



City of Nedlands

Planning and Development Reports

Committee Consideration – 12 November 2019

Council Resolution – 26 November 2019

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Council: 26 November 2019

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| PD42.19 | Nedlands Town Centre Precinct Plan (Local Planning Policy) – Additional Budget Required |
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| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | City of Nedlands |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | The report writer previously worked with an Urban Planner who is now employed by a consultancy which provided a price estimate to the City for traffic services. |
| Previous Item | Nil |
| Attachments | 1. Summary of Estimate Responses (Confidential) |

1.0 Executive Summary

The purpose of this report is to request Council to approve additional budget allocation for Administration for further critical work required to be undertaken to support the draft Nedlands Town Centre Precinct Plan – Local Planning Policy (Precinct Plan), prior to the Precinct Plan being advertised for public comment. As identified in the Precinct Plan, the further work required includes built form and urban design analysis and a detailed traffic assessment. Administration have liaised with relevant consultants to provide an indication of the cost of this additional work including a requested expedited timeframe. Based on this correspondence, Administration estimates that an additional \$85,000 is required to undertake this work.

Following the traffic and built form work being undertaken, the City will have the critical detail that it needs to inform the proposed Precinct Plan and to provide detail on local traffic impacts, built form context analysis and options. Administration then intends to commence the advertising period for the draft Precinct Plan in February-March 2020.

2.0 Recommendation to Committee

Council

- 1. Instructs the CEO to undertake additional analysis regarding traffic and movement as well as built form and urban design analysis to further test the Draft Nedlands Town Centre Precinct Plan (Local Planning Policy) prior to advertising.**
- 2. Approves the additional budget funding of \$85,000, in addition to its existing budget, for the purpose of engaging consultants to deliver built form and traffic modelling for the draft Nedlands Town Centre Precinct Plan.**

3.0 Background

Administration have developed a Nedlands Town Centre Precinct Plan – Local Planning Policy which introduces local planning controls for the town centre. At the 24 September 2019 Council Meeting, Council considered the draft Precinct Plan and resolved to advertise it for public comment in accordance with the Planning and Development (Local Planning Scheme) Regulations 2015.

The implementation section of the draft Precinct Plan sets out the following further work which should be undertaken prior to advertising the plan for public comment:

- Built form modelling, including architectural/urban design perspectives/3D bulk and massing plans;
- A public realm design for the proposed new Florence Road Town Centre Heart; and
- Preliminary traffic advice for the precinct.

In addition, Administration believe that the built form analysis needs to test the proposed height and plot ratio proposals in order to derive options for built form context. This additional work will inform options which will be presented to the community in a visual manner. The additional traffic analysis is required to be further tested, modelled and evaluated, including testing the options for road closures, partial road closures and model the potential impact on road network, safety and movement. Administration intends to undertake the built form and traffic modelling prior to commencing advertising. The public realm plan will be prepared either concurrent with, or following, the advertising process, for the reasons outlined in the Discussion section below.

4.0 Discussion

Need for Further Work Prior to Advertising

Built form modelling and urban design

The draft Precinct Plan proposes the following key built form controls:

- Plot ratios of up to 6:1 (exceeding the plot ratio of 3:1 set out in the Residential Design Codes - Volume 2) (R-Codes Vol. 2);
- Concentration of building heights in close proximity to the Town Heart (between Mountjoy Road and Stanley Street), with the intensity of development transitioning to a lower scale towards the western and eastern boundaries of the precinct;
- Building heights of up to 20 stories, inclusive of height bonuses (as per the City's Local Planning Scheme No. 3 (LPS 3) the building height limits established in the R-Codes Vol. 2 do not apply within the precinct area);

The built form controls outlined above would allow for development of a scale which is vastly different to that which is currently in the precinct area and in some instances exceeds that of the Perth CBD. Built form modelling is therefore crucial in order to understand the potential impact or benefit of introducing the scale that could be introduced through the adoption of this draft Precinct Plan. The built form and urban design analysis will provide modelling and test of different built form context, For example “Podium and Tower” development, versus taller built form with lesser on ground building footprint.

The work will assist in providing a visualisation of the built form controls proposed under the draft Precinct Plan and to provide the ability to test various options. Furthermore, it is imperative that this modelling is undertaken prior to advertising, as it will provide the community with a more tangible sense of what is proposed, which will allow them to make more informed submissions during the advertising process.

The scope of the required built form modelling is as follows:

1. 2D street cross-sections for key parts of the precinct, showing the interface with the surrounding Residential R160 area, and illustrating the following provisions in the draft Precinct Plan:
 - Building heights (including height bonuses);
 - Building setbacks;
 - Indicative broad land uses – i.e. non-residential at ground floor; and
 - Indicative overshadowing onto adjoining buildings and public areas.
2. 3D perspectives of indicative built form based on maximum build out of precinct as per Precinct Plan.
3. Further architectural context analysis incorporating Nedlands based “character or style”.
4. Any further advice provided by the Office of the Government Architect.

The City does not currently have the required experience internally to develop the built form modelling required for the draft Precinct Plan. Therefore, Administration contacted six planning and urban design consultants to obtain price estimates for the required built form modelling. Three responses were received. The cost for built form modelling indicated by these responses range from \$10,000 to \$14,500. Given the discreet, specific nature of the scope for the built form modelling, the range of price estimates for the work was small (\$4,500 variance).

At the State Design Review Panel (SDRP) meeting on 15 October 2019, the SDRP advised the City that the scope of the built form work for the town centre should be expanded. Based on the price estimates provided, each 3D model costs between \$6,625 and \$8,500. If an additional three models are required, this would cost an additional \$19,875 - \$25,500. Therefore, to account for additional built form models required as part of this expanded scope, Administration estimates that an additional \$25,000 may be required.

Administration recommends that \$40,000 be allocated for the built form modelling, to allow for any potential price variance through the formal request for quote (RFQ) process.

Public Realm Design

The draft Precinct Plan proposes the following key public realm measures:

- Creation of an active town square in the previous Florence Road reserve, with a new shared pedestrian and slow-speed vehicle space with outdoor seating activated by a variety of uses; and
- Abundant landscaping, public art, bike racks and public seating within the town square.

The draft Precinct Plan identifies that a public realm design plan should be prepared prior to advertising the plan. It is noted, however, that the design of the public realm for the precinct will largely depend on the viability of the partial closure of Florence Road, given this is where the proposed town square is to be located. The public realm design plan is therefore contingent on the traffic modelling. If the traffic modelling finds that the partial closure of Florence Road is not feasible, then it would be redundant to have a public realm plan which proposes street furniture, landscaping and road treatments based on the partial closure. Therefore, Administration intends to prepare the public realm design plan following the traffic modelling being undertaken. So as to not delay the advertising of the draft plan, the preparation of the public realm design plan can run concurrently with the consultation period.

Preliminary traffic modelling and analysis

The draft Precinct Plan proposes the following key traffic measures:

- Partial closure of Florence Road, supporting one-way traffic in a southerly direction from Stirling Highway, subject to the establishment of east-west laneways between Dalkeith Road and Stanley Street; and
- New signalized intersections on Stirling Highway at Stanley Street and Smyth Road.

No traffic modelling or assessment has yet been undertaken to ascertain the feasibility of these proposed measures. As with the built form modelling, traffic modelling should be undertaken to test the draft Precinct Plan prior to advertising, so that stakeholders are presented with the feasibility of the plan and are therefore able to make more informed submissions during the advertising period.

Cost of Further Work

In order to establish an approximate budget for the further work, Administration consulted with a number of relevant consultants to obtain price estimates based on the scope of work outlined above. These price estimates are summarised below, and it is noted that a full copy of all relevant documentation received by the City has been given to the Councillors prior to the Council meeting.

Preliminary traffic modelling

The City does not currently have the required experience internally to prepare the traffic advice and modelling required to best inform and test the options presented through the draft Precinct Plan. Therefore, Administration have contacted seven transport consultants to obtain price estimates for the required traffic advice and modelling. Three responses were received. The cost for traffic advice indicated by these responses range from \$22,600 to \$85,000.

Compared to the scope for built form modelling, the scope for traffic modelling was broader in nature, which was reflected in the broad range of price estimates received (\$62,400 variance). It is noted that one traffic consultant provided two options for traffic models that could be prepared for the City's purposes:

- Option 1: use of modelling spreadsheet and SIDRA analysis
 - Six to eight-week turnaround
 - \$20,000 to \$40,000

- Option 2: development of detailed traffic assessment using specialized software
 - Eight to 12-week turnabout
 - \$50,000 to \$80,000

The consultant advised that the advantage of Option 2 is that the model created can easily be used to assess traffic issues for future proposals within the Nedlands Town Centre. Whilst it would be desirable to produce a traffic model that could be used to test future proposals within the town centre, the indicative timeframe provided for this option would not support advertising of the draft plan commencing in February/March 2020. Therefore, Option 1 would be more appropriate. By eliminating Option 2, the upper range of the price estimate drops to \$45,000. Administration recommends that this amount is allocated to the traffic modelling required for the draft Precinct Plan.

Total cost of further work

As noted above, the recommended budget allocation is \$40,000 for built form modelling and \$45,000 for traffic modelling, resulting in a total requested budget allocation of \$85,000.

It should also be noted that current and future development applications that will be determined by the JDAP do attract somewhat higher fees and therefore increased revenue to the City. In most cases these fees cover the costs of engaging consultants to undertake peer reviews of the applicant's supporting documentation. Over time we would expect the Precinct Plans to reduce the need for some of the peer reviews and therefore the possibility of a net gain in revenue exists.

Additionally, Statutory Planning revenue for the current financial year is \$56,000 ahead of budget at the end of September. If this level of activity continues revenue should be conservatively \$150,000 above budget by the end of the financial year.

5.0 Consultation

In the preparation of the draft Precinct Plan, pre-consultation was undertaken with the key stakeholders, including Councillors, property owners and developers within the precinct, and property owners and residents surrounding the precinct. The purpose of this pre-consultation was to engage the key stakeholders to identify and discuss key issues and priorities related to the future development of the precinct and to explore potential strategies that could resolve those issues. These issues and priorities identified throughout the pre-consultation process were used to inform the preparation of the draft Nedlands Town Centre Precinct Plan LPP.

Following the further traffic and built form work being undertaken, the draft Precinct Plan will be advertised as a local planning policy for 21 days in accordance with the Planning and Development Regulations 2015. Administration intends to commence the advertising period in February-March 2020.

It should also be noted that recent consultation exercises undertaken by staff have been very hostile with threats made against staff and Council generally. The Executive have recently introduced a new policy that provides for consultation exercises to be abandoned if a threatening or hostile atmosphere is developing as a means to discharge the CEO's duty of care towards staff. Experience has shown that an independent consultant undertaking the consultation is likely to be treated with more respect and courtesy than using administrative staff.

6.0 Risk

The draft Precinct Plan identifies further work which should be conducted prior to advertising the plan. If this work is not undertaken prior to advertising the plan, there is the risk that the community will not have sufficient information to make informed submissions to the City and that the options proposed remain untested and options presented to Council in terms of built form being unknown without effective comparison. If the advertising period for the draft Precinct Plan is delayed to wait for budgeting to be assigned in the 2020/21, then there is the risk that the City will not have adequate statutory controls in place in a timely manner in order to appropriately assess development applications in accordance with the City's and the community's vision for this area, as set out in the Local Planning Strategy, therefore it is identified that the risk in not undertaking this analysis is high.

7.0 Budget/Financial Implications

As discussed above, it is estimated that the built form and traffic modelling for the draft Precinct Plan will cost in order of an additional \$85,000. This amount is not allocated in the 2019/20 Planning and Development budget as it was not anticipated that such a plan would become an urgent priority within the current budget period. Whilst it is noted that the City's mid-year financial review is planned to take place in February 2020, Administration intends to commence advertising of the draft Precinct Plan in February-March 2020, and the consultants will need to have completed the further work prior to this time. Given the urgent nature of this further work, it is requested that Council approves \$85,000 in addition to its existing budget for the 2019/20 financial year.

8.0 Conclusion

The draft Precinct Plan identifies the need for built form and traffic modelling to be undertaken prior to advertising the plan. Following liaisons with consultants to obtain price estimates for this work, Administration is seeking the allocation of \$85,000 for this work to be undertaken as an urgent priority. Subject to securing the required budget, Administration will undertake a formal RFQ process and engage consultants accordingly. Administration is intending to have a consultant engaged early-mid December 2019 and then have the requested work finalised prior to advertising the draft Precinct Plan for public comment in February/March 2020.

Council need to be aware that as a formal decision will not be able to be made until the November Council meeting the request for quote process may be bisected by the Christmas break. This means that community consultation is unlikely to take place before February 2020. In any case consultation over the Christmas break is usually inefficient due to people being on holiday. However, the consultant appointed will be able to progress background work during this period.

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| PD43.19 | Broadway Precinct Plan (Local Planning Policy) – Additional Budget Request |
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| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | City of Nedlands |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | The report writer previously worked with someone who now works for a traffic consultancy which provided a price estimate. |
| Previous Item | Nil |
| Attachments | 1. Summary of Estimate Responses (Confidential) |

1.0 Executive Summary

The purpose of this report is to request Council to approve additional budget allocation for the development of the Broadway Precinct Plan (Precinct Plan). This will require a budget of up to between \$70,100 and \$244,500 which represents a range based on preliminary consultant quotations for technical work required to model and test the Precinct Plan. Administration suggest that a budget of \$130,000 is required to be allocated to commence the technical work in an expedited manner.

Given the developing complexity of the project it is requested that the City engage additional consultants to assist Administration in delivering a Precinct Plan in a timely manner whilst incorporating all the required technical expertise.

The additional budget allocation will allow for the City to engage the necessary technical consultants and gain high quality information. Administration have budgeted a nominal \$20,000 in the current budget which was to aid in community engagement and or the assistance of built form visual modelling therefore an additional \$110,000 would be required.

The additional research work required includes built form and urban design analysis, a more detailed community engagement program and detailed traffic modelling and assessment. The City has also sought price estimates for consultants to write the Precinct Plan document if administration could not resource this internally. Administration have liaised with relevant consultants to provide an indication of the cost of this additional work including a requested expedited timeframe. Based on this correspondence, Administration estimates that an additional \$60,000 is required to be funded to undertake the research and engagement work and an additional \$50,000 to engage consultants to write the Broadway Precinct Plan.

Administration, pending approval of funding will put out a formal request for quotation in early December 2019 for the components of the project which cannot be resourced within the planning department.

2.0 Recommendation to Committee

Council

- 1. Instructs the CEO to commence the development of the Broadway Precinct Plan as a Local Planning Policy.**
- 2. Instructs the CEO to undertake additional analysis regarding traffic and movement, community engagement and urban design analysis and modelling of the built form to provide adequate supporting documentation for preparation of the Broadway Precinct Plan.**
- 3. Approves the additional budget funding of \$110,000, in addition to its existing budget, for the purpose of engaging consultants to deliver community engagement, built form and urban design, traffic modelling and the Precinct Plan for the Broadway area.**

3.0 Background

Administration have developed, through engagement of a planning and community engagement consultancy, a Nedlands Town Centre Precinct Plan – Local Planning Policy (draft Precinct Plan) which introduces local planning controls for the town centre. With the influx of development applications within the Broadway precinct, the City plan to bring forward the preparation of the Broadway Precinct Plan in a similar manner to the Nedlands Town Centre.

Before a Precinct Plan for the Broadway area can be developed, consultants will need to be engaged to complete the following work to help prepare the document:

- Built form modelling, including architectural/urban design perspectives/3D bulk and massing plans;
- Engagement workshops with both the Council and the Community; and
- Preliminary traffic advice for the precinct.

In addition to this, Administration have sought quotes for the preparation of the Precinct Plan itself. Although administration seeks to undertake this work internally, budget has been requested to allow for this to be outsourced if timing and internal capacity become an issue. An indicative image of the Precinct Plan boundaries can be seen below in Figure 1. (Highlighted in yellow)



Figure 1: Broadway Precinct Plan Area

As shown in Figure 1 the proposed boundaries of the Broadway Precinct Plan are Stirling Highway to the north, Bruce Street, Kingsway, Melvista Avenue and Bessell Avenue to the west, Esplanade to the south and Broadway to the east.

