7.0 Introduction

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

- a) An existing single storey grouped dwelling on the property is to be demolished and replaced with a two storey grouped dwelling which will be detached from the other grouped dwelling on the same parent lot.
- b) The two storey grouped dwelling is proposed to be setback a minimum of 4.65m from the street boundary, with a porch setback 4.2m and an average front setback of 5.1m.
- c) The existing crossover and driveway adjoining the northern boundary of the parent lot is proposed to be relocated to the southern strata lot boundary. This will result

in one on street car parking bay being removed and one created where the existing crossover will be removed.

- d) Balconies are proposed to the front and north-west side of the dwelling, and a double carport on the southern (side) strata lot boundary.
- e) Existing street trees along the adjoining portion of verge are to be retained.

Refer to the following attachments:

1. Existing Layout Plan;
2. Proposed Layout Plan;
3. Proposed Layout Plan (Ground and Upper Floor);
4. Ground Floor Plan;
5. First Floor Plan;
6. South and West elevations;
7. North and East elevations;
8. Photograph of 2 Bruce Street;
9. Photograph of 37 Cooper Street as seen from Bruce Street; and
10. Photograph of 20 Stirling Highway as seen from Bruce Street.

8.0 Statutory Requirements

8.1 Town Planning Scheme No. 2

Under Table 1 (Use Class Table) of TPS 2 the use 'Dwelling House – Grouped/Attached' is not permitted on properties zoned Residential unless approval is granted by Council.

The proposal is compliant with the provisions of TPS 2.

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

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

8.2 Residential Design Codes

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

	R Code Requirement	Proposed	Complies?
Driveway width	3m minimum, 6m maximum or 9m in aggregate	3m	Yes
Car Bays	2 covered bays	2 covered bays	Yes
Open Space	55% minimum	56%	Yes
Boundary Setbacks (from the nearest boundary)			
Kitchen and Meals Room	1.5m	2.3m	Yes
Laundry and Bedroom	1.5m	3.1m	Yes
Master Bedroom and Ensuite	1.5m	1.75m	Yes
Stairway	1.1m	1m	Yes
Games Room	3.3m	2.3m	No
Games Room, Study and Bedroom	2.9m	4.6m	Yes
Bedroom	2.2m	1.75m	Yes
Outbuilding	1m	Nil	No
Visual Privacy			
Front Balcony	7.5m or 1.6m high screening provided	8m from southern façade 1.8m from northern façade	Yes No
Bedroom 1	4.5m or have obscure glazing, or a window sill height of 1.6m above floor level.	4.8m	Yes
Bedroom 2	4.5m or have obscure glazing, or a window sill height of 1.6m above floor level.	4.5m and a window sill height of 1.6m above floor level.	Yes
Study Room	4.5m or have obscure glazing, or a window sill height of 1.6m above floor level.	4.9m	Yes

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

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

“Buildings setback from lot boundaries so as to:

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

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

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

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

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

9.0 Consultation

The proposal was advertised in accordance with Council Policy – Neighbour Consultation for 21 days to nearby landowners for comment in March and April 2015. During the advertising period one objection and one submission which provided comment on the proposal were received.

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

Summary of Comments Received	Officer’s Technical Comment
<p>Objection</p> <p>a) There will be an increased number of windows overlooking our back garden, family and study rooms.</p>	<p>a) The proposal complies with the visual privacy requirements of the R Codes.</p>

<p>b) The dwelling is currently being used as a student rental.</p> <p>c) The increase in bedrooms within the proposed dwelling will consequently increase the number of occupants and cars being parked.</p> <p>d) Noise levels will increase in the vicinity of our property.</p> <p>e) The two storey building will not be in keeping with the surrounding residential properties.</p>	<p>b) Noted. If the application is approved by Council it will be recommended that a condition be included stating that the dwelling is not to be used as short stay accommodation or the use 'Residential Building' without the City's approval.</p> <p>c) The proposal is compliant with the car parking requirements of the R Codes.</p> <p>d) There is no evidence to suggest that the proposed development will result in an increase in the level of noise which is beyond deemed acceptable under the <i>Environmental Protection (Noise) Regulations 1997</i>.</p> <p>e) The proposed dwelling's height and scale is compliant with the provisions of TPS 2 and the R Codes.</p>
<p>Comment On The Proposal</p> <p>a) We have no objection to the development generally however we do have a number of concerns.</p> <p>b) We are aware that the property is currently used to rent to students. Concerned that this proposal is not accurate and may be intended to accommodate well in excess of 6 unrelated people. Has approval been granted by the City for the use Residential Building on the property?</p> <p>c) We are concerned about the lack of car parking on site.</p>	<p>a) Noted.</p> <p>b) Noted. If the application is approved by Council it will be recommended that a condition be included stating that the dwelling is not to be used as short stay accommodation or the use 'Residential Building' without the City's approval.</p> <p>c) The proposal is compliant with the car parking requirements of the R Codes.</p>

<p>d) We are concerned that the bulk and scale of this proposal is inconsistent with the character of the area and that the site cover may exceed 50% of this portion of the block.</p> <p>e) As the development abuts our property to the north we are concerned about overshadowing and overlooking of our primary outdoor area and bathroom/laundry.</p> <p>f) The development is directly adjacent to our parapet wall and will likely have structural consequences particularly to the foundations, ceiling and roof as they are currently joined.</p> <p>g) Would require a Strata Plan of re-subdivision be done post construction at the applicant's cost.</p> <p>h) No consent was sought or granted by us for development on the common property.</p>	<p>d) The proposal complies with the overshadowing and minimum open space requirements of the R Codes.</p> <p>e) The proposal complies with the visual privacy setback requirements from the boundary with your property, and overshadowing requirements of the R Codes.</p> <p>f) If the development application is approved by Council the landowner will be required to apply for a building permit. At this stage it will need to be demonstrated that the proposed development will not structurally affect buildings/structures on the adjoining lot.</p> <p>g) If planning and building approval are granted for the proposal the landowner will be required to submit and obtain approval from the City for a Built Strata application.</p> <p>h) There is no readily identifiable common property on the Strata Plan for the property. Also based on legal advice obtained by the City previously, The City is not the regulatory authority for the Strata Titles Act. As such, if the development application is approved by Council the applicant will be advised that the development application is not an approval for the purposes of the <i>Strata Titles Act 1985</i>. The applicant may need to obtain further approvals prior to constructing.</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>	

10.0 Conclusion

The proposal is compliant with TPS2 and the R-Codes with the exception of the building and visual privacy setbacks proposed from the northern boundary.

As the property adjoining the northern boundary which is affected by the proposed building and visual privacy setbacks is used for commercial purposes, the variations are considered acceptable.


During the advertising period concerns were received with regard to the proposed building possibly being used as short term (student) accommodation in future. If the application is approved by Council the building will only be permitted to be used as a dwelling. Any future use of the building as short term (student) accommodation will require a development application to be submitted to and approved by the City prior to being used for such purpose.

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

11.0 Attachments

1. Existing Layout Plan;
2. Proposed Layout Plan;
3. Proposed Layout Plan (Ground and Upper Floor);
4. Ground Floor Plan;
5. First Floor Plan;
6. South and West elevations;
7. North and East elevations;
8. Photograph of 2 Bruce Street;
9. Photograph of 37 Cooper Street as seen from Bruce Street; and
10. Photograph of 20 Stirling Highway as seen from Bruce Street.

PD25.15 Department of Education – Reconfiguration of extended lease area at Nedlands Park Early Learning Centre – 150 Melvista Avenue, Nedlands

Committee	12 May 2015
Council	26 May 2015
Applicant	Department of Education
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	CAP-002824
Previous Item	PD50.14 on November 25 <u>16 December</u> 2014

1.0 Executive Summary

This item is now presented further to Council’s meeting of ~~25 November~~ 16 December 2014 where it resolved to extend the Department of Education’s lease area at 150 Melvista Avenue Nedlands.

Since the meeting a significant risk has been identified with a large tuart tree located on Reserve 1669, a tree which sits outside the lease area but whose canopy would largely overhang the extended lease premises and playground area.

Following assessments and advice from arborist the Department of Education has applied for a reconfiguration of the area to form the extension to its playground. The report considers the various aspects of this application.

1.1 Recommendation to Committee

This report notes two options for a Recommendation.

Option 1:

Council:

- 1. Refuses to reconfigure the Department of Education’s extension to lease area as per Attachment 1;**

2. **Requests that the area of the extension to lease area previously agreed by Council which is located immediately under the canopy of the tuart tree be fixed with the cabling system as suggested by Arbor Logic; and**
3. **Requests that all costs associated with the installation of the cabling system be borne by the Department of Education.**

Option 2:

Council:

1. **Agrees to reconfigure the extension to the lease area and playground as the Department of Education have requested and as per Attachment 1;**
2. **Agrees that the reconfigured area will substitute for the agreed extension to lease area in Council's resolution PD50.14 and for the land to be handled accordingly; and**
3. **Requests that all costs associated with this reconfiguration are borne by the lessee – Department of Education.**

1.2 Strategic Community Plan

This proposal requires Council to give consideration to aspects of community development and enhancement when resolving in this matter. The residents of Nedlands with pre-school aged children will benefit from the arrangement requested by the Department of Education (Department) as pre-schooling will be maintained at the current location in close proximity to Nedlands Primary school where siblings may attend.

Council must also consider aspects of governance and civic leadership when resolving on this issue as it is called to determine the best use of City resources, be it for early childhood education purposes or the competing public interest of preserving public open space for all to use, giving consideration to present and possible future sporting and community needs.