4.0 Discussion

Built form modelling and urban design

The Broadway precinct is proposed to encompass properties zoned both Mixed Use and Residential. It also has a range of density codes ranging from R-AC3 along Broadway, R160 closer to Stirling Highway, R60 along Kingsway and R40 on the Esplanade. The built form provisions for these properties are dictated by the Residential Design Codes. The built form modelling will aim to illustrate both the topographical differences between the streets of Broadway and Kingsway and the difference in scale between the different densities which abut one another. The built form analysis will propose to test built form scenarios and their suitability given the current zoning and to provide the community with options in terms of primary controls relating to built form within the precinct.

The scope of the required built form modelling is as follows:

1. 2D street cross-sections showing the interface between the Mixed-Use R-AC3 and surrounding Residential R60 area, illustrating the following provisions in the plan:
 - Building heights as per R-Codes Volume 2
 - Building setbacks, as per R-Codes Volume 2
 - Indicative broad land uses – i.e. non-residential at ground floor
 - Indicative overshadowing onto adjoining buildings and public areas
 - Cross section of up to 3 option scenarios based on feedback from preliminary community consultation.
2. 3D perspectives of indicative built form based on maximum build out of precinct based on the above criteria in point 1.

The City currently does not have the required technical expertise to develop the built form modelling required for the draft Precinct Plan. Administration therefore have contacted five planning and urban design consultants to obtain price estimates for the required built form modelling work. Two responses were received with the cost indicated by these responses ranging from \$12,000 to \$24,500. Administration recommends that \$20,000 be allocated.

Preliminary traffic modelling and analysis

Traffic modelling is required to appropriately test the proposed development densification and the outcomes which may occur through the development under the new scheme, so that stakeholders are able to make more informed engagement throughout the creation of the Precinct Plan.

The implications of traffic movement associated with densification and full implementation of the LPS3. zoning requires further investigation. This investigation will assist the City in developing the Precinct Plan and associated primary controls, reflective of the modelling to be undertaken, testing the suitability of various density outcomes within the precinct.

Consultation

The City is seeking consulting services of a facilitator to guide stakeholder engagement sessions with Councilors, key landowners as well as the immediate surrounding community. Workshops are proposed to be undertaken in late February 2020 and will provide the community with the opportunity to shape the vision for the precinct as well as provide their comments and feedback regarding but not limited to built form, traffic and urban design related issues.

Precinct Plan

Administration have sought quotation for a consultant to develop the Precinct Plan similarly to how the process was undertaken for the Nedlands Town Centre. It is the intention of Administration to undertake the development of the Precinct Plan within the urban planning team's resources, however, parts of the document may need to be completed by a consultant to assist Administration to expedite the completion of the Precinct Plan, dependent on competing priorities.

The current program for the commencement of the Precinct Planning process sees the planning work commence in November 2019. As a result of the Christmas period, it is unlikely that a consultant will be appointed to undertake this work, therefore, the City's planning staff will fast track the process. The City is required to prepare the necessary context analysis, undertake pre-engagement with the community, develop the draft plan for the Council's endorsement as a draft. It will then need to formally advertise and engage with the community again before finalising the Precinct Plan before presenting it back to Council for formal adoption. If this Precinct Plan seeks to amend provisions within SPP7.3 R Codes Volume 2 which is outside of the provisions of Clause 1.2.2 but fit within the context of Clause 1.2.3 'Sections that may be amended or replaced with WAPC approval', the Precinct Plan will then require WAPC approval.

It is worth noting that the City is not compelled or required by statutory process to develop a Local Planning Policy, Local Development Plan or Precinct Plan as an instrument to guide development in this area. The R Codes and the LPS3 are currently in place and are applied as the local planning framework. It is the City's proactive approach to undertake further consultation, modelling and testing to ensure that the local planning framework and context is suitable, and given that the LPS3 is relatively new and only now being tested, it is seen as prudent from Administration that further work is required in relation to forming an appropriate planning control for the Broadway precinct as well as other areas within the City which have seen an increase in density applied through the new Scheme.

Cost of Further Work

In order to establish an approximate budget for the further work, Administration liaised with several relevant consultants in each field to obtain price estimates based on the scope of work outlined above. These price estimates are summarised below, and it is noted that a full copy of all relevant documentation received by the City has been given to the Councillors prior to the Council meeting. A formal RFQ process will be required following approval from Council to undertake this further work.

Preliminary traffic modelling

The City currently does not have the required expertise on staff to prepare the traffic advice and modelling required to best inform and test the various options which will be provided for the Precinct Plan. Administration have contacted five transport consultants to obtain price estimates for the required traffic advice and modelling. Three responses were received with the cost for traffic advice and modelling indicated by these responses ranging from \$17,600 to \$100,000.

Compared to the scope for built form modelling, the scope for traffic modelling was broader in nature, which was reflected in the broad range of price estimates received (\$82,400 variance). It is noted that one traffic consultant provided two options for traffic models that could be prepared for the City's purposes:

- Option 1: Broadway corridor only analysis
 - \$15,000 to \$50,000
- Option 2: Stirling Highway, Broadway and Hampden Road corridor analysis
 - \$30,000 to \$100,000

The consultant was of the view that it will prove to be very difficult to obtain meaningful traffic modelling results if the Broadway corridor is assessed in isolation without considering other nearby intersections and the broader area. Therefore, they have provided estimates for both the Broadway Corridor only and the wider area. Administration recommends that \$50,000 be put aside for traffic modelling of the broader area. If Council wish to look at the Broadway corridor in isolation a budget of \$30,000 would likely be needed.

Community Consultation (facilitated workshops)

The City currently does not have the required experience on staff to undertake the stakeholder and community consultation required for the draft Precinct Plan. Administration have therefore contacted seven engagement consultants to obtain price estimates for the required stakeholder consultation. Four responses were received with the cost ranging from \$7,500 to \$35,000. Most consultants who provided estimates gave a price range between \$7,500 to \$14,000, therefore Administration would recommend a budget of \$10,000 be allocated for stakeholder engagement.

It should also be noted that recent consultation exercises undertaken by staff have been very hostile with threats made against staff and Council generally. The Executive have recently introduced a new policy that provides for consultation exercises to be abandoned if a threatening or hostile atmosphere is developing as a means to discharge the CEO's duty of care towards staff. Experience has shown that an independent consultant undertaking the consultation is likely to be treated with more respect and courtesy than using Administrative staff.

Precinct Plan

Administration currently plan to undertake the Precinct Planning for Broadway internally, although due to high volumes of work not all elements may be able to be completed internally in a timely manner. For this reason, the City has contacted seven planning consultants to obtain price estimates for the creation and development of a Precinct Plan for the Broadway area. Two responses were received with the cost ranging from \$33,000 to \$85,000. As the City intends to undertake most of the work required for the Precinct Plan in house, Administration would recommend a budget of \$50,000 be allocated as this will provide the necessary resources to expedite the completion of the Precinct Plan where needed by utilising consultant support.

Total cost of further work

As noted above, the recommended budget allocation is \$20,000 for built form modelling, \$50,000 for traffic modelling, \$10,000 for stakeholder consultation and \$50,000 for completion of the Precinct Plan, resulting in a total requested budget allocation of \$130,000. \$20,000 has already been allocated within the 2019/2020 Annual budget so therefore a requirement of \$110,000 is being sought to undertake the necessary works to develop a comprehensive Precinct Plan for Broadway.

It should also be noted that current and future development applications that will be determined by the JDAP do attach somewhat higher fees and therefore increased revenue to the City. In most cases these fees cover the costs of engaging consultants to undertake peer reviews of the applicant's supporting documentation. Over time we would expect the Precinct Plans to reduce the need for some of the peer reviewing and therefore the possibility of a net gain in revenue exists.

Additionally, Statutory Planning revenue for the current financial year is \$56,000 ahead of budget at the end of September. If this level of activity continues revenue should be conservatively \$150,000 above budget by the end of the financial year.

5.0 Risk

If adequate budget is allocated to commence the necessary modelling and testing for the Broadway Precinct Plan the result is likely that the City will not have a local planning policy considered within the Broadway area when development applications are received for a longer period of time. If funds are not provided Administration will then need to table a request for funding at the mid-year budget review which would then cause greater delays for the development of the necessary local planning framework. The Broadway area has recently had an influx of development applications and interest and a lack of a detailed framework to guide the outcomes within the area is a risk. Without the prioritisation of this work the risk is that more developments will be lodged and assessed in accordance with the current LPS3 and R Code planning framework only.

6.0 Budget/Financial Implications

Administration have budgeted \$20,000 towards the Strategic Planning Project of Broadway Precinct Plan. This was intended to fund the engagement of a community workshop facilitator as well as for incidentals relating to the development of the Precinct Plan itself. As discussed above, it is estimated that the Broadway Precinct Plan and supporting documentation will cost in order of up to \$110,000 if the City chooses to engage consultants to provide full and thorough modelling and testing of development scenarios based on the key components which may influence local neighborhood amenity being built form and urban design and traffic management.

Whilst it is noted that the City's mid-year financial review is planned to take place in February 2020, Administration intends to commence this project in December 2019 given the urgent and immediate development pressures being faced within this precinct. It is therefore requested that Council approves additional funding of \$110,000 in addition to its existing budget for the 2019/20 financial year.

7.0 Conclusion

Administration will require a total budget of \$130,000 of which an additional \$110,000 is requested as a priority to commence the technical work required including built form and urban design analysis, community engagement and a detailed traffic assessment. Without additional immediate funding Administration does not have the in-house expertise to complete the necessary work and therefore the project will not be able to commence until the adequate budget, or additional staff, have been allocated.

Council need to be aware that as a formal decision will not be able to be made until the November Council meeting the Request for Quote process will be bisected by the Christmas break This means that community consultation is unlikely to take place before February 2020. In any case consultation over the Christmas break is usually inefficient due to people being on holiday. However, the consultant appointed will be able to progress background work during this period.

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| PD44.19 | No. 40 Jutland Parade, Dalkeith – Additions (Stair landing) to Single House (Retrospective) |
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| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | Urbanista Town Planners |
| Landowner | Mr M R Franco |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | Nil. |
| Report Type Quasi-Judicial | When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| Reference | DA19/39448 |
| Previous Item | DA14/307 – PD17.3 (of 2015) |
| Delegation | In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received. |
| Attachments | <ol style="list-style-type: none"> 1. Site photographs 2. Department of Biodiversity, Conservation and Attractions referral response. 3. Applicant's justification <ol style="list-style-type: none"> 1. Plans (Confidential) 2. Submission (Confidential) |

1.0 Executive Summary

The purpose of this report is for Council to determine a retrospective development application received from the applicant on the 10 September 2019, for an existing staircase landing to a residential property at No. 40 Jutland Parade, Dalkeith.

The staircase landing is located between the river foreshore and the rear retaining wall. The staircase landing is a maximum of 2.3m above natural ground level and located up to the western side lot boundary.

The dwelling which is currently still under construction has previously been approved at Council in April 2015 and subsequent amendments approved under delegation in August 2019 after extensive mediation at the State Administrative Tribunal.

The application was advertised to the impacted adjoining western neighbour in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. An objection was received during the advertising period.

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

2.0 Recommendation to Committee

Council approves the retrospective development application dated 10 September 2019 for Additions (Stair landing) to Single House at No. 40 (Lot 1000) Jutland Parade, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. The previous development approval (DA18/33555, dated 15 August 2019) and conditions there-in, remain in effect. This excludes the plans approved as part of the previous development application.**

Advice Notes specific to this proposal:

- 1. The applicant shall make application to the City's Building Services for a Building Permit, to acknowledge any unauthorised works.**

3.0 Background

3.1 Land Details

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| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Residential |
| R-Code | R12.5 |
| Land area | 1867m ² |
| Land Use | Residential |
| Use Class | P |

3.2 Locality Plan

The subject property is bounded by Jutland Parade to the north and the Swan River to the South. The river reservation does not protrude into the property as the river reservation was excised from the lot when the lot was previously subdivided (and then re-amalgamated later).

The property has a significant slope of 24m across the site (from the road down to the river). The house (which is still under construction) is located on the southern portion of the lot and is being constructed concurrently with no. 38 and no. 36 Jutland Parade, Dalkeith.



3.3 History

There is significant history on the subject property (and no. 36 and 38 Jutland Parade) dating back to 2010. The houses at no. 36, no. 38 and the subject property currently under construction were approved by Council in April 2015 after a significant period of time in mediation at the State Administrative Tribunal with the City, the landowners (and their legal representation) and the Department of Biodiversity, Conservation and Attractions (DBCA – also known as the Swan River Trust).

The City became aware of a number of breaches in mid-2017 which included (but not limited to) a staircase in lieu of a ramp down the western side of the subject property, significant changes to the rear retaining walls, the levels between the river and retaining walls and the boathouse (on no. 38 Jutland Pde). The applicant lodged a development application in July 2017 for the staircase along the western side of the lot at no. 40 Jutland Parade, Dalkeith. The City proceeded to refer the application to the DBCA and conduct neighbouring landowner consultation, however the City and DBCA were unable to process the application further without understanding the staircase in context of the other deviations from the approved plans which required more detailed plans.

The applicant did not provide this information initially and appealed to the State Administration Tribunal (SAT) after the application had been with the City for over 90 days in January 2018. The City and the applicants were directed to mediation to attempt to resolve the matters at hand. As the applicants had not provided the requested information, the City issued s.213 and 214 directions (under the Planning and Development Act 2005) to cease works and remove the unauthorised rear retaining walls in March 2018. The applicants also appealed these directions and successfully had the stop works directions (s.213) limited to an area of 10m from the rear retaining walls and were able to also have the remove directions (s.214) incorporated into the existing development application appeal mediations.

The City entered into a lengthy mediation process with the DBCA and the applicants to have additional information lodged and revised to address the rear retaining wall and landscaping area (between the retaining and river) issues. In late 2018, the applicants brought in new representation into the process with significant local and state government experience which allowed significant progress to be made between parties. The applicants lodged retrospective development applications in late 2018 and early 2019 for all three lots (no. 36, 38 and 40) and the DBCA provided comment of conditional support for the developments in August 2019. This allowed the City to withdraw the directions shortly after this advice was received.

The City was able to issue a development approval under Local Planning Scheme no. 3 for no. 38 Jutland Parade in August 2019 (MRS approval still required). The City was able to issue approval for the retrospective works at no. 40 Jutland Parade in August 2019 with the exception of the stair landing after consultation was conducted by the applicant and the impacted western neighbouring landowner provided non-objection to the development with the exception of the area between the river and the retaining wall. The development application at no. 36 Jutland Parade is still being processed by the City at this time.

As a result of the above, the applicants withdrew their appeal for the development application lodged with the City in 2017 for the staircase at no. 40 Jutland Parade, Dalkeith. This allowed the applicant and the City to move out of the SAT as significant efforts had been made on both parties' sides to resolve non-compliances at the subject property.

The applicant has lodged a development application for the stair landing only. All other works between the river and the rear retaining wall comply with the City's Local Planning Scheme No. 3 and the deemed to comply provisions of the R-Codes and therefore were approved as part of the 2018 development application in August 2019.

4.0 Application Details

The applicant seeks retrospective development approval for a stair landing located up to the western side lot boundary between the rear retaining wall and the river. The development has been referred to the DBCA for comment and they have provided conditional support for the development.

By way of justification in support of the retrospective development application the applicant has addressed the submission received on this development application. This justification has been provided as an attachment to this report (see attachment 3).

5.0 Consultation

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

- Site works; and
- Setback of retaining walls.

The development application was therefore advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to the western neighbouring landowner. One objection was received.