The City's Community Strategic Plan makes requirement for the Melvista reserve to be subject of a master planning process in 2019-22 and so Council must consider this commitment when resolving the matter. The City's 10-Year Financial Plan makes provision for a proposed multi-purpose / use centre to be constructed in the years 2019-2022 at an estimated cost of \$3,150,000.

Council must also consider identified risks at its leased premises and reserves and how best to manage this.

2.0 Background

The Department of Education currently leases class "C" Crown Reserve 27688 which comprises Lot 203 on Plan 170153 addressed as 150 Melvista Avenue Nedlands. This reserve has management order vested in the City of Nedlands for the purpose of

a Kindergarten. The Nedlands Primary School conducts kindergarten and pre-primary classes from this premises which is known as the Nedlands Park Early Learning Centre. The lease agreement is for a term of 10 years with an option to renew for a further 5 years. The lease commenced on 1 January 2002 and the further term expires on 31 December 2016. The terms of the lease accord the City's standard terms of lease for community and sporting groups, ie. terms of lease include a peppercorn rental and premises are maintained by the lessee.

On ~~25 November~~ 16 December 2014 Council resolved to permit an extension to the Department of Education's lease area in the form requested which formalised current area used as playground as well as an extension in to the adjacent class "A" reserve. This was to follow a process of excision of class "A" reserve for inclusion in class "C" reserve with purpose of 'kindergarten'. An interim agreement of a management licence was agreed by Council. This decision was made following consideration of various options to satisfy the lessee's requirements for increased playground area. One such option was to allow the Department of Education the use of the public playground adjacent to the school's lease premises and attached to the Nedlands Child Health Clinic. A playground currently open to the public and subject of no exclusive use arrangement. The Department of Education advised preference to have an area for its own exclusive use and not shared use of a public playground. The Department advised such preference based on requirements for exclusive use and thereby control of the area. The Department also noted the preference for flat open space for children to run around in. The public playground is furnished with play equipment for younger pre-school children.

Further to Council's meeting the Department of Education engaged an arborist to assess the state of trees onsite the lease premises and bounding the premises. The arborist report produced by Arbor Logic form **Attachment 2**. Essentially the arborist (which the City has engaged on several occasions to advise on arbor matters and considers work to be of a high standard) reported that several trees required pruning or removal. In particular advice noted that the large tuart located on the surrounding reserve 1669 which was to form the boundary of the lease premises gave concern for its structural integrity. Specifically the report noted:

The unions of the regrowth looked to show acceptable form at their point of attachment (from viewing them from ground level). However there were some indications to suggest that an area of decay and possibly cavity may well be at their point of union to the original main stem of the Tree.

At this time I would suggest (recommend) that it would be better to design the proposed extension of the Site to exclude its canopy spread from the 'Target' area unless a more thorough investigation into its structural integrity by way of an aerial inspection can be undertaken, and the results show that its structural for is not of any concerns.

Closer inspection showed a split looks to be forming in the union. No movement was noted in the split at the time of my inspection, but the nature of the split occurring suggests that the union will continue to split apart over time; possibly slowly over the next 3-5 years or more.

Whilst failure is more likely to occur during a storm period (a time when the Targets of most concern are possibly unlikely to be around) it may be better to remove this Tree before the failure occurs so to avoid potential damage to surrounding infrastructure.

The Department of Education engaged Arbor Logic to further assess the tuart tree to determine level of risk associated with location of a playground directly under the canopy of the tree. Arbor Logic provided this advice which forms **Attachment 3** of this report. In particular the report at page 3 notes the following:

Comments on my Observations

This is clearly a mature specimen, possibly in the order of 100-150 years old or more, and quite probably remnant vegetation for this area of Perth.

It does remain in very good health and at this time its condition would suggest that it could possibly continue to survive for another 50- 100 years or more in this location.

Whilst its structural condition is in many respects 'typical' for a mature specimen of this species that has been previously topped, the presence of the areas of decay at the unions of the regrowth is of some concern.

Whilst the decay did not appear to be excessive at this time and there was no indication that failure at these points is imminent, based on my visual observations there is sufficient evidence in my opinion to *suggest* that there is an increased possibility that failure of some of the larger diameter branch structures on the western side of its canopy *could* occur at some point during the foreseeable future.

Predicting when failure would occur remains difficult, other than to suggest that at this time, failure looks more likely to occur during a period of increased wind activity.

However given the *proposed* use of the area underneath its canopy spread there is some potential that the area may be occupied at the time if a failure did indeed occur.

Given the size of parts that look to have the potential to fail, the consequences of a failure are likely to be 'high'.

As such its inclusion into an area of an increased number and frequency of potential Targets is considered highly questionable.

The report goes on to suggest options for managing the tree in future. Three options are proposed of which it appears the first two are to be considered.

The options are:

1. Reconfigure the lease area and playground to exclude the area under the trees canopy – as per application by the Department of Education now considered
2. Leave the lease area as previously agreed in PD50.14, allowing canopy to overhang the playground area but reducing weight of the canopy (pruning the tree) and installing a "suitably sized fall arrest (cabling) system into the remaining branch structures". The report notes that this would not prevent failure of tree however in such an event the playground area underneath would be protected from failure.

The Department of Education have now sought approval from the City to reconfigure the extension to lease area in order to address the identified risk of a falling limb from the tuart tree in their preferred method. The proposed extension to lease area as reconfigured is noted in **Attachment 1**.

As noted above the arborist's subsequent report on the tuart suggests two options for future management of the tree. Option 1 is preferred by the Department of Education. Option 2 would maintain the resolution of Council in ~~November~~ December 2014 but requiring the Department of Education to install the necessary cabling system. Option 2 would obviously involve some financial costs to install and maintain the cabling system.

2.1 Legislation / Policy

Relevant legislation is the Local Government Act 1995 and the Land Administration Act 1997.

Both pieces of legislation have been referenced in previous item PD50.14 and dictate processes for the City agreeing a lease of local government land as well as procedures for handling crown reserves. This item now presented requires no new legislative considerations than PD50.14.

3.0 Consultation Process

3.1 What consultation process was undertaken?

The City has onsite at 150 Melvista Avenue, Nedlands with the Department of Education, the principal of Nedlands Primary School to discuss the details of the Department of Education's proposal and the initial arborist report.

Required by legislation: Yes No
Required by City of Nedlands policy: Yes No

3.2 How and when was the community consulted?

The Nedlands Primary school has been consulted in so far as the City has met and discussed the school's requirements for additional lease area and its concerns following from the arborist reports.

4.0 Budget / Financial Implications

Within current approved budget: Yes No
Requires further budget consideration: Yes No (Possibly if lease area is to exclude area under the trees canopy)

Any financial costs associated with a reconfiguration of the Department's lease area would be borne by the Department of Education as lessee and licensee of the premises. Any measures taken to ensure risk of tuart tree failing will be borne by the Department of Education where it is determined that area under tree canopy will remain within the lease area. However if it is determined that such area will be excluded from the lease area the City will need to consider strategies for and associated financial implications of managing the tuart tree in future.

5.0 Risk management

In this matter Council must consider how to respond to the advice of an arborist on identification of risk associated with a large tuart tree on a City reserve. The Department of Education has stated a preference to address this identified risk by applying for a reconfiguration of the lease area and playground to exclude the area below the tuart's canopy. The City is not obliged to reconfigure the lease area based on this risk management strategy but nonetheless the risk must be considered in making this determination.

Council must also consider how to direct Administration if dealing with the tuart tree at a public reserve, although this will likely occur as part of Administration's routine operation.

6.0 Discussion

Essentially the matter is that Council has previously agreed to provide the Department of Education with an area to extend its lease premises and playground in order to accommodate the school's growing numbers and meet standards set for requisite school play area. The Department of Education have subsequently received 2 arborist reports which identify risk of falling limbs from a large tuart tree which bounds the extended lease area and whose canopy overhangs this area. The Department have noted their preference for reconfiguring the extension to the lease area to relocate away from the tree's canopy. The reconfigured area is the same area in size as that previously agreed by Council just in a different form. The fact remains that the school's requirement for extended playground area is the same.

Council now has options for addressing the identified risk – to reconfigure the Department's lease area as requested and noted in **Attachment 1** or to maintain previously approved lease area but require the Department to take measures advised by Arbor Logic to ensure safety of students. Alternatively the City could address identified issues of risk by reverting back to an option originally considered last year for providing play area for the school in that it could offer the school the use of the existing public playground in lieu of an extended area of playground beyond that already used by the school. This would involve the formalisation of current playground area as lease premises but no further extension into Reserve 1669 (therefore no area under the tuart's canopy) and a shared use of the public playground. The school could use the playground during school hours and paying a fee to the City for maintenance of the area. I note that this option was previously advised by the school as less desirable as it was preferred for early year's school children to have flat area for children to run and play with less structure than the adjacent equipped playground provided.

7.0 Conclusion


Council at its previous meeting in which the initial item was considered resolved to support an extension to the Department of Education's lease area at Melvista Avenue. This item was considered without knowledge of the risk associated with the large tuart tree and its canopy overhanging the extended lease / playground area. The school's

requirements for increased play area for its student's remains the same and the Department of Education have applied to the City for the reconfiguration to meet its school's needs, to provide the requisite play area in a safe environment. Council must now consider whether to accept the proposal to reconfigure the area or to require the Department of Education to take measures such as "cabling" to make the previously approved lease area / playground safe.

8.0 Attachments

1. Sketch of lease area with proposed reconfiguration;
2. Initial arborist report by Arbor Logic on trees at lease premises and surrounding reserve 1669; and
3. Second arborist report by Arbor Logic on tuart tree at Reserve 1669.