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

| Submission | Officer Response | Action Taken |
|--|---|--|
| <p>My primary concern is the extent of modifications to the site work requirements on the western boundary which have resulted in the addition of considerable building bulk due to the construction of the concrete stairs and adjoining landing above NGL, forward of the approved river setback line. The extent to which the modifications to the staircase and landing, as recommended in this submission, will be effective in improving the amenity outcomes for my property depends upon the willingness of the Applicant to address the cumulative impacts of these features which currently detract from the existing residential amenity and character.</p> | <p>The stair landing is the only aspect which requires development approval. Further to this, the balustrade above is 1.4m in height and is constructed of glass which will allow views to be maintained to the east of the western neighbouring property. The staircase is therefore comparable to a dividing fence (permitted to be 1.8m as of right) in terms of obstruction and therefore considered to be an appropriate bulk and scale.</p> | <p>Complies with design principles – no action required.</p> |
| <p>The modifications sought in relation to the site works associated with the construction of the staircase landing on the western boundary represent significant departures to the Deemed-to-comply provisions of the R-Codes. These differences negatively impact on the amenity of my property as a result of the</p> | <p>The impact on the western neighbouring property from the staircase should be considered in the context of the slope of the site, the need to obtain access to the river and also the area impacted adjacent on the western neighbouring property. The property has a significant</p> | <p>Complies with design principles – no action required.</p> |

| | | |
|---|---|----------------------------|
| <p>significant departure from the natural ground level at the lot boundary.</p> <p>In my opinion, as the staircase and landing is well above the natural ground level on the boundary, it therefore does not respond to the natural features of the site. With the addition of a proposed dividing fence (balustrade) above the 1.802m (max.) natural ground level variation arising from the constructed staircase landing, the overall structure results in an overbearing feature adjacent to the outdoor living areas in the southern portion of my property and does not respond to or respect the natural features of the site or the natural ground level at the boundary.</p> | <p>slope and hence access to the river is safest through means of a staircase rather than a ramp. Access is required to the area between the river and the retaining wall to ensure that the landscaping plan is complied with and the landscaping can be maintained to maturity. Further to this, the staircase is adjacent to the escarpment area and is not used for outdoor living area as it is not directly accessible from the dwelling. As building height is not the subject of this application, views of significance are not able to be taken into consideration.</p> | |
| <p>No justification has been presented to explain why the staircase and landing have been constructed to this height on the boundary. These considerations give rise to recommended modifications to mitigate the impact of the constructed staircase and landing on the amenity of my property.</p> | <p>Please see applicant's response to your submission in Attachment 3.</p> | <p>No action required.</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.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

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

6.2 Policy/Local Development Plan Consideration

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

The applicant is seeking assessment under the Design Principles of the R-Codes for site works and setback of retaining walls as addressed in the below table:

Element 5.3.7 –Site Works and 5.3.8 – Setback of Retaining Walls

| Design Principles |
|--|
| <p>The application seeks assessment under the design principles which are as follows:</p> <p>“P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</p> <p>P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.”</p> <p>“P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.”</p> |
| Deemed-to-Comply Requirement |
| <p>All fill behind the street setback line and within 1m of a lot boundary, not more than 0.5m above the natural ground level at the lot boundary.</p> <p>Retaining walls greater than 0.5m in height set back from lot boundaries in accordance with the setback provisions of Table 1.</p> |
| Proposed |
| <p>The stair landing is a maximum of 2.3m in height above natural ground level and located up to the western side lot boundary.</p> |
| Administration Assessment |
| <p>The stair landing is not able to be lowered as the staircase between the subject stair landing and the next one further north along the western boundary traverses a sewer line which requires a minimum vertical clearance and the flights of stairs are permitted to a maximum number of steps as per the BCA. The staircase down the western side of the property is required for access down to the river to fulfil the landscaping plan for the foreshore area.</p> <p>The staircase serves an important access function to allow the area between the river and the retaining wall to be landscaped and this landscaping to be maintained – the amelioration benefits from this serve a greater public benefit.</p> <p>The stair landing is concealed by the dividing fence, with the fencing material approved as glass (at the neighbouring landowner’s request) to ensure view lines are maintained. The area of the neighbouring property where the staircase is visible is limited to a lawn area at the top of the river escarpment which is not considered to be outdoor living area as it is not directly accessible from the dwelling.</p> |

7.0 Conclusion

The development application the subject of Council’s consideration is limited to the stair landing located up to the western side lot boundary between the river and the retaining wall at the subject property.

Administration has assessed the development against the relevant design principles of the Residential Design Codes and other matters local governments can take into consideration (Clause 67 of the 2015 regulations) and has determined that the staircase has limited impact on the western neighbouring property and serves an important function of public benefit to landscaping and maintain the landscaping of the river escarpment which will ameliorate the impact of the development as viewed from the public realm. The development is therefore recommended for conditional approval.

Taken from western neighbouring property

Staircase landing the subject of this application shown in red. All other works approved.





Department of **Biodiversity,
Conservation and Attractions**



Your ref: DA18-33555
Our ref: 2019/1303
Enquiries: Greg Comiskey
Phone: 9278 0922
Email: greg.comiskey@dbca.wa.gov.au

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

City of Nedlands
Received
06 August 2019

Dear Ms Bainbridge

**CLAUSE 30A(2)b(i) – SINGLE RESIDENCE – LOT 1000 (40) JUTLAND PARADE,
DALKEITH**

Thank you for providing the Swan River Trust (the Trust) with the opportunity to comment on the above development application received on 7 May 2019.

The proposal is being processed pursuant to Clause 30A(2)b(i) of the Metropolitan Region Scheme, as the proposed development is within a lot that abuts land within the Swan Canning Development Control Area.

The Department of Biodiversity, Conservation and Attractions (the department) has assessed the application on behalf of the Trust, and you are advised that the department has no objections to the proposal, subject to the following conditions:

1. The applicant shall ensure that all contractors and personnel involved in the works, activities, operations and/or development approved by the City of Nedlands are familiar with the conditions and requirements of this approval at all times.
2. Prior to any fill and/or topsoil being brought onto the site, the applicant shall ensure that all material is certified clean, uncontaminated, and free from rubble, weeds and disease and is geotechnically suitable for the proposed works.
3. Approval to implement this decision is valid for two (2) years from the date of the approval. If substantial on-site works have not commenced within this period, a new approval will be required before commencing or completing the development.
4. Approval is subject to implementing the works in accordance with the conditions of this planning approval including the following approved plans and documents:
 - a. 0146-LS-RV206 SITE SURV-rock PLAN 36-38-40(1-100@A1 1-200@A3) Amended in Red (Rev E)
 - b. 0146-LS-RV901.1 PLAN40-GRADING_(1-100@A3) (Rev G)
 - c. 0146-LS-RV901.2 PLAN40-REVEG&TREES_(1-100@A3) (Rev G)
 - d. 0146-LS-RV901.3 PLAN40-PLANT KEY SCHEDULE_(1-100@A3) (Rev G)
 - e. 0146-LS-RV901.4 PLAN40-IRRIGATION_(1-100@A3) (Rev A)

Rivers and Estuaries Branch
Locked Bag 104, Bentley Delivery Centre, Western Australia 6983
Phone: (08) 9219 9000 Email: rivers.planning@dbca.wa.gov.au
www.dbca.wa.gov.au

- f. 0146-LS-RV904.1 FINISH_(1-100@A3) (Rev E)
 - g. 0146-LS-RV904.2 SURFACEFINISH_(1-100@A3) (Rev E)
 - h. 0146-LS-RV905.1 RIVER ELEVATION WEST_F(1-100@A3) (Rev F)
 - i. 0146-LS-RV905.2 RIVER ELEVATION EAST_F(1-100@A3) (Rev F)
 - j. 0146-LS-RV906.1 SEC RV21 NO40_(1-100@A3) (Rev D)
 - k. 0146-LS-RV906.4 SEC DETAILS_(1-100@A3) (Rev F)
 - l. 0146-TRANEN-40_P848A-01 40 Jutland Pde Landscape Management Plan 190619 (Rev 0)
 - m. 190765-40-S1 ENGINEER CERT- #40 LIMESTONE ARMOUR (Rev 2)
 - n. 190765-40-S2 ENGINEER CERT- #40 INORGANIC EROSION CONTROL (Rev 2)
 - o. Construction Environmental Management Plan as amended in red and dated 6 August 2019
5. The area between the Swan River and the approved residential dwelling is to be landscaped, stabilised, irrigated and maintained in accordance with the approved plans to the satisfaction of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.
 6. Any changes to the approved landscape plans are to be approved by the City of Nedlands on the specifications of the Department of Biodiversity, Conservation and Attractions prior to implementation.
 7. For 10 years from the date of occupation of the residential dwelling, or until approximately 75% of screening, by vegetation, of the retaining structure (when viewed from the river) is achieved, an annual report with photographic documentation is to be submitted to the City of Nedlands and the Department of Biodiversity, Conservation and Attractions demonstrating progress against and compliance with the approved landscape plan (see **Advice Note 2**).
 8. In the event that the landscaped area between the Swan River and the approved residential dwelling does not achieve approximately 75% screening by vegetation of the retaining structures, the landscape plan is to be updated and approved and the amendments implemented to the satisfaction of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.
 9. The maximum height of the constructed boulder/rock structures within 10 meters of the Parks and Recreation reserve is not to exceed 1.5 meters or as otherwise agreed with the of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.
 10. In the event the land reserved for Parks and Recreation purposes is acquired by the Crown, all structures are to be removed and the land made good at the owners expense of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.

During works

11. Should any inadvertent damage to the foreshore, riverbank or waterway occur beyond the scope of the approved works, the applicant is required to notify the Department of Biodiversity, Conservation and Attractions within 48 hours and make good the damage to the satisfaction of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.

On completion of works

12. Upon completion of the works, all waste materials, equipment and machinery shall be removed and the site cleaned-up to the satisfaction of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.

Prior to occupation

13. Prior to occupation of the residential dwelling confirmation is to be provided that substantive works relating to landscaping and stabilisation of the land between the Swan River and the approved residential dwelling have been undertaken to the satisfaction of the City of Nedlands and to the specifications of the Department of Biodiversity, Conservation and Attractions.

ADVICE TO APPLICANT

1. With regard to **Condition 4**, all proposed landscape materials and installation is to be installed in accordance with the applicable technical specifications including:
 - p. 0146-HYDRO-SOAKWELL SUMP SERVICES IN_a3
 - q. Global-Synthetics-Secutex-Brochure
 - r. 0146-spec-GS Jute-Mesh-Soil-Saver-Blanket-WEB (a4)
 - s. 0146-spec-GS Miracell-Data-Sheet (a4)
 - t. 0146-spec-SOAKWELL SUB-SOIL_a303042019
 - u. Propex-Geotextile-Data-Sheet
 - v. ProDrain-30mm-Drainage-Cell-Data-Sheet
2. With regard to **Condition 7**, it is noted that the approved landscape plan aims to achieve significant screening by vegetation of the proposed retaining structures of approximately 75%. As such, the annual report is to include an assessment of the proportion of screening of the buildings when viewed from the river.
3. The applicant is advised that sediments must not be discharged into the Swan Canning Development Control Area and/or the Swan River, in accordance with the Environmental Protection (Unauthorised Discharge) Regulations 2004.

If you have any queries regarding this matter, please contact the officer above. In all correspondence please quote the above reference number.

Yours sincerely



Jacey Mills
A/Manager, Statutory Assessments

As delegate of the Swan River Trust
Under Section 28B(2) of the SCRM Act 2006

📅 August 2019

16 October 2019

council@nedlands.wa.gov.au
Attn: Kate Bainbridge
Coordinator Statutory Planning
City of Nedlands
71 Stirling Highway
Nedlands WA 6909

Dear Ms Bainbridge,

40 JUTLAND PARADE DALKEITH – PROPOSED RETAINING WALL

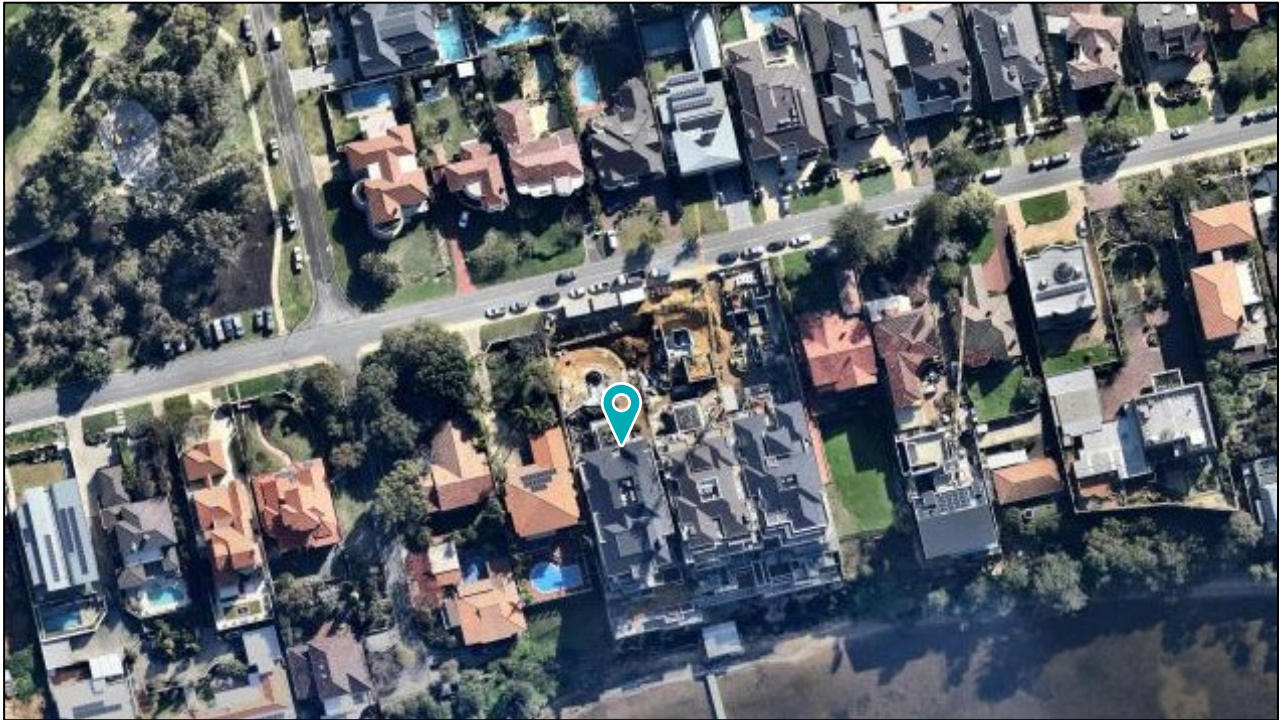
Urbanista Town Planning is the applicant on behalf of the landowner of No. 40 Jutland Parade, Dalkeith for the retaining wall, subject of this application.

This letter details how the retaining wall is compliant with the Residential Design Codes and addresses the concerns raised by the adjoining landowner at No. 42 Jutland Parade, Dalkeith.

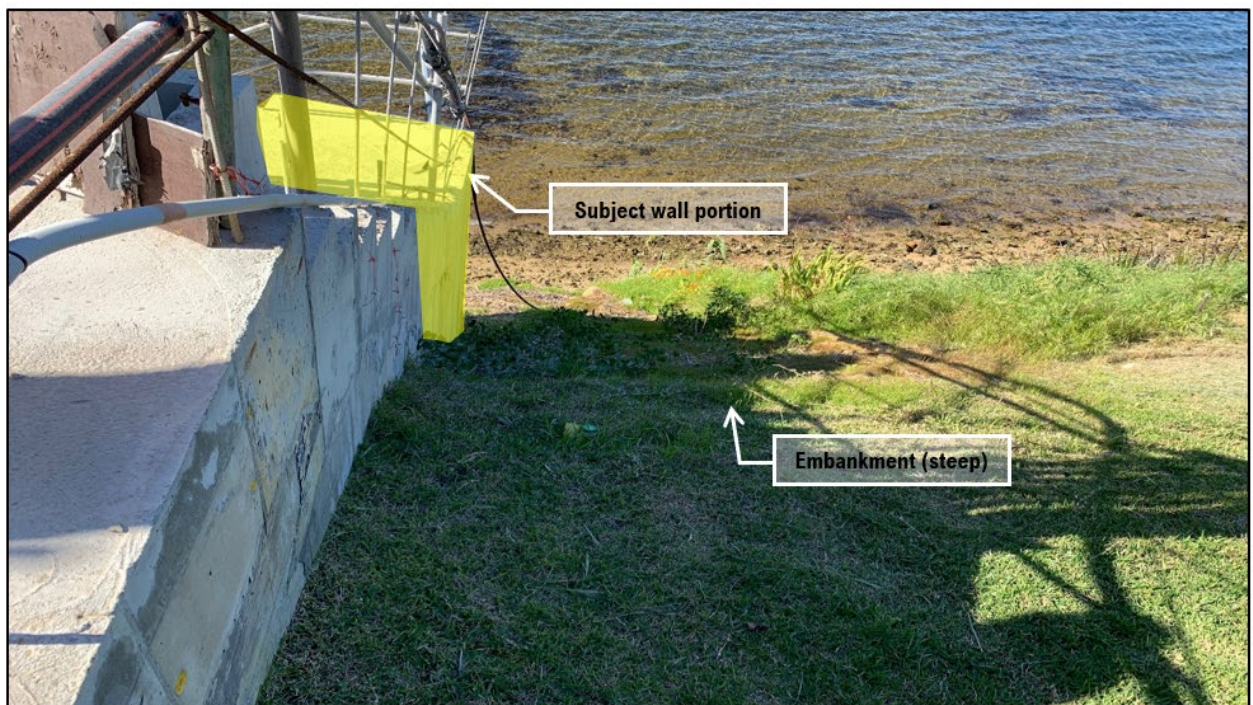
BACKGROUND & SITE CONTEXT

The subject site is currently under construction for a single dwelling. The dwelling itself has been approved by the City, with the most recent amended development application being approved in 2019. The constructed retaining wall along the western boundary was applied for under a separate application, which is the subject of this application. However, all other components of the dwelling and incidental structures have been approved by the City, Council and Department of Biodiversity, Conservation and Attractions.

This application was advertised for a period of 14 days by the City of Nedlands. Whereby one letter of concern was received by the adjoining landowner.



Site aerial image. Source: Nearmap 2019.



Photograph showing subject wall portion/landing area within the Swan River embankment area.
Photo demonstrates the difficulty in viewing and receiving any perceptible impact from the subject wall portion.

PLANNING FRAMEWORK

The planning framework which applies to the subject site notably includes the following key planning documents:

- State Planning Policy 7.3 Volume 1, Residential Design Codes
- City of Nedlands Local Planning Scheme No. 3
- City of Nedlands Local Planning Policy Fill and Fencing Policy

PLANNING ASSESSMENT

The application is seeking consent for a portion of retaining wall which has a length of 1.8 metres and a varying height between 0.775m to 2.302m along the western boundary. The purpose of the retaining wall is to facilitate a compliant staircase to the river foreshore which has been approved by the Department of Conservation, Biodiversity and Attractions (DBCA).

Notwithstanding the above, the application requires consideration against the design principles of clause 5.3.8 relating to retaining walls of the R-Codes as follows:

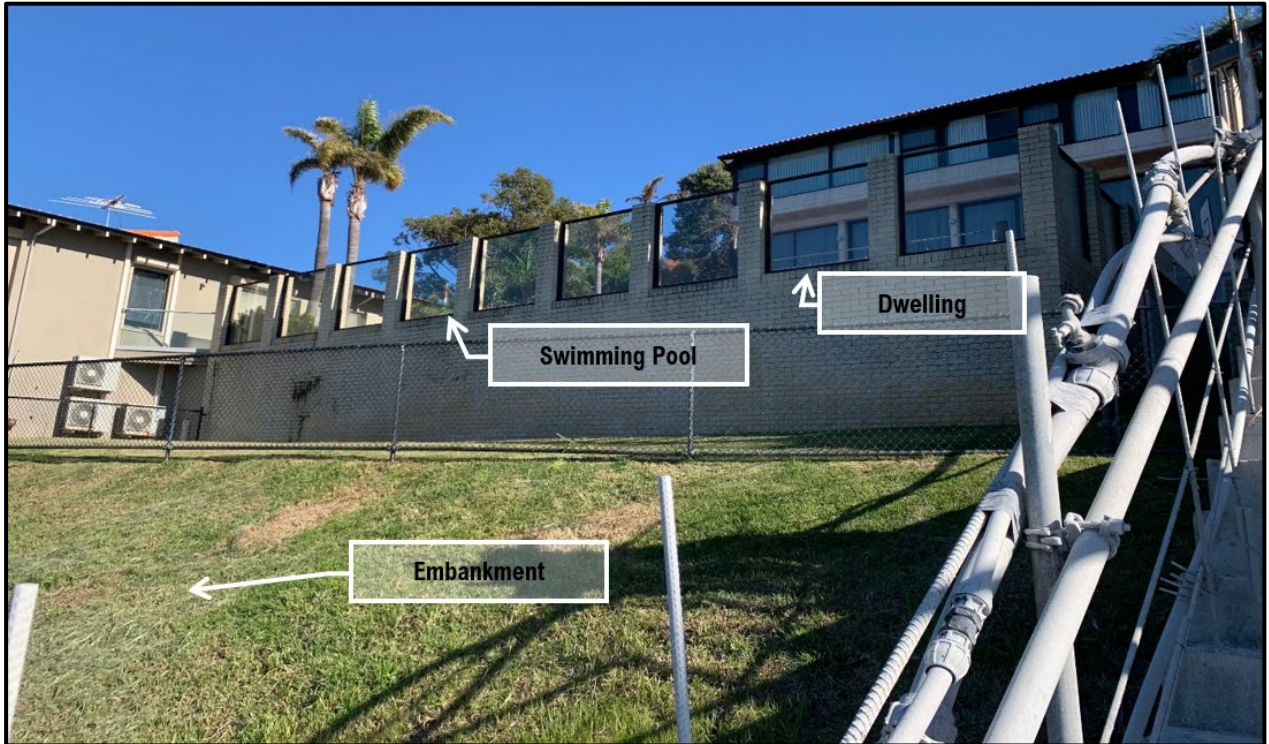
- P8 *Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.*

This application only seeks consideration for the 1.8m length of retaining walls as, the remainder of the wall was supported by the adjoining neighbour and subsequently approved by the City. The additional portion of wall is indistinguishable with respect to the performance and amenity of the neighbouring site.

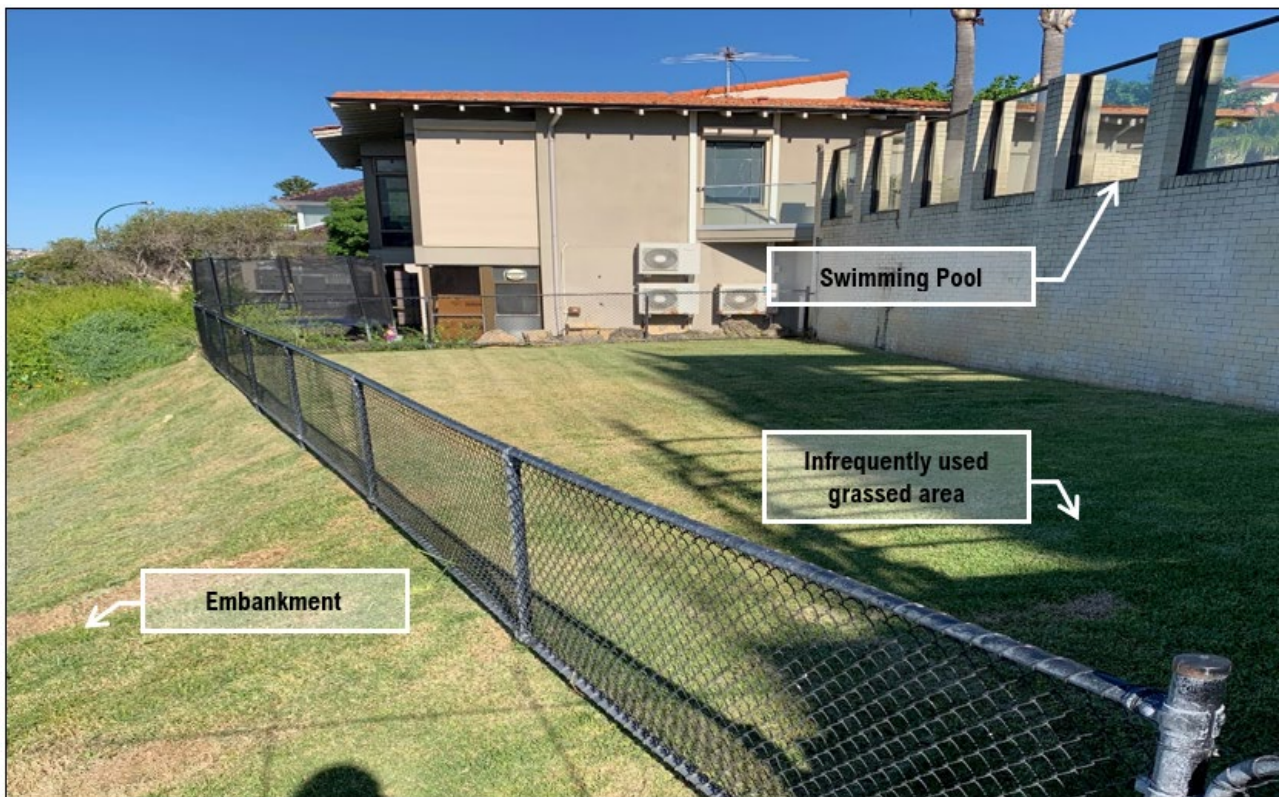
Impact and Views

The subject retaining wall (length of 1.8m) does not result in any increase in perceptible bulk and scale nor obstruct views to the Swan River from No. 42 Jutland Parade, Dalkeith. This is due to the dwelling at No. 42 Jutland Parade having a finished floor level significantly higher than the subject retaining wall. This is evident in the photographs below which shows the outlook from No. 42 Jutland Parade from the main outdoor living area and ground floor.

Based on Nearmaps the dwelling at No. 42 Jutland Parade has a finished floor level of approximately 20.0m to 17.0m AHD. The swimming pool (which functions as a primary outdoor living area) is elevated at a similar level of approximately 15.0m AHD and the infrequently used flat grassed area below the swimming pool sits at a height of approximately 12.0m AHD. The proposed retaining wall with a length of 1.8m and has an approximate AHD height of 10.0m, which is approximately 5.0m below the swimming pool and associated outdoor living and 7.0m below the finished floor level of the existing dwelling. This is represented in the images below.



Images of the rear of No. 42 Jutland Parade, Dalkeith



Images of the rear of No. 42 Jutland Parade, Dalkeith

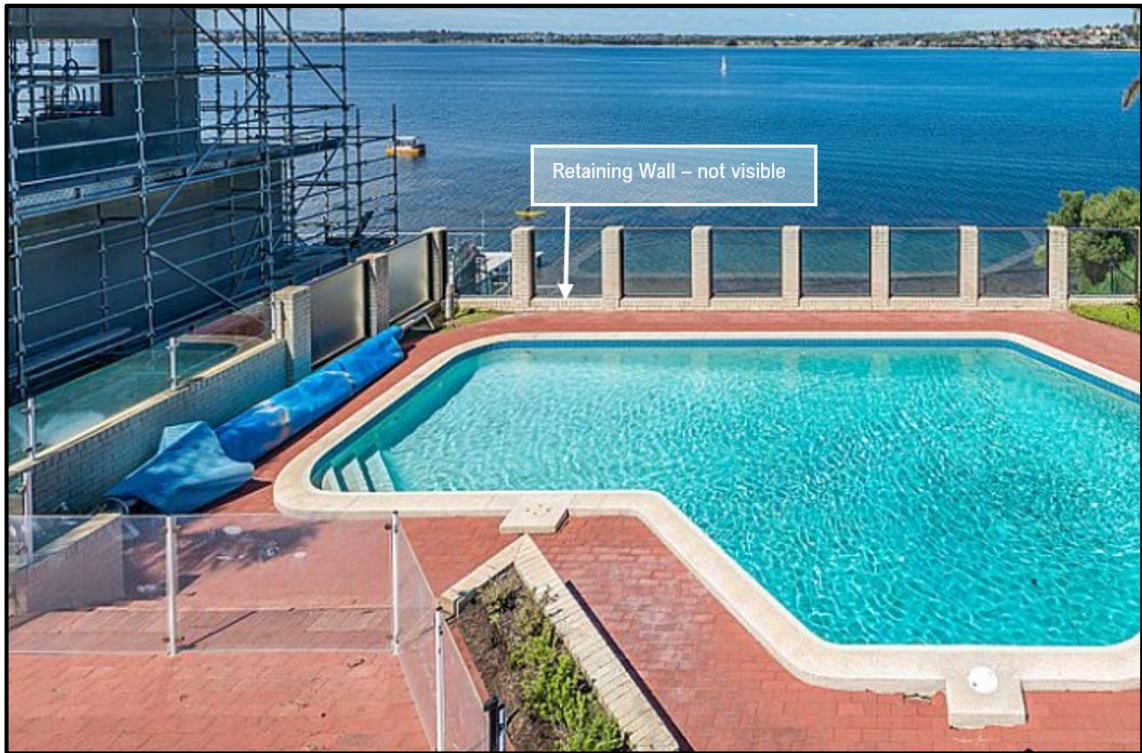
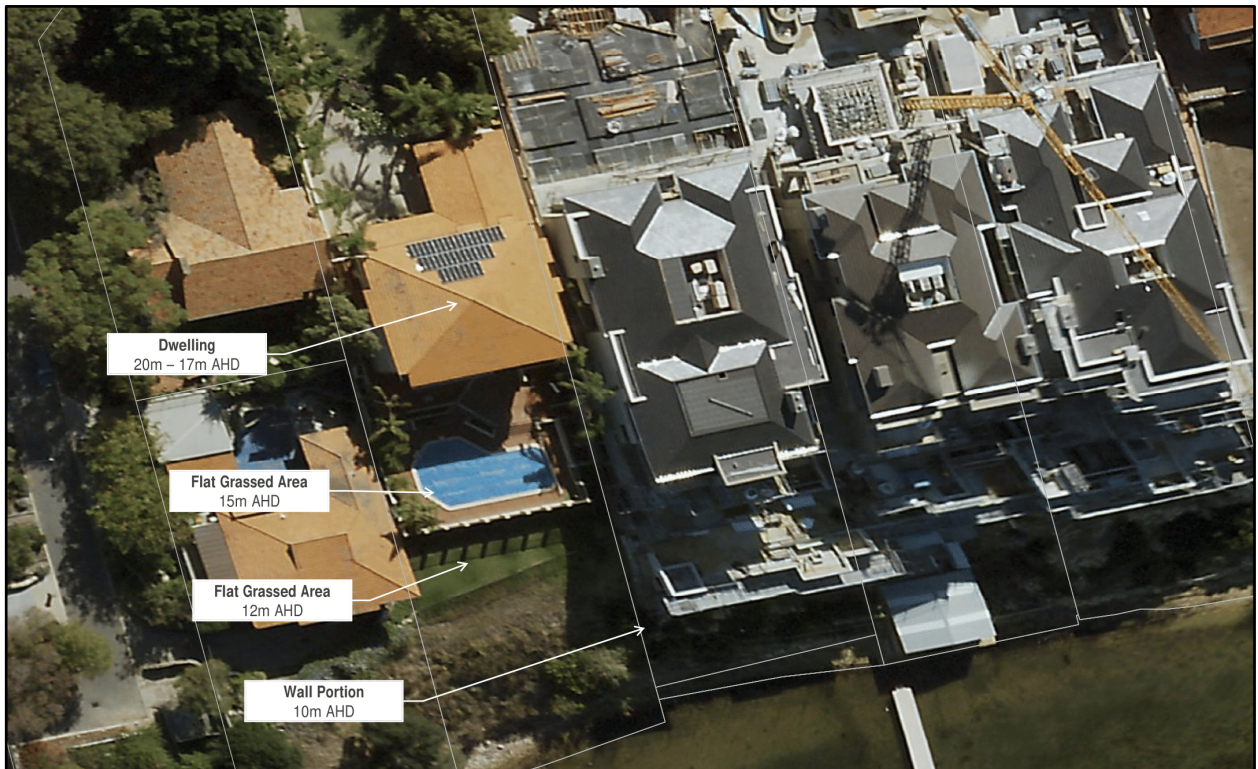


Image from No. 42 Jutland Parade, Dalkeith facing the River (realestate.com.au)



Image from No. 42 Jutland Parade, Dalkeith facing the River (ground floor) and the retaining wall is not visible (realestate.com.au)



Approximate AHD Levels of No. 42 Jutland Parade in accordance with Nearmaps 2019

Based on the technical assessment above and the images, the retaining wall has no undue impact on the adjoining property with respect to bulk and scale. It will not be visible from the adjoining dwelling due to the finished floor levels of the existing dwelling and structures.