PD26.15 Scheme Amendment 202 – Initiation Report

Committee	12 May 2015
Council	26 May 2015
Applicant	Planning Solutions (Aust) Pty Ltd
Owner	Stirling 52 Pty Ltd
Officer	Holly White – Strategic Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	PLAN-PA-00003
Previous Item	D11.06, PD49.14

1.0 Executive Summary

The purpose of this report is for Council to consider an application to initiate an amendment to the Town Planning Scheme No. 2 (TPS No. 2). The application is to amend the zoning of Lot 7 (No. 52) Stirling Highway, Nedlands from 'Residential R35' to 'Special Use'.

At December 2014 Council meeting, this item was withdrawn by the applicant and in April 2015 a revision of the scheme amendment report was received by the City. The revision includes restricting the maximum gross leasable area (GLA) of office use on the site to 50m².

The amendment has been assessed against the current State and Local Planning framework and it is recommended that the amendment is initiated as it generally meets the direction set out in these frameworks. However, it is considered that several components of the amendment need reconsideration, and in particular, the built form guidelines.

The scheme amendment may be considered premature due to the lack of a suitable Local Planning Framework, specifically a Local Planning Strategy, being in place. Nonetheless, the current Local Planning Framework, however outdated, eludes to promoting development along Stirling Highway in some form or another in recognition that it is an 'activity corridor'.

The initiation of the amendment will allow for the amendment to be advertised to the community and relevant stakeholders, and for the Council to make further consideration following this consultation. The Council will then be in a position to either adopt the amendment, with or without modification, or refuse to adopt the amendment.

1.1 Recommendation to Committee

Council:

1. Pursuant to Section 75 of the *Planning and Development Act 2005*, initiate an Amendment to Town Planning Scheme No. 2 to rezone Lot 7 (No. 52) Stirling Highway, Nedlands from 'Residential R35' to 'Special Use'; and
2. Advise the applicant that Council's preliminary initiation of the Scheme Amendment is not to be construed as approval of the built form provisions in Table 2, and that reconsideration is expected in regard to these provisions following consultation with the community.

1.2 Strategic Community Plan

KFA: Natural and Built Environment

The proposed Scheme Amendment concerns the Natural and Built Environment in regards to amending the controls set out in TPS No. 2. This will effect land use planning, development approvals, streetscape and compliance.

2.0 Background

Property address	Lot 7 (No. 52) Stirling Highway, Nedlands
Lot area	1044m ²
Zoning	R35
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential

The site abuts Stirling Highway, in a predominantly low density residential area serviced by a traditional grid network. The existing structure on the site consists of a two-storey brick residential dwelling. The adjoining sites are single and two-storey dwellings. Under the provisions of the Metropolitan Region Scheme (MRS) the front portion of Lot 7 (No. 52) Stirling Highway is reserved 'Primary Regional Road' and the balance of the lot is zoned 'Urban'.

2.1 Key Relevant Previous Council Decisions

In 2005, Scheme Amendment No. 166 proposed to rezone Lot 7 (No. 52) Stirling Highway from 'Residential R35' to 'Office/Showroom – Additional Use: Residential R50 Grouped Dwellings and Multiple Dwellings'.

Council adopted for final approval the scheme amendment at its Ordinary Council meeting on 28 June 2005. On 26 October 2006 the Minister of Planning refused to grant final approval on the basis of it being 'ad-hoc' and decisions needed to be of a more 'holistic' approach.

Specifically, the Minister for Planning and Infrastructure refused to grant final approval for the following reasons:

1. The amendment is ad-hoc and fails to properly recognise the location of the subject land in relation to abutting and nearby residential zoning and development;
2. Intensification of uses along Stirling highway needs to take into account the principles of Network City, including not only further commercial uses but also the need for provision of a wider choice of housing types; and
3. Any rezoning in this vicinity, whether by means of amendments to Town Planning Scheme No. 2 or by inclusion in proposed Town Planning Scheme No. 3, would need to be carried out in a more holistic manner, possibly on a block-by-block basis, and possibly offering significant incentives for amalgamation and comprehensive redevelopment, and taking into account traffic and vehicle circulation issues, building mass and design, and management of the impact on abutting residential areas.

2.2 Legislation / Policy

*Planning and Development Act 2005 (P&D Act);
Town Planning Regulations 1967; and
City of Nedlands Town Planning Scheme No. 2 (TPS No. 2)*

3.0 Consultation Process

Before a Scheme Amendment is initially adopted, there is no requirement for public consultation.

3.1 What consultation process was undertaken?

Required by legislation: Yes No
Required by City of Nedlands policy: Yes No

3.2 How and when was the community consulted?

If Council initiates this amendment there is a statutory process to follow that requires environmental review, referrals to agencies likely to be affected by the proposed scheme amendment and advertisement of the scheme amendment for public inspection as per Part 5 of the *P&D Act*.

4.0 Budget / Financial Implications

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

This proposal has no budget or financial implications for the City. The applicant is responsible for meeting the costs associated with the processing of this application.

5.0 Risk Management

If Council resolves not to initiate this scheme amendment proposal, the Minister for Planning may instruct that the amendment be initiated. Section 76 of the *P&D Act* states that where the Minister is satisfied on any representation that the local government has failed to adopt (initiate) a proposal which “ought to be adopted”, the Minister may order the local government to do so.

6.0 Discussion

6.1 Introduction

On 16 December 2014, Scheme Amendment No. 202 – 52 Stirling Highway, Nedlands was withdrawn from the Council agenda at the applicant’s request. The amendment was placed ‘on hold’ by the City, until further notice was given by the applicant.

On 9 April 2015 the City received a revised submission of the Scheme Amendment No. 202 – 52 Stirling Highway, Nedlands. The report had been updated to include additional statutory provisions which are discussed further on.

6.1.1 Site Details

The subject site is located within the suburb of Nedlands, with the City of Nedlands Library 100 metres to the west on Stirling Highway. Predominantly low scale residential properties are located to east, south and west of the subject site, as well as northern properties adjacent on Stirling Highway being residential.

To the south of the lot is a unique layout of three grouped dwellings with a four (4) metre wide access leg which runs parallel to the rear of Lot 7 (No. 52) Stirling Highway and connects to Thomas Street. Please refer to ‘**Attachment 2**’ for a detailed map of the site and surroundings.

The wider surrounding areas include a mix of zonings. To the northeast of the subject site, a larger presence of ‘Office/Showroom’ exists. To the west and northwest of the subject site, the City of Nedlands Library and Administration Building are present. Further west to this is the Captain Stirling site and then the Windsor Cinema.

6.1.2 Proposed Amendment Details

The scheme amendment proposes to rezone Lot 7 (No. 52) Stirling Highway, Nedlands from ‘Residential R35’ to ‘Special Use’. Provisions relating to the ‘Special Use’ would be inserted into the Scheme to control land use and development.

The scheme amendment proposes to include within the Special Use provisions, permissible land uses of:

- Dwelling House – Single;
- Dwelling House – Grouped / Attached;

- Dwelling House – Multiple;
- Home Business;
- Home Occupation;
- Office – General;
- Office – Professional; and
- Officer – Service.

The proposed amendment also includes 'Build Form Provisions' which will be included into the scheme. These address; plot ratio, building heights, residential uses, setbacks and car parking with a 50m² GLA cap on the amount of office use permitted on the site.

Please refer to section 6.2.3 of this document for a comprehensive breakdown of the 'Built Form Provisions'.

6.2 Planning Context

6.2.1 State Planning Framework

The State Planning Framework unites existing state and regional policies, strategies and guidelines within a central framework which provides a context for decision-making on land use and development in Western Australia. It informs the Commission, local government and others involved in the planning process on those aspects of state level planning policy which are to be taken into account, and given effect to, in order to ensure integrated decision-making across all spheres of planning.

The State Planning Framework indicates the primary policies and strategies used to clarify and inform the public and those administering planning instruments of the framework of policies and strategies that come into play in planning decisions.

Local governments must have due regard to the provisions that form part of this framework in preparing planning schemes and scheme amendments, and making decisions on planning matters.

The Commission will assess local government town planning schemes and amendments against the State Planning Framework to ensure they are consistent with state and regional policies.

Directions 2031 and Beyond

Directions 2031 and Beyond (Directions 2031) is the overarching spatial framework and strategic plan that establishes a vision for the future growth of the Perth and Peel region; and it provides a framework to guide the detailed planning and delivery of housing, infrastructure and services necessary to accommodate a range of growth scenarios. In relation to the land use, Directions 2031 promotes diversity of dwelling types in residential areas. It identifies Stirling Highway as a growth area.

Central Metropolitan Perth Sub-Regional Strategy

The Central Metropolitan Perth Sub-Regional Strategy (Sub-Regional Strategy) is a product of Directions 2031, which groups outcomes into more specific regions. It identifies eight strategic priorities to deliver the outcomes sought by Directions 2031.

The strategy sets housing targets for local governments and 'Future Growth Areas'. The revised City of Nedlands' housing target is 2,540 additional dwellings by 2031. The targets also encourage a mix of housing types to provide more opportunities for the renewal and redevelopment of established urban areas while recognising the character of detached housing stock in established suburbs.

The Stirling Highway corridor has been targeted as a 'Future Growth Area' with an aim to providing an additional 1400 dwellings by 2031.

Section 4.2 of the applicants proposed Scheme Amendment Report (see 'Attachment 1') states:

'The current restrictions on the use of the subject portion prevent forward planning for Stirling Highway, and has been prepared having regard to SHACS and the rationalisation of the Stirling Highway reservation through Metropolitan Region Scheme Amendment 1210/40.'

Stirling Highway Activity Corridor Study

The Stirling Highway Activity Corridor Study (SHACS) is an integrated transport and land use planning study for the Stirling Highway precinct. The study is made up of two phases, the first being the MRS Amendment 1210/41 – Rationalisation of Stirling Highway Reservation and the second phase will focus on the preparation of a guidance document for future redevelopment along Stirling Highway.