Furthermore, the retaining wall is lower than other sections of wall and structures that have been approved on the subject site. These retaining walls and structures are higher than the retaining wall seeking approval and run parallel. Therefore, the retaining wall itself is lower than other approved structures and does not impact upon views accordingly.

The dwelling is still under construction and when completed the retaining wall will be finished to a high standard and consistent with the façade theme of No. 42 Jutland Parade, Dalkeith, enabling it to blend in with its surrounds and be indistinguishable.

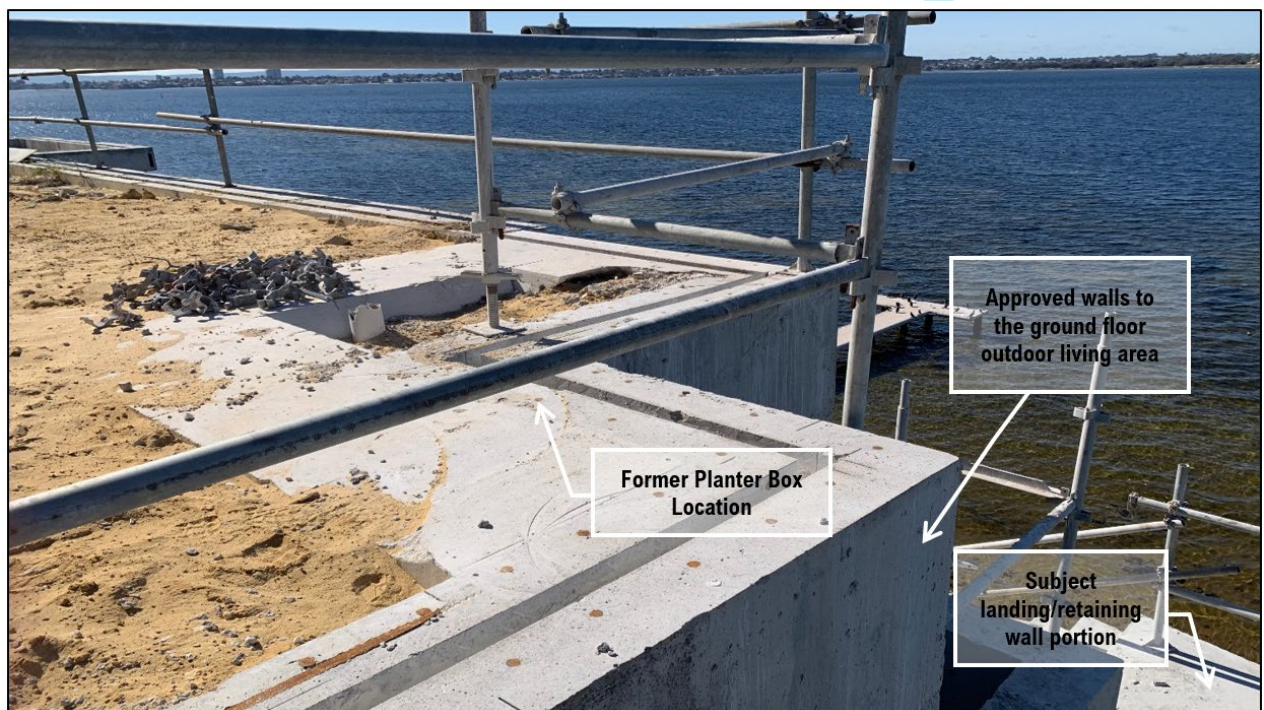
Planter Box Removal

As part of the latest approval from 2019 and in consultation with the adjoining landowner at No. 42 Jutland Parade, the owner agreed to remove an approved planter box. The planter box was positioned above four (4) metres from the immediate natural ground level and only 1.3m from the western boundary. The owner did this in good faith with the neighbour to facilitate additional views, despite the planter box not being within a direct line of site from the adjoining properties outdoor or internal living areas.

Other approved structures on the site remain within proximity to the western boundary to facilitate the ground floor outdoor living area of the subject site. These retaining walls and structures run parallel to the retaining wall subject of this application and are higher, therefore the notion of this retaining wall interrupting views is flawed. As viewed in the below images.



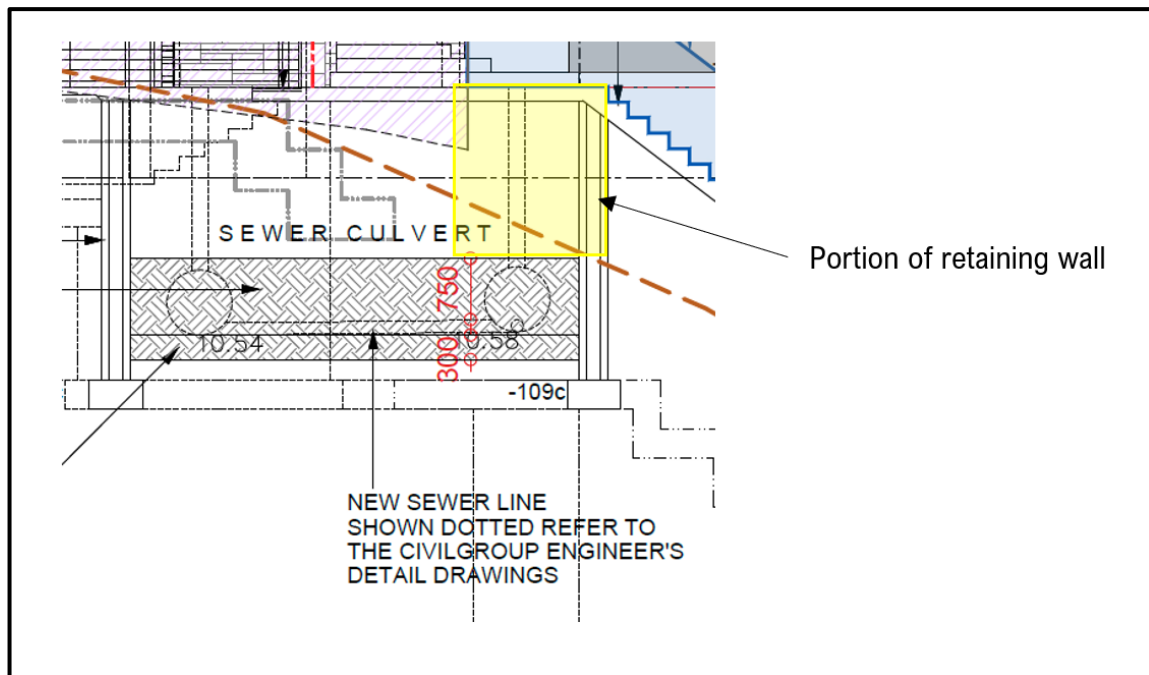
Aerial perspective image illustrating location of (former) approved planter box (now removed). Source: Nearmap 2018.



Sewer Culvert

As part of the construction of the approved dwelling a new sewer line, sewer culvert and maintenance access shaft were required to be constructed. These components were designed by a suitably qualified practising civil engineer in accordance with Water Corporation specifications and works completed by a qualified plumber approved by the Water Corporation.

Attached to this letter, are the approved Water Corporation plans for the services and associated maintenance access shaft. The landowner and builder have liaised with the qualified engineer and Water Corporation to establish whether the landing area could be reduced in height to reduce the height of the retaining wall. It has been advised that the maintenance access shaft is a standard Water Corporation design with minimum clearances and specifications. This design dictated the location and level of the stair landing and adjacent stairway. Any modification to the height of this landing area (retaining wall) would contravene the requirements of the Water Corporation.



In light of the above, the retaining wall forms part of a critical aspect of the development.

CONCLUSION

In summary, the retaining wall seeking approval is only 1.8m in length and is positioned within the low embankment foreshore area. The retaining wall will be finished to a high standard that is copesetic with Nos. 40 and 42 Jutland Parade.

The retaining wall facilitates the landing area which has been positioned accordingly, due to Water Corporation infrastructure relating to a sewer culvert and maintenance shaft. The finished floor level of this section cannot be modified as it will contravene the approval and guidelines of the Water Corporation.

The concerns raised by the adjoining landowner are notes in relation to bulk and scale and views. However, this letter clearly details that the retaining wall is entirely consistent with the design principles of the R-Codes. Given the subject retaining wall is not visible from the main internal and outdoor living areas of No. 42 Jutland Parade, and approved retaining walls and structures that run parallel to this retaining wall/landing area are higher which makes the visibility objection invalid.

The owner has also removed a constructed and approved planter box at the request of the adjoining landowner. This was completed in good faith. However, the assertions made in the submission that this minor portion of retaining wall/landing area results in undue bulk on the adjoining property is entirely invalid.

Based on the information presented in this submission, Urbanista Town Planning believes that the extent of the proposed variation is minor, attributable to the sloping site and specific site constraints, and are wholly capable of support from the City.

As a result of the evidence and justification provided, we respectfully ask that the Council support the applications by granting approval to the proposed for the 1.8m (length) retaining wall to the western lot boundary at No. 40 Jutland Parade, Dalkeith.

Should you have any questions in relation to the details provided in this submission, please contact Bianca Sandri on [6441 9171](tel:64419171) or bianca@urbanistaplanning.com.au.



Bianca Sandri — Director
Urbanista Town Planning

Attachment 1: Water Corporation Approved Plan

Attachment 1

LEGEND

- EXISTING SEWER AND ACCESS CHAMBER / MAINTENANCE SHAFTS
- EASEMENTS
- PROPOSED SEWER AND ACCESS CHAMBER / MAINTENANCE SHAFTS
- ACCESS CHAMBER NUMBER APPROXIMATE DEPTH OF CHAMBER DROP
- LID TYPE CHAMBER TYPE 90° ANGLE OF MAINTENANCE SHAFT
- SECTION 70A ON TITLE LOT CANNOT BE FULLY SERVED
- AREA CANNOT BE SERVED
- CONCRETE ENCASUREMENT
- RETICULATION AREA BOUNDARY
- CATCHMENT BOUNDARY
- DESIGNED (FINISHED) SURFACE CONTOURS
- SERVED BUT NOT RELEASED IN STAGE
- FLOW IN L/sec
- FUTURE FLOW IN L/sec
- NET AREA (Ha)
- POP. DENSITY (PERSONS/NET Ha)
- FLOW (LITRES/PERSON/DAY)
- PEAK FLOW (L/sec)

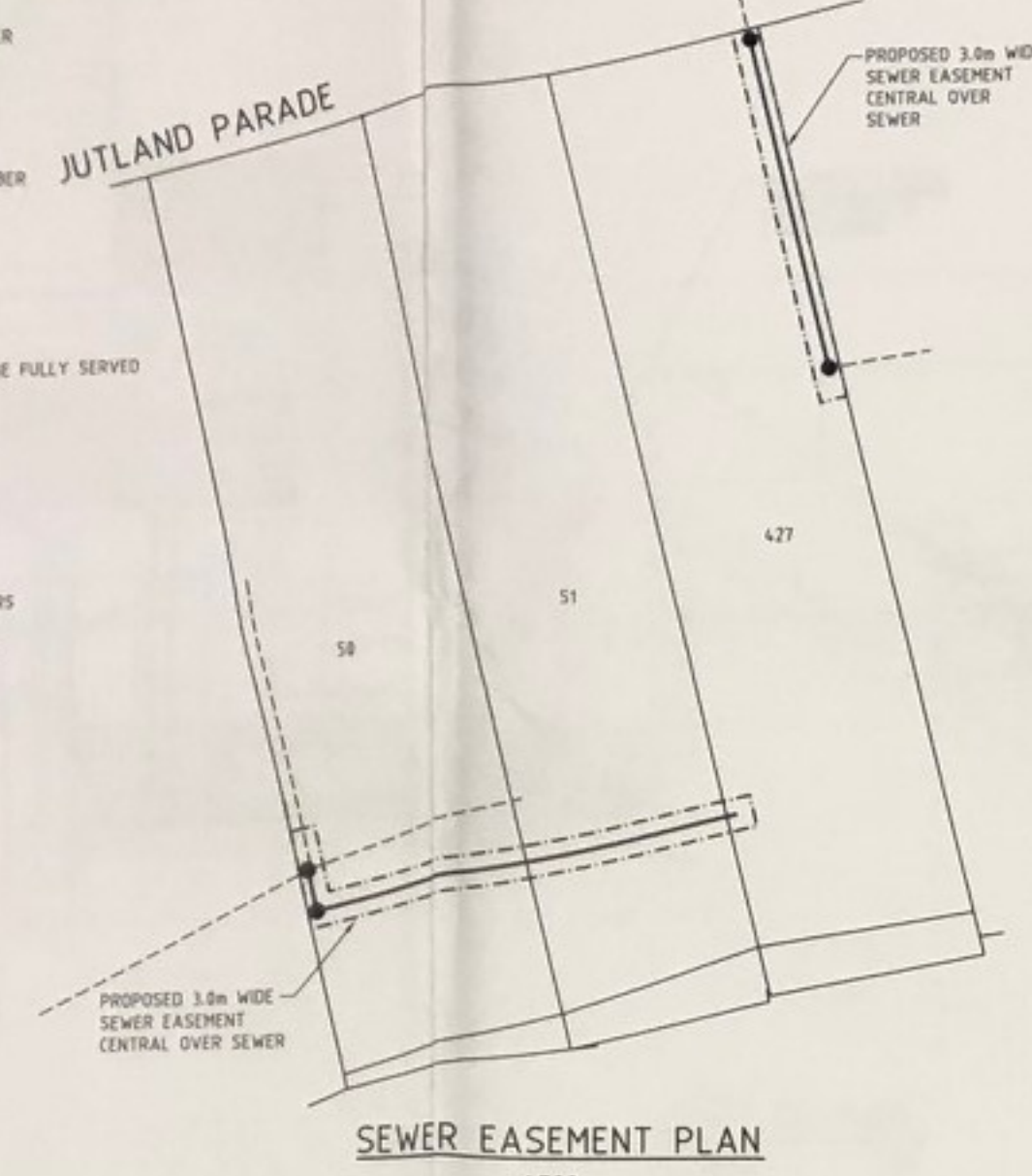
DESIGN CRITERIA - AREA

- NET AREA TO BE SERVED 0.46Ha
- TOTAL PEAK FLOW 0.19L/s
- WATER TABLE DRY
- NUMBER OF LOTS SERVED 3
- LENGTH OF SEWERS
 - Ø 150 76.7m
 - Ø 225 0.00m
- NUMBER OF ACCESS CHAMBERS 0
- NUMBER OF MAINTENANCE SHAFTS 4
- NUMBER OF INSPECTION TEES 0

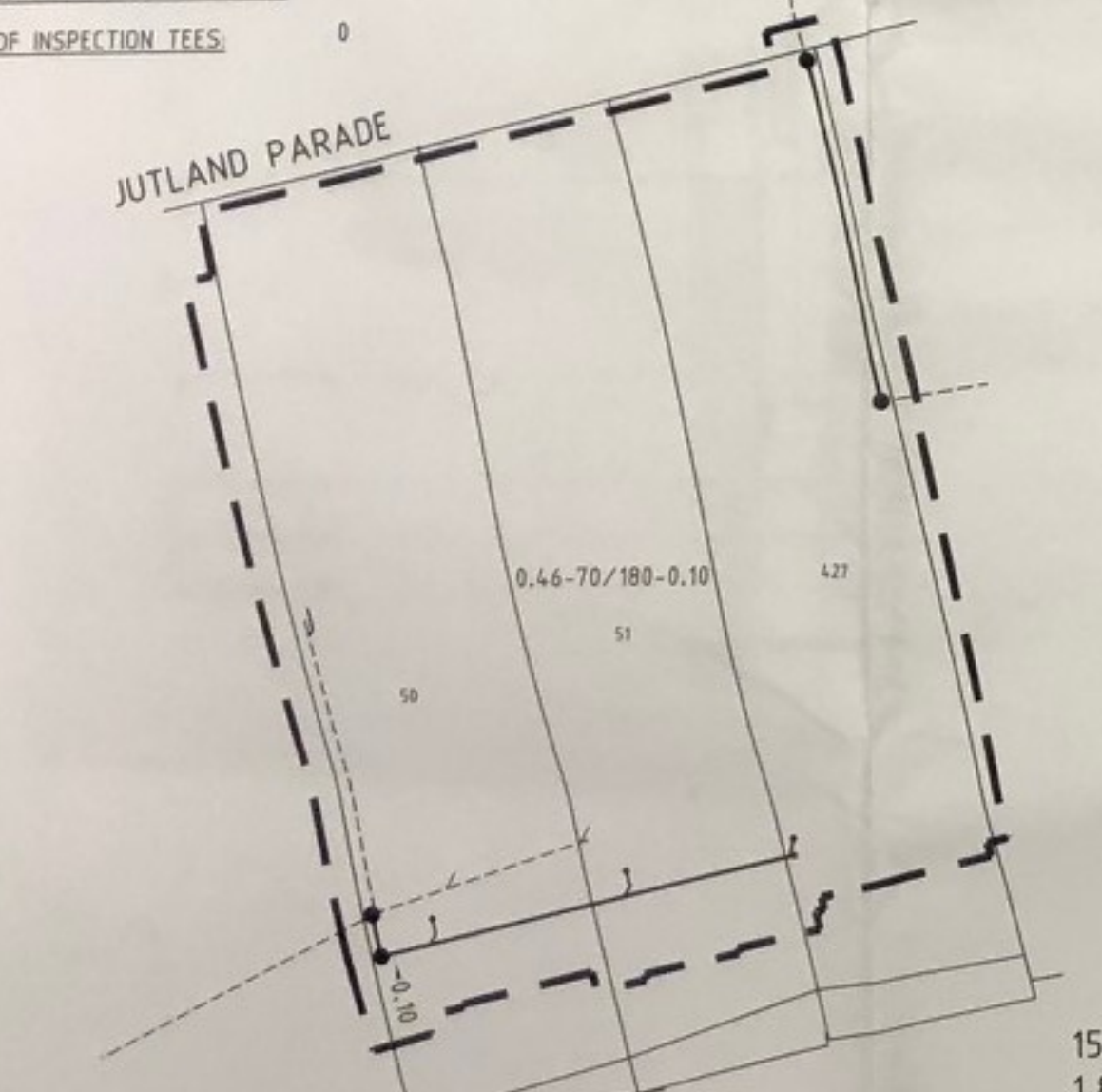
NOTE:
ACCESS FOR OPERATION AND MAINTENANCE OF THE CORPORATION'S SERVICES MUST BE INCORPORATED IN CONSTRUCTION AS WITH THE DESIGN.

NOTES

- 1 ALL SEWERAGE RETICULATION WORKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE WATER CORPORATION'S SEWERAGE MANUAL VOLUME 1 (AS AMENDED), THE SPECIFICATION AND THE CURRENT WATER CORPORATION STANDARD DRAWINGS
- 2 CONSTRUCTION OF SEWERS IN LOTS WITH FILL SHALL NOT PROCEED UNTIL FILL IS PLACED AND COMPACTED IN ACCORDANCE WITH THE SPECIFICATION
- 3 THE CONTRACTOR SHALL DETERMINE AND BE RESPONSIBLE FOR THE BEDDING CONDITIONS TO COMPLY WITH THE REQUIREMENTS OF THE WATER CORPORATION'S SEWER MANUAL VOLUME 1 (AS AMENDED)
- 4 DX = DUPLEX (REQUIRES TWO BOUNDARY CONNECTIONS)
GH = GROUP HOUSING (REQUIRES Ø150 CONNECTION)
- 5 CENTRES OF ALL ACCESS CHAMBERS TO BE 3.5m FROM FRONT BOUNDARIES AND 1.0m FROM SIDE AND REAR BOUNDARIES OF LOT UNLESS OTHERWISE DIMENSIONED
- 6 FOR STAGING OF WORKS CONTRACTOR TO PROVIDE SEALED INLET ON UPSTREAM INLET OF ACCESS CHAMBER ADJACENT TO RETICULATION BOUNDARY (UON)
- 7 EXISTING SEWER INFORMATION FROM WATER CORPORATION AS CONSTRUCTED PLANS. SITE IS TO BE SURVEYED TO CONFIRM PRIOR TO CONSTRUCTION COMMENCING.
- 8 EXISTING SERVICES - INFORMATION ON THESE DRAWINGS PURPORTING TO RELATE TO EXISTING SERVICES IS INDICATIVE ONLY AND MAY NOT BE COMPLETE REFER TO SPECIFICATION AND CLAUSE 12 OF AS4000
- 9 THE CONTRACTOR SHALL NOTE THAT NON-TRAFFICABLE SUBTERRANEAN STRUCTURES AND/OR VOIDS (SOAKWELLS, ETC.) MAY EXIST ON THE SITE AND SHALL TAKE ADEQUATE MEASURES TO LOCATE THESE PRIOR TO COMMENCING WORKS AND SHALL ADOPT SAFE WORK PRACTICES THAT OBLIATE ANY RISK THAT SUCH STRUCTURES MAY PRESENT.
- 10 THE SUPERINTENDENT HAS NOT INVESTIGATED THE SITE & MAKES NO REPRESENTATION AS TO WHAT MAY EXIST ON OR BELOW THE SITE. THE CONTRACTOR SHALL MAKE THEIR OWN INVESTIGATIONS AS TO THE NATURE OF THE SUBSURFACE CONDITIONS OF THE SITE. A GEOTECHNICAL REPORT IS PROVIDED AS A GUIDE ONLY.
- 11 THE CONTRACTOR SHALL ENSURE THAT AT LEAST ONE PERSON IN EACH PIPELAYING CREW SHALL BE CERTIFIED IN PVC PIPELAYING IN ACCORDANCE WITH WATER CORPORATION REQUIREMENTS.
- 12 THE CONTRACTOR SHALL CONTACT THE CIVIL GROUP FOR THE SCHEDULING OF THE NECESSARY 'START UP' MEETING WITH THE WATER CORPORATION PRIOR TO THE REMOVAL OF ANY EXISTING SEWER.
- 13 CAVEATS TO BE APPLIED TO LOTS 50 AND 51 DURING CONSTRUCTION. REFER SUPERINTENDENT.
- 14 MINIMUM SERVING LEVELS ARE:
LOT 50 RL 10.75
LOT 51 RL 11.00
LOT 427 RL 11.35
- 15 EXISTING EASEMENTS TO BE RELINQUISHED AS REQUIRED. DISCUSS WITH WATER CORPORATION 'PROPERTY' AND 'PROCUREMENT' BRANCH.



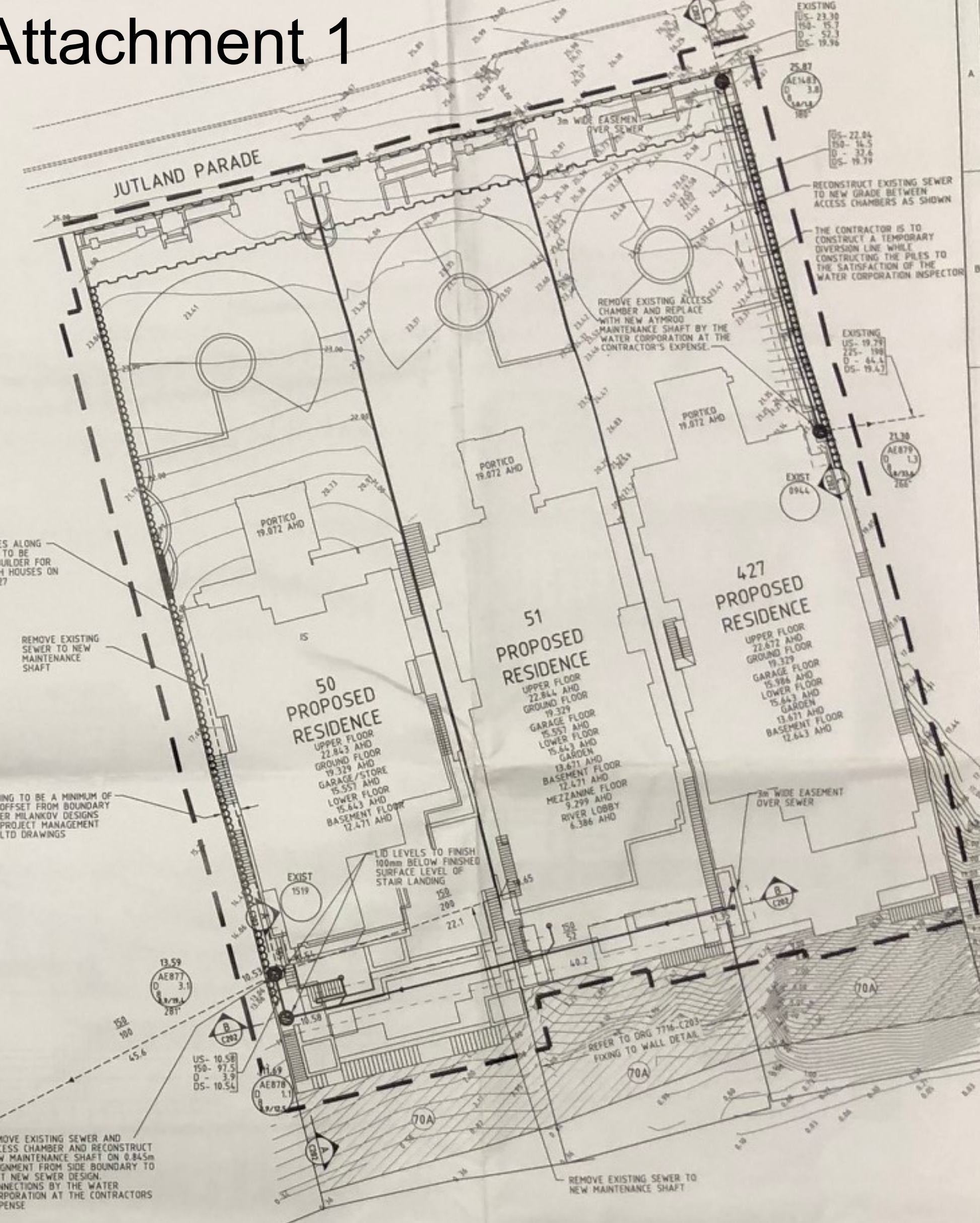
SEWER EASEMENT PLAN
1:500



SEWER DESIGN DATA PLAN
1:500



SEWER SITE PLAN
1:500



SEWER RETICULATION PLAN
1:250

NOTE:
EXISTING SERVICES ARE TO BE MAINTAINED AT ALL TIMES.

EXISTING SERVICES - INFORMATION ON THESE DRAWINGS PURPORTING TO RELATE TO EXISTING SERVICES IS INDICATIVE ONLY AND MAY NOT BE COMPLETE REFER TO SPECIFICATION AND CLAUSE 12 OF AS4000



LOCAL AUTHORITY CITY OF NEGLANDS
THE PLAN IS ACCEPTED AS COMPLYING WITH THE OVERALL WATER CORPORATION PLANNING COMPLIANCE WITH WATER CORPORATION MANUALS STANDARDS HAVE NOT BEEN CHECKED AND REMAINS THE RESPONSIBILITY OF THE CONSULTING ENGINEER
DATE 2/10/15

MANAGER DEVELOPMENT SERVICES BRANCH
EXISTING MAINS TO BE SURVEYED FOR LOCATION AND LEVEL BEFORE CONSTRUCTION COMMENCES

LR12-001-001-01A

FILE No. J71 2014 09411 V01 RETICULATION AREA CLAREMONT 18

| REV | REVISION | DATE | APPROVED |
|-----|--|----------|----------|
| D | SEWER AMENDED | 22/09/15 | GT |
| C | SEWER AMENDMENTS MADE | 24/10/14 | PB |
| B | DETAILS ADDED AND SEWER AMENDED ON LOT 427 | 08/09/14 | GR |
| A | ISSUED FOR WATER CORPORATION APPROVAL | 30/07/14 | GR |

| CLIENT | DRAWN | DESIGNED | CHECKED | APPROVED | DATE |
|------------|------------|-----------|-----------|----------|------|
| FERO GROUP | A. Vernali | J. Barram | G. Treacy | | |



TITLE
LOT 50, 51 AND 427 JUTLAND PARADE
DALKEITH
SEWER DESIGN DATA AND RETICULATION

consultingcivilengineers
38 Richardson Street West Perth WA 6005
phone 9481 4255 fax 9481 3900
info@civilgroup.com.au www.civilgroup.com.au



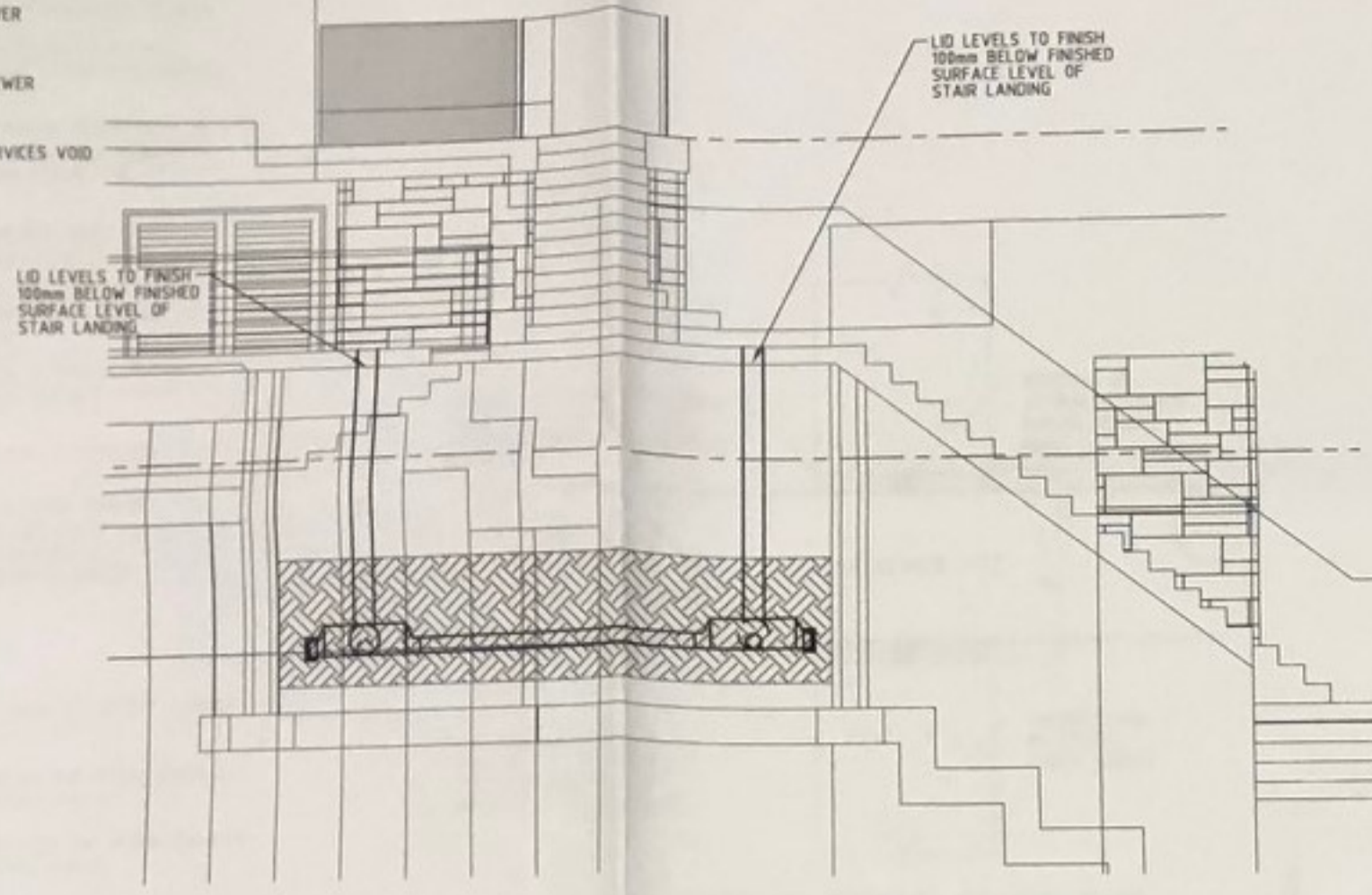
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SHEET SIZE A1
SHEET 1 OF 3
DRAWING No 7716-C201 D
REV