The second phase document will focus on smaller dwelling provisions to increase housing diversity along the corridor. Street level activity will not be encouraged in existing residential parts of Stirling Highway where the existing character mainly consists of residential uses. Upon completion of the first amendment phase, this will commence.

The MRS Amendment 1210/41 is anticipated to be considered by the WAPC in the near future. The process generally takes another 12 months before the amendment may be subject of disallowance. However, the amendment is given significant weight as it is being seriously entertained to guide development along this portion of Stirling Highway.

Metropolitan Region Scheme

The subject site is predominantly zoned 'Urban' under the provisions of the MRS. Under the MRS, a portion of the subject site fronting Stirling Highway is reserved Primary Regional Road.

Metropolitan Region Scheme Amendment 1210/40

The MRS amendment proposes a rationalisation of the existing Stirling Highway Primary Regional Roads reservation. Amending the reservation over Stirling Highway will provide clarity and certainty for landowners, enable orderly land use planning and, for the first time, confirm the long-term highway design.

Following initiation, administration will refer the amendment to Main Roads which will determine whether the setback provisions are appropriate in relation to the proposed MRS 1210/40 amendment.

Please refer to '**Attachment 2**' for a diagrammatic representation of the current MRS.

Please refer to '**Attachment 1**' section 5.1.1 for a diagrammatic representation of the proposed MRS amendment.

Summary of State Planning Framework

Generally, the above state planning documents require local governments to provide greater housing diversity and for inner City metropolitan areas this will mean housing infill resulting from increased density.

The State Planning Framework sets out specific housing targets for each Local Government and the City should be working to achieve these objectives. The State Planning Framework identifies that Specialised Centres, Activity Centres and Activity Corridors should be the focus areas where these housing infill targets should be met. In relation to this scheme amendment, Stirling Highway has been identified as an 'activity corridor' and as such is a location that the City should be actively encouraging development.

The City needs to start achieving its housing diversity targets and this proposal would work towards that objective.

This proposed scheme amendment seeks to allow for a mostly residential development, that introduces housing diversity, and therefore would be consistent with the State Planning Framework.

6.2.2 Local Planning Framework

City of Nedlands Town Planning Scheme No. 2

Lot 7 (No. 52) Stirling Highway, Nedlands is currently reserved MRS Primary Regional Road across the portion of the lot fronting Stirling Highway and is zoned 'Residential R35' across the balance of the lot under TPS No. 2.

The existing zoning does not allow an 'Office' land use and TPS No. 2 does not permit 'Multiple Dwelling'.

A 'Multiple Dwelling' defined by the R-Codes as 'a dwelling in a group of more than one dwelling on a lot where any part of a plot area of a dwelling is vertically above any part of the plot ratio... does not include grouped dwelling; and includes any dwellings above the ground floor in a mixed use development.'

Draft Stirling Highway Redevelopment Project (2009)

This document has never advanced past a draft format and was only ever endorsed in principle for inclusion into draft Town Planning Scheme No. 3 (draft TPS No. 3). As a draft document, endorsed only as part of a bigger draft document, the City is unable to give its provisions significant weight in the decision making process as it is not a seriously entertained document.

The draft Stirling Highway Redevelopment Project sought to apply provisions to all development within the Stirling Highway Special Control Area (SCA) within draft TPS No. 3. The control area was then divided into specific Precincts, each with its own Precinct Plan. The document addresses Stirling Highway and the creation of an activity corridor. It promotes a variety of dwelling types, activity nodes and mixed-use development to occur along this activity corridor.

Housing Diversity Study (2006)

The aim of the Housing Diversity Study was to research in a definitive way how to address:

1. Current housing diversity and land availability in the City;
2. Statistical trends in City Demographics;
3. Trends in housing development;
4. State and Local Government policy;
5. Current Strategic directions within the housing industry; and
6. Strategic direction of the City.

Whilst this document is eight years old and there has been a shift in the State Planning Framework the majority of the local contextual issues are still relevant and recommendations still valid.

The key recommendation from this study states that the most suitable areas to absorb change with minimum impact on City amenity are in precincts adjacent to Stirling Highway, including Broadway. These areas can be considered for introduction of opportunity for subdivision.

Local Housing Strategy (2001)

Under the provisions of the Local Housing Strategy adopted by Council in 2001, one of the recommendations was that incentives are required to encourage residential development to occur above new commercial developments. The residential density permitted could be equivalent to R50/60. The strategy did recommend that a series of design guidelines for Stirling Highway be introduced to ensure that future development is of high quality.

Summary of Local Planning Framework

There is no holistic Local Planning Strategy to guide the City in its decision making.

The current Local Planning Framework is outdated by a more recent State Planning Framework. Planning philosophies have evolved since the majority of these documents have been published and the draft format of some of these documents means that they do not hold a significant amount of weight.

The scheme amendment may be considered premature due to the lack of a suitable Local Planning Framework, specifically a Local Planning Strategy, being in place. This could be considered a reason for not proceeding with the scheme amendment and would be consistent with the Ministers reasons for refusing to grant final approval to a similar application back in 2006 on this site.

Nonetheless, the current Local Planning Framework, however outdated, eludes to promoting development along Stirling Highway in some form or another in recognition that it is an 'activity corridor'.

The proposed scheme amendment, by its nature of proposing additional housing density and by introducing housing diversity into the City, is generally in line with the broad principles outlined by the City's outdated Local Planning Framework.

The City is currently working towards a draft Local Planning Strategy which will assist Council in considering such amendments.

6.2.3 Built Form Provisions

The proposed scheme amendment involves zoning the site for 'Special Use' and includes specific land use and development provisions which would control the design of any building to be developed on the site.

The following are permitted uses that are proposed by the Scheme Amendment:

*“Dwelling House – Single
Dwelling House – Grouped / Attached
Dwelling House – Multiple
Home Business
Home Occupation
Office – General
Officer – Professional
Office – Service”*

The following Built Form Provisions are proposed and would control the type of development that could take place on the site:

Plot Ratio –
No density restriction applied to Multiple Dwellings. The maximum number of Multiple Dwellings will be determined by the permitted building envelope and applicable development standards for the lot (e.g. setbacks/heights/open space/car parking).

The total amount of Office land use (including Office - General, Office - Professional and Office - Service) permitted on site shall be restricted to a maximum gross leasable area of 50m², or as otherwise approved by Council.

Building Heights –
*Development without a residential component to be developed to a maximum of 3 storeys or equivalent to a maximum overall height of 12 metres.
Development with a residential component to be developed to a maximum of 4 storeys or equivalent to a maximum overall height of 16 metres.*

Residential uses –
Residential uses are permitted on all floors of a development, with the exception of fronting Stirling Highway on the ground floor.

Setbacks –

Front setback – Minimum 3 metres (measured from the boundary of the Stirling Highway road reserve as proposed under MRS amendment 1210/40.

Side Setbacks – Nil setback for ground floor and first floor, 3 metres for all other floors.

Rear Setbacks – Nil setback on ground floor, minimum 1.5 metres to first floor, and minimum 4.0 metres to second floor and above.

Car Parking –

Residential – In accordance with the Residential Design Codes. Non-residential uses – In accordance with Schedule III of TPS No. 2. All car parking shall be screened from view from Stirling Highway.

Where a development standard mentioned in Schedule V differs from a development standard contained elsewhere in TPS No. 2 or the Residential Design Codes, the provisions of Schedule V shall prevail.

Where a development standard is not mentioned in Schedule I, the provisions of the Residential Design Codes apply.”

It must be noted that the applicant has justified the proposed scheme amendment based on the draft Stirling Highway Redevelopment Project, being the most recent and site specific document the City of Nedlands has produced. However, this document is not given significant weight as it has only ever been adopted as a draft to be included in draft TPS No. 3.

TPS No. 3 is in draft format and it would be premature to make “binding” decisions based on draft provisions contained within another draft document.

For information purposes, the draft Stirling Highway Redevelopment Project provisions, in relation to Lot 7 (No. 52) Stirling Highway proposes the following land use provisions:

- *“Residential developments.*
- *Office permitted.*
- *Ground floor Shops, Cafes, Offices.*
- *Mixed use development with combination of Office/Shop.*
- *Mixed use with residential.”*

The draft Stirling Highway Redevelopment Project document contains Built Form Provisions as set out below:

- *“Front Setbacks:*
 - *Ground and 2nd floors: Minimum 3m.*
 - *3rd and 4th floors: Minimum 6m.*
- *Side Setbacks:*
 - *Secondary Street:*
 - *Ground and 2nd floors – Nil.*
 - *3rd and 4th – Minimum 3m.*

- *Adjoining Another Lot*
 - *All floors – Nil.*
- *Adjoining Residential*
 - *All floors – Minimum 5m.*
- *Rear Setbacks:*
 - *With Laneway:*
 - *Minimum 1m.*
 - *Without Laneway:*
 - *Minimum 5m.*
- *Height – With Residential Component:*
 - *Maximum 4 storeys and 16m for lots with residential component of minimum two (2) dwellings per 1000m² is proposed.*
- *Land Use Notes:*
 - *Prohibited Land Uses:*
 - *Ground floor residential facing Stirling Highway.*
- *Car Parking:*
 - *Without laneway:*
 - *Only visitor car parking permitted to front of development.*
 - *Access off Stirling Highway to car parking at rear of property.”*

Officer Comment

If the proposed scheme amendment Built Form Provisions were to be assessed against the draft Stirling Highway Redevelopment Project provisions the following elements would be considered non-compliant:

- Rear Setback - The property abutting the lot to the rear has an access leg which is not considered a 'laneway' and therefore the rear setback requirement is five metres.
- Rear Setback – Fourth storey component is required to be 15 metres.

As mentioned above, this document does not hold sufficient weight and should not be the benchmark for assessing development along Stirling Highway.

To this end, in relation to orderly and proper planning, the following points are raised with the proposed built form provisions:

- There is no density/plot ratio attached to the site and total dwelling yield is unknown. The revised submission encourages a mixed use building without Office use dominating future development.
- Setbacks:
 - The interface with Stirling Highway in relation to bin storage, carparking and office needs to be addressed;
 - Side and rear setbacks need to be addressed as the adjacent landowners would remain as single or double storey residential properties for the foreseeable future and the impact of this development on their amenity is unknown.
- Building height, bulk and scale may impact the amenity of the adjoining properties.

It is considered that the Built Form Provisions included in the proposed scheme amendment are not ideal, however there is little guidance in the City's current Local Planning Framework to determine what should be considered acceptable. For this reason, it is recommended that following advertising of the scheme amendment, the Built Form Guidelines be modified to consider community views, be generally more in line with the Residential Design Codes and current planning policy.

6.3 Conclusion

The proposed scheme amendment seeks to rezone the subject site from 'Residential R35' to 'Special Use' with provisions to allow Grouped & Multiple dwellings and Office land uses within a three to four storey building envelope.

The proposed scheme amendment is considered to address the State Planning Framework with regard to land use and development along Stirling Highway which is an identified 'activity corridor'. The proposed scheme amendment would aid the City in achieving its specific housing target as outlined in Directions 2031.

The City's current Local Planning Framework consists of a range of outdated and/or draft documents that give little guidance on what is considered appropriate for future development of the area and cannot be given significant weight for strategic decision making. The proposed scheme amendment may be seen as premature due to the lack of local planning direction and this may be a basis to refuse the proposed scheme amendment. However, the little guidance that is given by the City's Local planning documents suggests that this type of development has been envisioned in the past.


The Built Form Provisions stipulated within the proposed scheme amendment are considered inadequate due to their being based on a draft document and the impact the resulting development may have on the adjoining properties. It is considered appropriate that these Built Form Provisions are further scrutinised as part of a full assessment of the proposal, following initial adoption, which will include consultation.

It is recommended that Council initiate the proposed scheme amendment on the basis that the intent of the development aligns with the State Planning Framework. It is central to note that the Built Form Provisions may have implications on the general amenity of the area and that these will require further revision.

7.0 Attachments

1. Scheme Amendment Report; and
2. Detailed Map

PD27.15	(Lot 230) No. 15 Mountjoy Road Nedlands – Proposed Two Storey Single House
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Committee	12 May 2015
Council	26 May 2015
Applicant	Boughton Architecture
Owner	T Siangra
Officer	Kate Bainbridge – Senior Statutory Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/57

1.0 Executive Summary

The proposal is for a two storey single house and pool. The application has been referred to Council for determination due to the nature of the proposed variations to the Residential Design Codes of Western Australia (R-Codes).

The development is considered to meet the relevant ‘deemed-to-comply’ or ‘design principles’ of the R-Codes, relevant Council policies and provisions of the City’s Town Planning Scheme no. 2 (TPS2). As a result, the application is recommended for approval with conditions.

1.1 Recommendation to Committee

Council approves the application for a Two Storey Single House at (Lot 230) No. 15 Mountjoy Street Nedlands, in accordance with the application received on 16 February 2015 and amended plans received on 05 March 2015, subject to the following conditions:

- 1. The development shall at all times comply with the approved plans.**
- 2. The clothes drying area is to be adequately screened from the street.**
- 3. All street trees in the nature-strip / verge are to be retained and shall not be removed without written approval from the Manager Parks Services.**
- 4. All proposed visual privacy screens and obscure glass panels to Major Openings and Active Habitable Spaces shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2013 (R-Codes)*. The**

structures shall be installed and remain in place permanently, unless otherwise approved by the City.

5. 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.
6. The existing crossovers shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
7. A grated channel strip-drain shall be constructed across the driveway, aligned with and wholly contained within the property boundary, and the discharge from this drain to be run to a soak-well situated within the property.
8. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.
9. All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the Certificate of Title.
10. The parapet wall shall be finished to a professional standard within 28 days of the practical completion of the dwelling, to the satisfaction of the City.

Advice Notes specific to this approval:

1. The applicant is advised that a further planning application will be required for any primary street fencing.
2. Any construction in the nature-strip / verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services, prior to construction.
3. Dividing fences behind the front setback line, height no greater than 1.8m above approved levels and complying with the provisions of the *City of Nedlands Fencing Local Law 2007* are deemed to comply with the Scheme and do not require further planning approval. A further planning application and approval is required for other fencing, including heights greater than 1.8m above approved ground levels and/or forward of the front setback line.
4. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.

5. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
6. 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.
7. The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.

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

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

8. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
9. 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 Community Plan

KFA: Natural and Built Environment

KFA: Governance and Civic Leadership

The proposed development relates to the Natural and Built Environment Key Focus Area in relation to:

- Land Use Planning;
- Development approvals and compliance; and
- Streetscape.

The proposed development relates to the Governance and Civic Leadership Key Focus Area in relation to:

- Consultation and engagement; and
- Council decision-making.

2.0 Background

Property address	(Lot 230) No. 15 Mountjoy Road Nedlands
Lot area	1011.7m ²
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential – R10

The subject site is 1011.7m² in area with direct street frontage only to Mountjoy Road as depicted on the attached locality plan (refer **attachment 1**) and there is a 1 metre drop in ground level from the rear of the lot to the street (west to east).

The site currently has a single storey residence setback 7.5m from the front boundary with the rear yard being heavily vegetated. In February 2015, the City received an application to demolish the existing single storey residence and construct a new two-storey single house and pool. Following an initial assessment of the application, the applicants submitted amended plans to ensure greater compliance with the R-Codes, leaving only three variations to the 'deemed-to-comply' provisions of the R-Codes.

2.2 Legislation / Policy

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

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes No
 Required by City of Nedlands policy: Yes No

3.2 How and when was the community consulted?

Two-storey notification sign:	6 March 2015 – 20 March 2015
Community consultation period:	6 March 2015 – 20 March 2015
Response:	The City received one (1) submission stating no objection subject to the pool house rear wall being solid in nature.

4.0 Budget / Financial Implications

The proposal is for works to be constructed on a private lot, and therefore has no immediate budget or financial implications for the City, however should Council refuse the application, there may be financial implications through an appeal of Council's decision.

5.0 Risk Management

N/A

6.0 Discussion

The proposal involves the demolition of the existing development and the construction of a two-storey single house and pool on the site, as depicted in the submitted plans (**Attachment 2**). The development has a less conventional design with east-west central permeability provided splitting the ground floor and upper floors into northern and southern living zones. The living space of the dwelling is located on the ground floor and the upper floor contains three of the four bedrooms along with a roof terrace. A three car garage is provided with access to Mountjoy Road on the southern side of the lot, ensuring the crossover is setback from the street tree in accordance with the City's requirements.

The development complies with the City's Town Planning Scheme No. 2, Council Policies and the 'deemed-to-comply' provisions of the R-Codes with the exception of the following:

- a) The pool house is proposed to be built up to the southern lot boundary in lieu of the required 1 metre setback;
- b) The pool house is proposed to be setback 1.8 metres to the rear boundary in lieu of the required 6 metre rear setback; and
- c) The open space proposed is 59.53% in lieu of the required 60% open space.

Consultation with impacted neighbouring landowners for the proposed variations resulted in one (1) submission being received during the consultation period, which raised no objection to the proposed variations subject to the rear pool house wall being solid in nature. The pool house rear wall is shown as being solid in nature on the plans. The City also received no objection to the proposed boundary wall on the 13 April 2015 from the southern neighbouring landowner.

The following assessment of the variations is based upon the 'design principles' of the Residential Design Codes. The Council shall not refuse to grant approval to an application in respect of any matter where the application complies with the relevant development provision as stipulated under Clause 2.5.4 of the R-Codes.

6.1 Residential Design Codes

6.1.1 Variation clauses

- a. Boundary wall to southern lot boundary.

The proposal includes a boundary wall to the southern lot boundary for the proposed pool house. Under the 'deemed-to-comply' requirements of the R-Codes, boundary walls are not permitted as of right in an R10 coded area. As a result the proposed boundary wall is to be assessed against the relevant design principles of the R-Codes. Design Principle P3.2 (Lot Boundary Setback) of the R-Codes requires the following:

”Buildings built up to boundaries (other than the street boundary) where this:

- *makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;*
- *does not compromise the design principle contained in clause 5.1.3 P3.1 (wall setbacks, see below);*
- *does not have any adverse impact on the amenity of the adjoining property;*
- *ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- *positively contributes to the prevailing development context and streetscape.”*

Further to this, design principle P3.1 (wall setbacks) requires the following:

“Buildings set back from lot boundaries so as to:

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

The following is considered in response to these design principles, with regard to the current proposal plan.

Design Principle	Administration Response
Effective use of space	The boundary wall to the southern lot boundary permits a larger open uncovered area with direct access to northern sun in a location which will not be visible from the street.
Impact of building bulk	The bulk of the wall is minimised with no upper floor section above the pool house, the length being 7 metres and the height being 2.7m above natural ground level. The location, length and height ensures minimal impact upon the neighbouring landowner to the south.
Access to direct sunlight and ventilation	The neighbouring landowner to the south has their outdoor living areas and habitable spaces of the dwelling located further towards the front of the property, ensuring no impact upon the neighbour’s access to sunlight and ventilation as a result of the proposed boundary wall. The proposed dwelling has been designed to permit maximum access to northern sun for the outdoor living areas and main living areas of the dwelling with excellent east-west permeability for cross ventilation.
Overlooking and privacy loss	The boundary wall will provide privacy to the proposed pool house, with the location ensuring that the southern neighbour’s outdoor living areas and habitable spaces of the dwelling are not impacted.