Consult

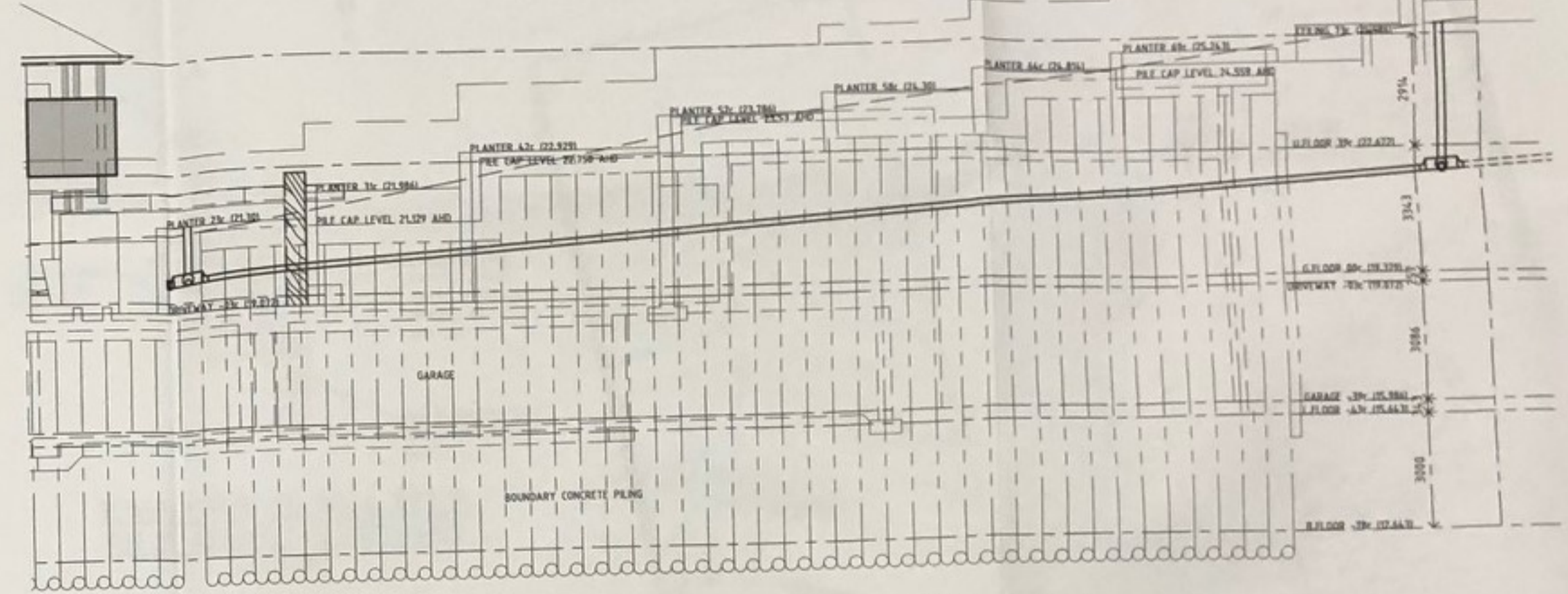
Attachment 1

LEGEND

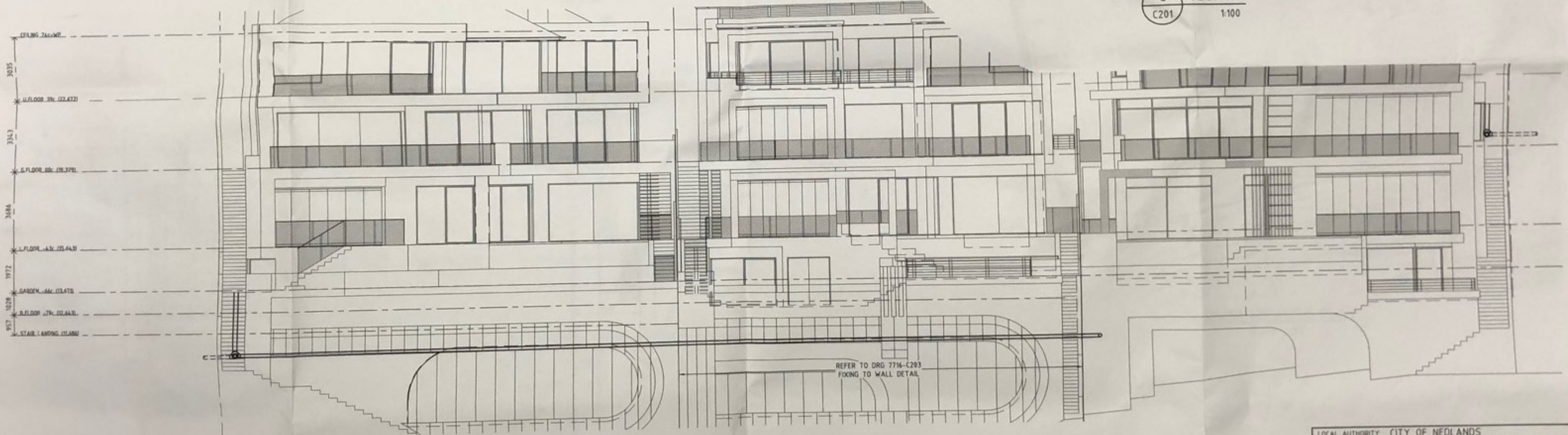
- EXISTING SEWER
- PROPOSED SEWER
- ▨ UTILITIES SERVICES VOID



A SECTION
C201 1:50



C SECTION
C201 1:100



B SECTION
C201 1:100

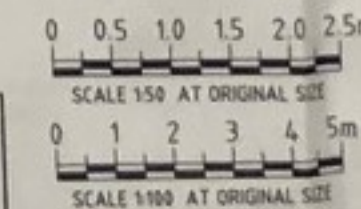
LOCAL AUTHORITY: CITY OF NEDLANDS

THE PLAN IS ACCEPTED AS COMPLYING WITH THE OVERALL WATER CORPORATION PLANNING COMPLIANCE WITH WATER CORPORATION MANUALS STANDARDS HAVE NOT BEEN CHECKED AND REMAINS THE RESPONSIBILITY OF THE CONSULTING ENGINEER

DATE: 7/14/15

MANAGER DEVELOPMENT SERVICES
EXISTING MAINS TO BE SURVEYED FOR LOCATION AND LEVEL BEFORE CONSTRUCTION COMMENCES

LR12-004-001-01A



EXISTING SERVICES - INFORMATION ON THESE DRAWINGS PURPORTING TO RELATE TO EXISTING SERVICES IS INDICATIVE ONLY AND MAY NOT BE COMPLETE REFER TO SPECIFICATION AND CLAUSE 12 OF AS4000

| REV | REVISION | DATE | APPROVED |
|-----|----------------------------------|----------|----------|
| D | HOUSING LAYOUT AND SEWER AMENDED | 22/09/15 | GT |
| C | SEWER AMENDMENTS MADE | 24/10/14 | PB |
| B | SECTION A, B AND C AMENDED | 08/09/14 | GR |
| A | ISSUED FOR APPROVAL | 30/07/14 | GR |

| CLIENT | DRAWN | DESIGNED | CHECKED | APPROVED | DATE |
|------------|------------|-----------|-----------|----------|------|
| FERO GROUP | A. Vernall | J. Barran | G. Treacy | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

DA Design Australia

TITLE
LOT 50, 51 AND 427 JUTLAND PARADE DALKEITH SEWER SECTIONS

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info@civilgroup.com.au

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the civil group

ORIGINAL SHEET SIZE: A1
SCALE: AS SHOWN
LEVEL DATUM: AHD
SHEET 2 OF 3
DRAWING No: 7716-C202
REV: D

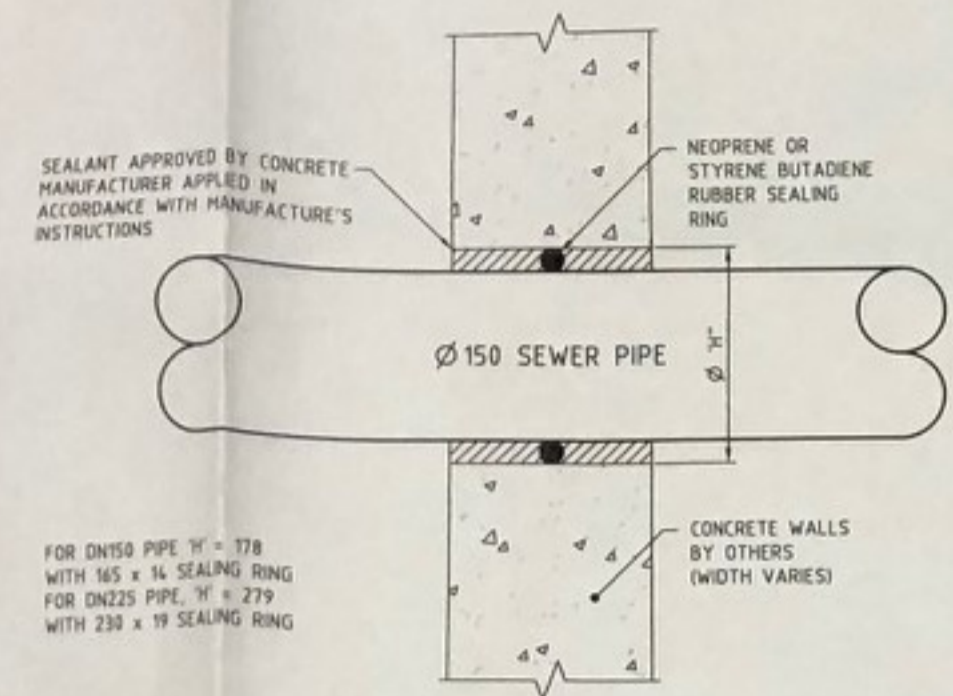
Attachment 1

NOTES

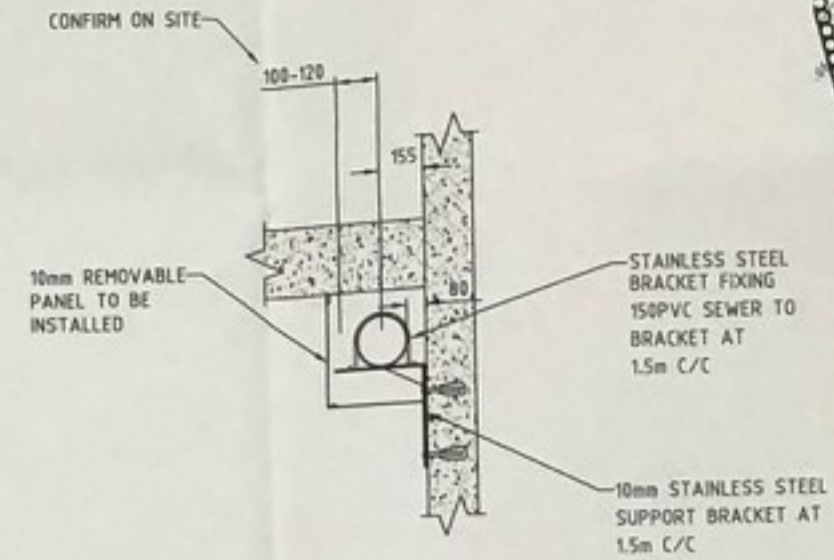
1. ALL SEWERAGE RETICULATION WORKS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE WATER CORPORATION'S SEWERAGE MANUAL VOLUME 1 (AS AMENDED), THE SPECIFICATION AND THE CURRENT WATER CORPORATION STANDARD DRAWINGS.
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6. FOR STAGING OF WORKS CONTRACTOR TO PROVIDE SEALED INLET ON UPSTREAM INLET OF ACCESS CHAMBER ADJACENT TO RETICULATION BOUNDARY (UDN).
7. EXISTING SEWER INFORMATION FROM WATER CORPORATION AS CONSTRUCTED PLANS.
8. EXISTING SERVICES - INFORMATION ON THESE DRAWINGS PURPORTING TO RELATE TO EXISTING SERVICES IS INDICATIVE ONLY AND MAY NOT BE COMPLETE. REFER TO SPECIFICATION AND CLAUSE 12 OF AS4000.

LEGEND

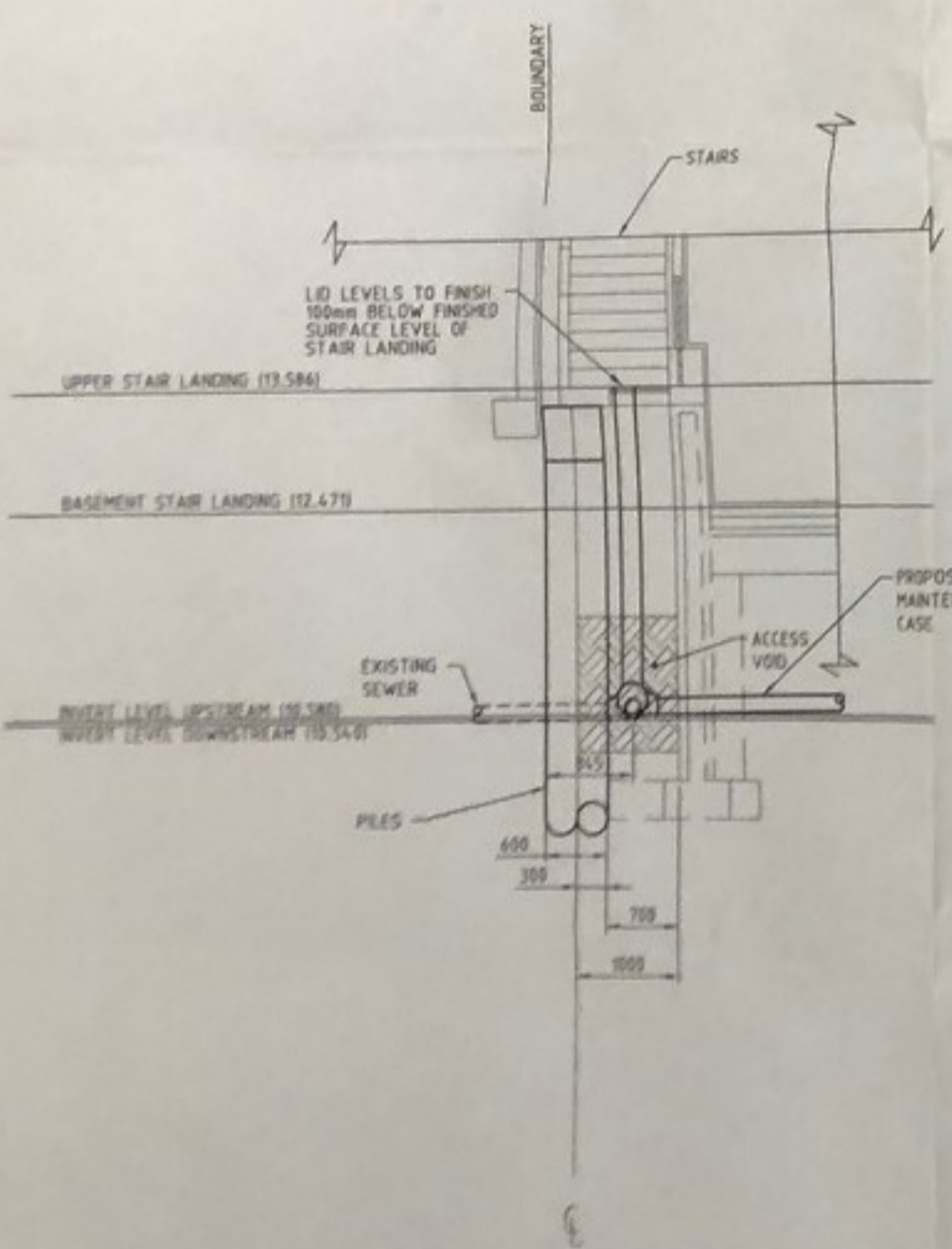
- EXISTING SEWER AND ACCESS CHAMBER /MAINTENANCE SHAFTS
- FUTURE SEWER AND ACCESS CHAMBER /MAINTENANCE SHAFTS
- PROPOSED SEWER AND ACCESS CHAMBER /MAINTENANCE SHAFTS