Amenity impact	The boundary wall is not considered to have an adverse impact upon neighbouring landowners due to the location, height and length of the wall.
Access to direct sun to major openings & outdoor living areas	Please see above.
Contribution to prevailing development context and streetscape	The boundary wall is located 41.4 metres from the front boundary. Additionally, screening between the dwelling and the southern side boundary is required for the clothes drying area and some landscaping vegetation is proposed between the boundary wall at the rear of the property and the street. The design and location of the wall ensures that the boundary wall will not be visible from the street ensuring no change to the prevailing development context and streetscape.

b. Setback of ground floor to rear boundary.

The Ground floor pool house has a setback of 1.8 metres to the rear boundary in lieu of the required 6 metres. As a result the proposed boundary wall is to be assessed against the relevant design principles of the R-Codes. Design Principle P3.1 (Lot Boundary Setback) of the R-Codes requires the following:

“Buildings set back from lot boundaries so as to:

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

The following is considered in response to these design principles, with regard to the current proposal plan.

Design Principle	Administration Response
Impact of building bulk	<p>The neighbouring landowners to the rear of the subject property has their swimming pool adjacent to the proposed pool house with their cabana/pool house located on the rear boundary in the northern rear corner. The majority of the ground floor is setback well over the required 6 metre with only a 5 metre wall length being within the 6 metre rear setback.</p> <p>The small wall length and larger setback of the majority of the ground floor and entirety of the upper floor ensures building bulk has been minimised, especially compared to a</p>

	development which proposes a 6 metre ground and upper floor setback.
Access to direct sunlight and ventilation	The neighbouring landowner to the rear has their pool area adjacent and the location of the pool house further towards the south ensures that the rear neighbouring property will still have adequate access to sunlight and ventilation. As discussed earlier in the report, the subject dwelling has excellent east-west permeability for cross ventilation and the design permits excellent access to northern sun for the main living areas of the dwelling and outdoor living areas. The neighbouring landowner to the south will not be impacted by the rear setback variation in terms of access to sunlight and ventilation.
Overlooking and privacy loss	The neighbouring landowner has provided no objection to the reduced setback as the solid wall of the pool house will provide privacy to their pool area. It is considered that the design is likely to provide more privacy than an open area (such as an unenclosed alfresco) which has a larger setback. The impact upon the southern neighbouring landowners as discussed earlier is minimal due to the location of the pool house being further towards the rear of the property.

c. Open space

Under the 'deemed-to-comply' requirements of the R-Codes, properties within the R10 zone are required to provide a minimum of 60% of a subject site as open space. The dwelling proposes 59.53% open space. The site coverage is inclusive of covered areas which are over 50m² and excludes uncovered outdoor living areas raised more than 0.5m above natural ground level (such as roof terraces). The proposal includes a ground floor outdoor living area over 50m² in area which is considered the main contributor to the open space variation. The variation of 0.46% relates to an additional 0.47m² of dwelling/covered area which can be considered minor in nature given the lot area of 1011.7m². The dwelling proposes large eaves to reduce the dependence on mechanical means for heating and cooling of the dwelling. For this reason along with the open nature of the design, it is considered that the proposal meets the intent of the R-Codes requirements, as discussed below:

Design principle P4 (Open Space) of the R-Codes requires the following (emphasis added):

“Development incorporates suitable open space for its context to:

- *reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
- *provide access to natural sunlight for the dwelling;*
- *reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;*

- *provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
- *provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and*
- *provide space for external fixtures and essential facilities.”*

The following is considered in response to these design principles, with regard to the current proposal plan.

Design Principle	Administration Response
Reflects the existing or desired streetscape	The proposed dwelling will have an increased street setback than the current dwelling (which has a 7.5m setback) to comply with the City’s TPS2 9 metre setback requirement. As viewed from the street the development has compliant side setbacks and there is considerable landscaping proposed within the front setback area.
Access to natural sunlight for the dwelling	The dwelling has been designed with large eaves and the major habitable spaces (both internal and external) having access to northern sun.
Reduces building bulk and is consistent with the expectations of the applicable density code	The design of the dwelling has excellent east-west permeability with the design being separated into northern and southern sections by a central walkway/entry area in both the ground floor and upper floor. The upper floor is located towards the front of the lot, consistent with the location of the existing dwellings within the street. The design has indentations and protrusions in the street façade which reduces the appearance of building bulk as viewed from the street.
Provides an attractive setting for buildings, landscape, vegetation and streetscape	The front setback is proposed to be landscaped with semi-mature vegetation and a water feature is proposed to be provided around the path to the indented entry. The large front setback and design of the dwelling as viewed from the street will ensure the development will be located within an attractive setting as viewed from the street.

Opportunities for residents to undertake outdoor pursuits on site	There is a large outdoor living area with direct northern access in the rear setback, with a combination of covered outdoor living space, uncovered landscaped space and a pool area for the enjoyment by future residents. These areas are well connected to the dwelling's main living areas.
Provides space for external fixtures and essential facilities	There is still space around the dwelling for external fixtures and essential facilities which can be screened from view from the street.

In this instance, it is considered that the proposal meets the intent of the relevant 'design principles' of the R-Codes in relation to the provision of open space, and therefore is supported by the City.

6.2 Town Planning Scheme No. 2

Under Table 1 (Use Class Table) of TPS 2 the use 'Dwelling House – Single' is permitted on properties zoned Residential under the Scheme subject to compliance with the provisions of TPS2. The proposal is considered compliant with the provisions of TPS 2.

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

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

Considering the use of the land is not proposed to change and the development is considered to meet the 'deemed to comply' and 'design principles' of the R-Codes, it is considered that the development is also compliant with the above considerations.

7.0 Conclusion

The proposal is for new two-storey single house on the subject property. The proposal involves three variations to the 'deemed-to-comply' provisions of the R-Codes being a boundary wall to the southern side boundary in lieu of a 1 metre setback, a 1.8 metre


rear setback in lieu of the required 6 metre rear setback and open space of 59.53% in lieu of 60%. The variations are considered to be compliant with the relevant 'design principles' of the R-Codes.

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

8.0 Attachments

1. Locality Plan;
2. Site Survey;
3. Site Plan/Floor Plan;
4. Elevations;
5. Open Space Plan; and
6. Overshadowing Plan.

PD28.15 Heritage List and Municipal Inventory

Committee	12 May 2015
Council	26 May 2015
Applicant	City of Nedlands
Owner	Various
Officer	Christie Downie – Senior Strategic Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	PLAN-H-00015
Previous Item	PD05.13 26 February 2013 NOM 16 December 2014

1.0 Executive Summary

The purpose of this report is to present a Heritage List and Municipal Inventory for the City of Nedlands. The report will also explain the purpose of the 2 documents and clarify how the documents would be used within the City's planning framework.

For clarity, the following must be noted;

- A Heritage List is the modern term used when referring to the list of properties that are protected under a Town Planning Scheme (as per subsidiary legislation of the *Planning and Development Act 2005*)
- A Municipal Inventory is a list of places that the community see as important and/or representative of their heritage. These places may have aesthetic, historic, social or scientific value. A Municipal Inventory does not prohibit, restrict, or otherwise alter the development potential of the place (as per *Heritage of Western Australia Act 1990*).
- The only way a local government can actively protect buildings of heritage significance is under the Town Planning Scheme.

Currently, the City has a Heritage List (though with a different title) in Town Planning Scheme No. 2 that was last amended in 1990 and a Municipal Heritage Inventory from 1999.

The proposed Heritage List updates the properties protected by the Scheme. This list is based mostly on properties already on the State Heritage Register.

The proposed Municipal Inventory is a simple register of places that have heritage significance, based on the work completed by Palassis Architects to review the

existing 1999 Municipal Heritage Inventory. The proposed Municipal Inventory does not have management categories as the City does not have rules in place to protect properties on the Municipal Inventory. The proposed Municipal Inventory is for information purposes and to provide a record of the built heritage of the City of Nedlands at this time.

1.1 Recommendation to Committee

Council;

- 1. Endorses the proposed Heritage List (Attachment 1) as the accepted list of places to be given statutory protection; and**
- 2. Endorses the proposed Municipal Inventory (Attachment 3) for the purposes of consultation with all owners.**

1.2 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses heritage protection which is a component of the Natural and Built Environment Key Focus Area.

2.0 Background

The City of Nedlands engaged Palassis Architects in 2011 for the purpose of reviewing the existing Municipal Heritage Inventory (1999 MHI). The review was comprehensive and places were assigned a management category that gave a recommendation as to how a place should be dealt with into the future. The document also begins to address character areas and various other aspects of managing heritage in the local government area.

The reviewed Municipal Inventory (MI) document produced by Palassis Architects (Palassis MI) was first considered by Council in March 2012, but referred back to Administration for further consideration. The Palassis MI was again considered by Council in February 2013. At this time Council requested consultation be undertaken with owners affected by a new or altered entry in the Palassis MI.

The material provided to property owners during this round of consultation included a proposed management category. As a result of this consultation, administration investigated the establishment of a heritage incentives scheme, however this was not supported in the 2014-15 budget.

In December 2014, as a result of a Notice of Motion, Council resolved the following;

- (i) To request that administration as a matter of priority review the Palassis recommendations;*
- (ii) Produce from it a simple Municipal Inventory that also clarifies the way in which the document will be used.*

- (iii) *Heritage classifications and listings should be in categories and classes under existing rules as to protection.*

This report is intended to address this resolution and finalise the review process that commenced in 2011. As per the resolution the proposed MI and Heritage List documents are simple and the proposed rules as to protecting the properties have changed little from the existing rules.

2.2 Legislation / Policy

Heritage of Western Australia Act 1990 (Heritage Act)

Planning and Development Act 2005 (P & D Act)

Town Planning Regulations 1967

Town Planning Scheme No. 2 (TPS2)

3.0 Consultation Process

3.1 Previous Consultation

In April 2013 a substantial consultation process was undertaken. This consultation was based on the recommendations in the Palassis MI at that time, and therefore assumed management categories would be assigned to properties.

Approximately 75 places were included in this process, being places that were new to the MI or were proposed to have the management category changed. Approximately 40 written responses were received during the consultation. Seven responses were in support, the remainder either opposed or had issues with the proposed entry in the MI. Ten places were removed from the Palassis MI after the consultation period in response to comments provided.

The proposed Municipal Inventory (2015 MI) has been developed from the Palassis MI, taking into account feedback received during this consultation period.

3.2 Proposed Consultation

The *Heritage Act* requires that public consultation is carried out when compiling a MI.

The April 2013 round of consultation proposed management categories be assigned to places (and these categories would be subject to different levels of protection), as management categories are no longer proposed, all affected owners will again be offered opportunity to comment.

Consultation will involve letters to owners of all places on the proposed 2015 MI and/or proposed Heritage List, along with notice on the City's website. Comments will be collated, with a view to finalise the documents as efficiently as possible.

The 2015 MI and Heritage List will also be referred to the Heritage Council as per the *Heritage Act*.

Required by legislation: Yes No
 Required by City of Nedlands policy: Yes No

4.0 Budget / Financial Implications

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

5.0 Risk Management

The current 1999 MI is outdated and requires review. The local government is not in compliance with the *Heritage of Western Australia Act 1990* if the MI is not reviewed every four years.

The endorsement of a Heritage List is recommended as a response to the draft *Planning and Development (Local Planning Schemes) Regulations 2014*. The draft regulations require a local government to have a Heritage List and if it does not, the MI/MHI will become the Heritage List.

6.0 Discussion

6.1 Current Framework

Currently the City has two 'lists' that relate to heritage places, Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest (Attachment 2) which is within TPS2 and the 1999 Municipal Heritage Inventory (Attachment 4).

	Current Heritage Framework	Proposed Heritage Framework
Has statutory power under a Scheme.	Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest	Heritage List
Information only. No statutory power.	1999 Municipal Heritage Inventory	2015 Municipal Inventory

The differences in the documents can be seen by comparing Attachments 1-4.

Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest

The abovementioned is contained in Appendix II in TPS2. The statutory implications of inclusion in this appendix are detailed in Clause 5.9 of TPS2. Put simply, for properties in Appendix II, development of any kind cannot be commenced or carried out without consent in writing from the Council. Inclusion on this list does not necessarily preclude or prohibit development, but does give Council an opportunity to preserve or recognise the heritage values of a place and only allows demolition at Council's discretion.

Adding or removing places from this list (or varying any of the associated clauses) requires a scheme amendment.

In a more modern town planning scheme (and the Model Scheme Text), this section is referred to as a Heritage List.

Existing Municipal Heritage Inventory 1999 (1999 MHI)

The 1999 MHI entries are accompanied by 'place record forms' that explain and describe the place and the reason for its heritage significance. The 1999 MHI also assigns management categories (A, B, C or D). The places on this list are offered no statutory protection, however internal procedure may require referral to a heritage advisor if a development application is received. All places on the 1999 MHI are treated the same, regardless of their management category. Referral to the heritage advisor is at the discretion of the Planning Officer/Manager who may refer to the 'place record' to help understand the heritage significance of the place. The information provided by the heritage advisor may prompt the Planning Officer to initiate further discussion with an applicant but ultimately cannot prohibit alteration, redevelopment or demolition of a place.

6.2 Proposed Framework

Proposed Heritage List

A proposed Heritage List has been prepared to be endorsed by Council. The Heritage List contains the places that are intended to be protected by a planning scheme. Taking into account feedback received over the life of this project and the December 2014 Notice of Motion, there are few places on this list. It is based on the existing 'Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest', but removes entries that can no longer be located and includes entries that are already on the State Heritage Register.

The proposed Heritage List will not have effect until it is included within a planning scheme for the City (either via a scheme amendment or a new scheme) however it is presented at this time to;

- assist in clarifying the difference between a Municipal Inventory and a Heritage List, and

- ensure Council's position on the heritage places that are to be afforded statutory protection is clear in the event deemed provisions within the draft *Planning and Development Regulations* create ambiguity.

Proposed Municipal Inventory 2015 (2015 MI)

The proposed MI is included as Attachment 3, and is split into 3 sections:

- Residential Properties - are all in private ownership and includes flats in strata ownership.
- Commercial Properties – are also privately owned but are used for commercial purposes. Some of these places may include a residential component (ie a flat above a shop).
- Churches and Local, State & Federal Government Properties – includes places that do not fall into the previous two sections. Places within this section are varied but includes all places under the management of the City of Nedlands.

The sections are sorted by street address for ease of reference.

The proposed 2015 MI includes 40 places (39 residential, 1 commercial) in private ownership, which are not included in the current 1999 MHI. There are various reasons as to why the new places have been included.

In particular the following points are to be noted:

- Over the past 15 years, as new buildings replace older housing stock it becomes more important to record good examples of our built heritage as it ages.
- Approximately one quarter of these places are flats/maisonettes, which were underrepresented (generally not included) in the 1999 MHI.
- Many of the new places were identified in the 1999 MHI as requiring review at the next update.

The places on the proposed 2015 MI generally reflect the most current version of the document produced by Palassis Architects (which was amended after consultation). Palassis Architects identified these places as having heritage significance through research and site inspections. The 'place records' associated with the entries on the proposed 2015 MI include information on the construction of the place, historical notes, physical description and statement/s as to why the place has heritage significance. These 'place records' will be made freely available to anyone wishing to understand the heritage significance of a place or area.

It must be noted that while the Palassis document recommends management categories be assigned to places on the MI, the proposed 2015 MI **does not** include management categories or any strategies to incentivise the conservation of places on the MI. The proposed 2015 MI also **does not** include the identification of any 'heritage areas' that may be subject to different planning rules.

Like the current 1999 MHI, the proposed 2015 MI does not offer statutory protection to the places within it however internal procedure may require referral to a heritage advisor if a development application is received. Referral to the heritage advisor is at

the discretion of the Planning Officer/Manager who may refer to the 'place record' to help understand the heritage significance of the place. The information provided by the heritage advisor may prompt the Planning Officer to initiate further discussion with an applicant but ultimately cannot prohibit alteration, redevelopment or demolition of a place. Photographs are to be requested or taken wherever possible prior to substantial redevelopment or demolition.

There is no practical difference in the way properties on the current 1999 MHI are treated and the way properties on the proposed 2015 MI will be treated. It is anticipated the process may be easier to communicate without the added complication of management categories.

The proposed framework is intended to be simple but updated to align with current legislation and terminology. With this framework in place it will be easier in the future to adhere to review schedules and update lists as the built environment changes.


7.0 Conclusion

This report presents a proposed Heritage List and proposed 2015 MI to update the City's heritage planning framework in line with legislative requirements. The Heritage List is the places that are worthy of protection via a scheme and the proposed MI is the non-statutory, informative document. There are no other recommendations as to the management of heritage properties (ie character areas, management categories, other inventories) at this time.

8.0 Attachments

1. Proposed Heritage List;
2. Places of Natural Beauty and Historic Buildings and Objects of Historic or Scientific Interest;
3. Proposed Municipal Inventory; and
4. Current 1999 Municipal Inventory.

PD29.15	Town Planning Scheme No. 3
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Committee	12 May 2015
Council	26 May 2015
Applicant	City of Nedlands
Officer	Peter Mickleson - Director Planning & Development Services
Director	Peter Mickleson - Director Planning & Development Services
Director Signature	
File Reference	PLAN-009959
Previous Item	Nil

1.0 Executive Summary

The City has received notification (**Attachment 1**) that the Minister for Planning has given consent for draft Local Planning Scheme No. 3 (TPS 3) dated September 2010 to be advertised for public inspection subject to a significant number of modifications being made to the document.

The timeframe for making these modifications was very short and has now passed. However, Council has a number of options as to how it may deal with the Ministers recommendations.

Administration recommend that Council seek an extension of the 42 day timeframe for making changes to TPS3 in order for Administration to complete the Local Planning Strategy that will inform the content of TPS3. Once the LPS is completed, a redrafted TPS3 would be developed for Council approval and submitted to the WAPC.

1.1 Recommendation to Committee

Council

1. **Seek an extension of the 42 day timeframe for making changes to Town Planning Scheme No.3 in order for Administration to complete the Local Planning Strategy; and**
2. **Upon the completion of the Local Planning Strategy consider a re-drafted Town Planning Scheme No. 3 for submission to the Western Australian Planning Commission.**

1.2 Strategic Plan

KFA: Community Development

This item relates to a key strategic document that will shape the physical development of the community for a number of years into the future.

KFA: Governance and Civic Leadership

This item relates to a key strategic document that controls and manages land use activities within the City of Nedlands.

2.0 Background

The City has recently received notification (Attachment 1) from the Western Australian Planning Commission (WAPC) that the Minister for Planning has given consent for draft Local Planning Scheme No. 3 (TPS 3) dated September 2010 to be advertised for public inspection.

The WAPC are requiring a number of modifications to the originally submitted draft that would result in effect a total re-write of TPS 3. The modifications are required to be completed and submitted to the WAPC with 42 days so that the WAPC can check that the modifications have been carried out satisfactorily. Subsequent to this the WAPC will advise when the TPS 3 can be advertised.

Modifications

In summary the following modifications are required:

- Removal, and alteration of, all clauses that are not consistent with the current Model Scheme Text and Residential Design Codes (RCodes) until a Local Planning Strategy (LPS) is completed.
- Any variation to the Model Scheme Text and RCodes needs to be appropriately justified – the assumption by staff is that, without a Local Planning Strategy (LPS), the WAPC do not believe the current draft contains appropriate justifications.
- The WAPC advise that matters relating to street setbacks, maximum floor levels, building height and amenity are more appropriately dealt with by way of Local Planning Policies rather than being placed in the scheme itself.
- WAPC advise that the soon to be introduced reviewed Planning Regulations will necessitate further modification to the draft scheme to align with the changed model scheme text (in effect a double re-write of TPS3).

2.1 Key Relevant Previous Council Decisions

The Council has previously resolved (July 2009) to initiate TPS 3 and this report seeks confirmation that the Council still wishes to proceed with this new town planning scheme.

The Council has also more recently (February 2013) resolved to make a number of amendments to TPS 2 by way of an “Omnibus” scheme amendment. This amendment

has been lodged with the WAPC for permission to advertise and a response is pending. This amendment was lodged as a “stop gap” measure while the Council waited on a response to the submission of TPS 3 for approval to advertise from the WAPC.

3.0 Consultation

Required by legislation: Yes No
Required by City of Nedlands policy: Yes No

This report does not require that any consultation takes place however the process of completing a town planning scheme of amendment requires consultation at various stages of the process.

4.0 Legislation / Policy

Planning and Development Act 2005

5.0 Budget/Financial Implications

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

The proposed recommendation will not require any additional budget over and above that already approved. However any decision to duplicate work such as progressing the Omnibus amendment while also attempting to meet the recommendations asked for by the Minister for Planning is likely to require either additional budget or a reassessment of current workload priorities.

If the Minister for Planning does not accept the decision of Council and orders that an alternative program of work is undertaken a reassessment of budget requirements will be necessary.

6.0 Risk Management

The risks set out below need to be read in the context of the discussion below.

If the Council resolves not to make the modifications to TPS3 as recommended by the Minister or it seeks an extension of time to make the modifications that is not approved the Minister can take action under section 76 of the Planning and Development Act.

This provision allows the Minister to order the Council to make such changes as he recommends. This is what happened to the Waratah Ave Scheme Amendment where the Minister ordered that changes be made that were not consistent with the Council’s decision.

Administration is aware that community members have been lobbying the State Government to expedite the advertising and approval of TPS3 due to their

frustrations in the delays with the draft Scheme No. 3 and the relative age of TPS2 (30 years in April) which is seen as an impediment to their development aspirations.

Administration is of the view that there is a very real risk to Council of not proceeding with the Ministers recommended modifications for TPS3 and thereby being subject to an order under section 76 to make the modifications.

7.0 Discussion

WAPC Expectation

The WAPC are expecting the changes to be made to the draft TPS3 within the required 42 day period (21 April 2015) unless the Council applies for, and is granted, an extension of time or the Council resolves not to proceed with TPS3.

Can the changes be made within the 42 day timeframe?

By the time the Council considers this report the 42 day time period will have passed. However Administration are of the view that the Minister's recommendation could be completed within a relatively short timeframe (say 6 weeks) if all other strategic planning resources were diverted to making the requested modifications. It is likely that a small extension of time (several weeks up to 3 months) may be granted by the Minister to make the requested modifications.

However this timeframe would also need to allow for Council to be briefed on the totality of the modifications. It is anticipated that a number of briefings would be required to bring all Councillors up to speed with the modified contents of TPS3. A high level conversation about the changes could be easily arranged as part of a scheduled workshop.

What does this mean for the draft Omnibus Scheme amendment?

This amendment is currently following its own process in that it has been sent to the WAPC for approval to advertise. This is the same process that TPS3 went through.

Additionally Council resolved to reconsider, through workshops, specific matters within the Omnibus amendment such as on-site power generation. This reconsideration has yet to occur and Administration are currently preparing workshop material to be able to better explain the matters subject to reconsideration.

In discussion with staff at the Department of Planning (DoP) it is likely that the City will shortly receive a letter asking for modifications to the draft Omnibus amendment that effectively mirror the modifications asked for to TPS3. This would be consistent with Government policy in that both draft TPS3 and the draft Omnibus amendment are being required to be modified in accordance with the existing Model Scheme Text and the anticipated requirements of the proposed changes to the Town Planning Regulations due in July 2015.

It is interesting that the WAPC is likely to be asking for additional justification in relation to the Omnibus amendment, for variations to the RCodes, when the document submitted contain reasonably extensive justifications for all such

variations. Part of this issue could be the lack of a Local Planning Strategy (LPS) – required for all Town Planning Schemes – which sets out the higher level strategic issues that a Town Planning Scheme is trying to address.

However any further work on the Omnibus amendment must be balanced against the recommendation from the Minister to modify TPS3. Obviously it is not a good use of resources to be working on both.

New Town Planning Regulations

Adding further complications is the new Town Planning Regulations due to be released 1 July (date not confirmed). These regulations are proposing that all Town Planning Schemes across the State use the RCodes as a base set of ‘rules’ with local variations to be dealt with by way of Local Planning Policies (LPP). While ultimately a LPP does not have the same “weight” as a provision in the scheme it would appear that the DoP is requiring a higher and higher threshold for “non-standard” provisions to be incorporated into a scheme and significant justification will be required if such provisions are to be included.

Administration believe a “double-up” of effort is likely to occur if changes are made to draft TPS3 prior to the new regulations coming into effect. However the Minister has given 42 days for the modifications to be made and this date is prior to the scheduled commencement date of the new regulations.

The new regulations contain “deemed provisions”. This means that there will be a host of scheme provisions mandated by the State Government that will apply to every scheme in Western Australia. They will have automatic effect upon commencement of the Regulations being Gazetted (expected to be July 2015). **If there is any inconsistency between a deemed provision and a scheme the deemed provision prevails.** This is a complete reversal of the current situation where the scheme prevails over the RCodes.

The impact of the deemed provisions on the City’s current Town Planning Scheme No. 2 is significant as it will mean that several clauses within our scheme will no longer have effect, or have a different effect than that originally intended. In addition, as the TPS is over 5 years old, following gazettal of the regulations, no further scheme amendments will be able to be initiated to the existing TPS, unless the WAPC allows it (which is unlikely if we are not moving toward a new TPS).

Best Planning Option

Administration believe that the best planning solution is to focus on completing the Local Planning Strategy which is well in train, following consultation with Councillors at a briefing session and which the DoP has advised is a prerequisite to a new Town Planning Scheme. Reference to modifying the LPS is also contained in the recent letter from the WAPC. Once a LPS is drafted and endorsed by Council a new TPS3 will naturally fall out of this which is likely to be different from the current draft TPS3 but more aligned with DoP (and WAPC) recommendations and the likely directions required by the new Town Planning regulations but still able to accommodate issue specific controls (such as 9 metre setbacks) where satisfactorily justified in the LPS. However how soon this can be completed is difficult to confirm at this stage but is likely to be approximately 3-5 months.

Whether this timeframe is acceptable to the Minister will only be determined once a formal request is made.

Of course this option runs the risk of not being acceptable to the Minister due to the extended timeframes and the Council being ordered to make the recently recommended changes. Advice from the DoP is that they would prefer to see the TPS3 changes made now and the LPS developed later – which to administration seems back-the-front and not consistent with earlier advice.

Next Steps

A formal decision from Council will be required as to how it wishes to respond to the advice from the WAPC. Three broad options are available

1. Comply with the recommendation to make the modifications to TPS3, with or without a request to extend the 42 day timeframe.
2. Develop a revised TPS3 upon completion of the modifications to the LPS (work on the LPS is in full swing). This would require requesting an extension of the 42 day timeframe possibly for up to 12 months.
3. Resolve not to proceed with TPS3 and focus all efforts on the Omnibus amendment.

Option 1

The 42 day timeframe set by the Minister has now passed therefore this option will definitely require a request to extend the timeframe. If Council were to select this option Administration would recommend that the timeframe be extended to 30 June 2015.

Option 2

Administration recommend this option as the preferred option as the review of the LPS is underway and likely to be completed in 3-5 months. The subsequent work to rewrite TPS3 including necessary discussions with the Council is unknown but possibly an additional 6 months. There is a risk that such a timeframe will be unacceptable to the Minister however Administration believe it is the option that produces the best planning outcome.

Option 3

This is an option and would take the pressure off the 42 day timeframe set by the Minister. Additionally the Council's most recent decisions on the town planning scheme have asked that the Omnibus amendment be progressed. However Administration are aware that the Council is likely to receive a similar recommendation for changes to the Omnibus amendment as it has received for TPS3 and would therefore end up in the same situation as option 1. This option would also not alter the fact that the town planning scheme is now over 30 years old and the new town planning regulations will impose additional restrictions on such an old scheme. This option also carries a greater risk than option 2 in that it is not achieving a "renewal" of the scheme and that the Minister will find this unacceptable and order that changes to TPS3 be made.

8.0 Conclusion

Administration recommend that Council seek an extension of the 42 day timeframe for making changes to TPS3 in order for Administration to complete the Local Planning Strategy that will inform the content of TPS3. Once the LPS is completed a redrafted TPS3 will be developed for Council approval and submitted to the WAPC.

9.0 Attachments

1. Letter from WAPC 5 March 2015.