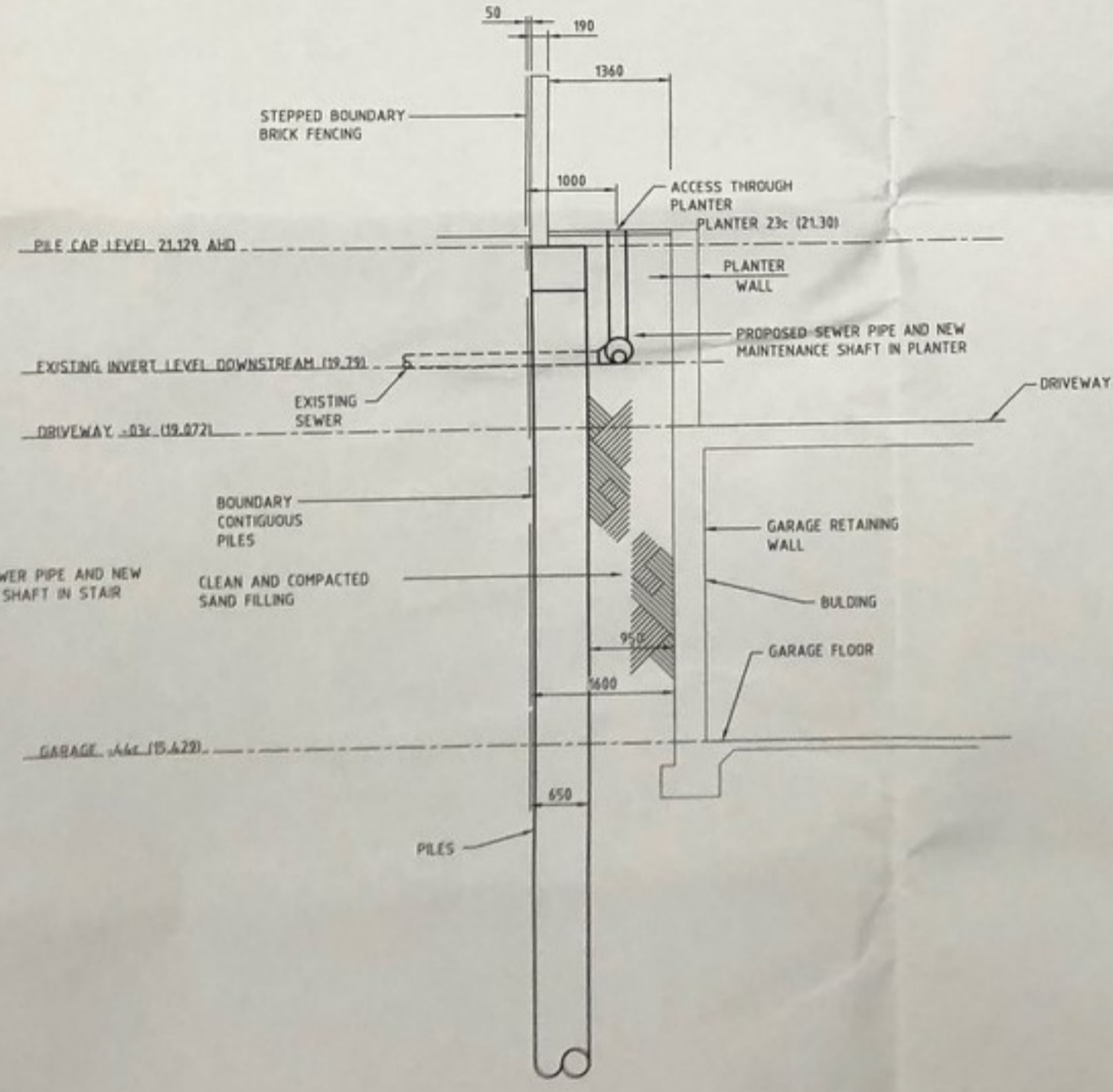
TYPICAL DETAIL SEWER PIPE THROUGH WALLS
SCALE: NTS



SEWER FIXING TO WALL DETAIL
REFER ARCHITECTS DRAWINGS
SCALE: NTS



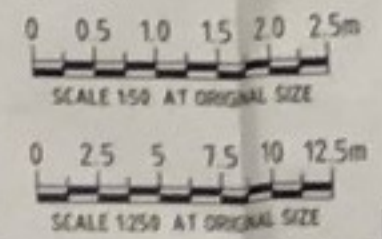
SECTION A
SCALE 1:50



SECTION B
SCALE 1:50



SEWER LOCALITY PLAN
SCALE 1:250



EXISTING SERVICES - INFORMATION ON THESE DRAWINGS PURPORTING TO RELATE TO EXISTING SERVICES IS INDICATIVE ONLY AND MAY NOT BE COMPLETE. REFER TO SPECIFICATION AND CLAUSE 12 OF AS4000.

LOCAL AUTHORITY CITY OF NEDLANDS
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 DATE 2/12/15
 MANAGER DEVELOPMENT SERVICES
 EXISTING MAINS TO BE SURVEYED FOR LOCATION AND LEVEL BEFORE CONSTRUCTION COMMENCES

LR12-004-002-01A

FILE No. J71 2014 09611 V01 RETICULATION AREA CLAREMONT 18

| REV | REVISION | DATE | APPROVED |
|-----|---|----------|----------|
| 1 | DETAILS AND SEWER APPROVED | 21/01/15 | GI |
| 2 | DETAILS AND SEWER APPROVED | 21/01/15 | PS |
| 3 | DETAILS AND SECTIONS ADDED FOR WATER CORPORATION APPROVAL | 08/01/15 | GR |
| 4 | ISSUED FOR WATER CORPORATION APPROVAL | 08/01/15 | GR |

FERO GROUP

| | |
|----------|------------|
| DRAWN | A. Verrall |
| DESIGNED | J. Barron |
| CHECKED | G. Tracy |
| APPROVED | |
| DATE | |



TITLE
 LOT 50, 51 AND 427 JUTLAND PARADE
 DALKEITH
 SEWER DEVIATION DETAILS

consulting civil engineers

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 West Perth WA 6005
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 fax 9481 3900
 info@civilgroup.com.au
 www.civilgroup.com.au



| | |
|---------------------|------------------------------|
| ORIGINAL SHEET SIZE | SCALE AS SHOWN |
| A1 | LEVEL DATUM AND SHEET 3 OF 3 |
| DO NOT SCALE | DRAWING No 7716-C203 D |

| | |
|---|---|
| PD45.19 | No. 96-100 Stirling Highway, Nedlands – Extension of a Non-Conforming Use (Cinema) |
| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | Ecologic Homes – Janine Lindsay |
| Landowner | Atari |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | Nil |
| Report Type Quasi-Judicial | When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| Reference | DA19/34537 |
| Previous Item | Nil |
| Delegation | The City's Instrument of Delegation allows Administration to determine applications involving the extension of a non-conforming use, however due to the parking shortfall this application has been referred to Council for determination. |
| Attachments | <ol style="list-style-type: none"> 1. External Referral Comments 2. Applicant Justification 3. Site photographs 4. Draft LPP – Parking <ol style="list-style-type: none"> 1. Plans (Confidential) 2. Assessment (Confidential) 3. Shared Car Parking Agreement (Confidential) |

1.0 Executive Summary

The purpose of this report is for Council to determine a development application received from the applicant on 8 August 2019, for the extension of the non-conforming use (cinema) at No. 96 (Lot 2) and No. 100 (Lot 123) Stirling Highway, Nedlands. The application has been referred to Council due to the nature of the use and the associated parking shortfall.

Following the gazettal of Local Planning Scheme No. 3 (LPS 3), the existing development (cinema) at the subject site was rendered a non-conforming use, meaning the cinema land use is prohibited ('X') in the Mixed-Use Zone. Notwithstanding, there are provisions in LPS 3 that facilitate the expansion of non-conforming uses.

It is noted that the previous iteration of draft Local Planning Scheme No. 3 designated this site as Neighbourhood Centre. Under that proposed Zoning Table, the intended land use permissibility was P, meaning it was a permitted use however this did not form part of the adopted LPS3.

The application was advertised to all residents within 100m of the subject site, in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. No objections were received.

The application is consistent with the provisions of Local Planning Scheme No. 3 (LPS 3), the Local Planning Strategy and the draft Town Centre Precinct Plan and the use in isolation is not considered to have a significant adverse impact on the local amenity, however, a car parking shortfall and no proposed provision on site or nearby utilising a shared parking agreement renders the application not supportable by Administration due to the draft Parking LPP.

This application could be considered somewhat of a test case as it is the first time that the provisions of the new Local Planning Policy – Parking have been used in an assessment. Council’s decision in relation to the application of this LPP may set the “tone” for consideration of subsequent applications. As a result of the draft Parking LPP Administration are unable to recommend approval.

Therefore, pursuant to the provisions of Parking LPP and due to the noncompliance with clause 32 and the additional site and development requirements of LPS3, it is recommended that the application be refused by Council due to the significant increase in the parking shortfall.

2.0 Recommendation to Committee

Council refuses the development application dated 8 August 2019 for extension of non-conforming use (cinema) at No. 96 (Lot 2) and 100 (Lot 123) Stirling Highway, for the following reasons:

1. **Having regard to clause 67(s) of Schedule 2 (Deemed Provisions) of Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of draft Local Planning Policy – Parking, the application is not considered to provide adequate number of car parking bays.**
2. **The application does not comply with the requirements of Table 6, Clause 32.2 of the Scheme relating to Shared Car Parking provision given that the applicant has not demonstrated the shared car parking on any adjoining or nearby site.**

3.0 Background

3.1 Land Details

| | |
|--|--------------------|
| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Mixed Use |
| R-Code | R-AC1 |
| Land area | 3394m ² |
| Additional Use | No |
| Special Use | No |
| Local Development Plan | N/A |
| Structure Plan | N/A |
| Land Use | Existing – Shop |

| | |
|------------------|--|
| | Proposed – Non-conforming use (Cinema) |
| Use Class | Proposed – Prohibited ('X') |

3.2 Locality Plan

The site is located within the street block bounded by Stirling Highway to the north, Mountjoy Road to the west, Jenkins Avenue to the south and Dalkeith Road to the west. The subject site is located on the southern side of Stirling Highway, within the proposed Town Centre Precinct.

The site is afforded with a joint car parking area comprising 68 car parking bays at the rear of the site.

An aerial image shows the site below.



3.3 Site History

At its 24 September 2019 meeting, Council resolved to approve the retrospective application for a 12m x 3m advertising roof sign on the existing cinema at No. 100 (Lot 123) Stirling Highway, Nedlands.

4.0 Application Details

The applicant seeks development approval to extend the non-conforming use (cinema) at 100 Stirling Highway, into an adjacent shop at 96 Stirling Highway, the details of which are as follows:

- 67 additional cinema seats (3 of which are removable universal access seats)
- Additional toilets
- Minor internal alterations to the building

5.0 Consultation

The development application was advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to 143 residents, business owners and landowners. No submissions were received.

The application was also referred to Main Roads for comment as the subject property is partially reserved for Regional Roads under the Metropolitan Region Scheme (MRS). Main Roads have advised that they have no objection to the development (see Attachment 1).

The City was advised by the Department of Planning, Heritage and Lands (DPLH) (formerly State Heritage Office) that all applications at the subject site were to be referred to DPLH for comment. The City did so on 26 August 2019, and no objection was received (see Attachment 1).

6.0 Assessment of Statutory Provisions

6.1 Metropolitan Region Scheme

The subject site is zoned 'Urban' under the MRS. The proposal is an urban use and is therefore consistent with the zoning classification under the MRS.

6.2 Planning and Development (Local Planning Schemes) Regulations 2015

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

In accordance with clause 67(s) of the Regulations, consideration is to be given to the adequacy of parking. The assessment of parking is provided later in the report.

6.3 Local Planning Scheme No. 3

| Item | Provision | Officer Response |
|--|--|---|
| Clause 9 – The aims of this Scheme | <ul style="list-style-type: none"> a) Protect and enhance local character and amenity; b) Respect the community vision for the development of the district; c) Achieve quality residential built form outcomes for the growing population; d) To develop and support a hierarchy of activity centres; e) To integrate land use and transport systems; f) Facilitate improved multi-modal access into and around the district; g) Maintain and enhance the network of open space; h) Facilitate good public health outcomes; i) Facilitate a high-quality provision of community services and facilities; j) Encourage local economic development and employment opportunities; k) To maintain and enhance natural resources; l) Respond to the physical and climatic conditions; and | The development is consistent with all relevant aims of the scheme. |

| | | |
|---------------------------------------|---|--|
| | m) Facilitate efficient supply and use of essential infrastructure. | |
| Clause 16 - Mixed Use Zone objectives | To provide for a significant residential component as part of any new development. | The development does not include any residential component, as it is an existing cinema building and is not being redeveloped. Administration is of the view that it is unreasonable to impose this requirement on applications for existing development, where no significant works are being proposed. |
| | To facilitate well designed development of an appropriate scale which is sympathetic to the desired character of the area. | The development utilises an existing building and is not considered to have a material impact on the streetscape. |
| | To provide for a variety of active uses on street level which are compatible with residential and other non-active uses on upper levels. | The cinema use is considered to be an active use and has operated since it commenced operations. According to the City records, no complaints have been received about the cinema use. |
| | To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres and eating establishments which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents. | The proposal will form a key anchor entertainment facility within the future Town Centre. The indoor cinema is considered compatible with surrounding commercial and residential development by virtue of the largely indoor activities undertaken. |
| Clause 17 & 18 Zoning Table | Cinema is classed as an 'X' use, meaning | Given that the cinema is existing, and the application is for the extension of the existing use, the development is considered an expansion of a non-conforming. An assessment of the Non-conforming provisions is provided later in this table. |
| Clause 22(1) Non-Conforming use | Unless specifically provided, this Scheme does not prevent - a) the continued use of any land, or any structure or building on land, for the purpose for which it was being lawfully used immediately before the commencement of this Scheme; or | The cinema was approved and operated prior to the gazettal of LPS 3. This provision formalises the cinema as a non-conforming use. |
| 22(2) | Subclause (1) does not apply if – a) the non-conforming use of the land is discontinued; and b) a period of 6 months, or a longer period approved by the local government, has elapsed since the discontinuance of the non-conforming use. | The cinema has operated continuously. This provision does not apply to the subject application. |

| | | |
|---|--|--|
| 22(3) | <p>Subclause (1) does not apply in respect of a non-conforming use of land if, under Part 11 of the Act, the local government –</p> <ul style="list-style-type: none"> a) purchases the land; or b) pays compensation to the owner of the land in relation to the non-conforming use | Not applicable to this application. |
| 23(1) | <p>A person must not, without development approval –</p> <ul style="list-style-type: none"> a) alter or extend a non-conforming use of land; or b) erect, alter or extend a building used for, or in conjunction with, a non-conforming use; or c) repair, rebuild, alter or extend a building used for a non-conforming use that is destroyed to the extent of 75% or more of its value; or d) change the use of land from a non-conforming use to another use that is not permitted by the Scheme. | <p>In relation to (a) and (b), the Scheme states that subject to approval, it is possible to extend a non-conforming use, despite being an ‘X’ use under Table 3 - Zoning Table.</p> <p>LPS 3 does not provide specific criteria to assess applications involving a non-conforming use. In lieu of prescribed criteria, this report has assessed the aims of the Scheme, Mixed Use objectives and clause 67 of the Deemed Provisions. This report considers the development to be consistent with all relevant provisions.</p> |
| 23(2) | An application for development approval for the purposes of this clause must be advertised in accordance with clause 64 of the deemed provisions. | The development application was advertised to all properties within 100m of the subject site. |
| 27(1) and (2) – Developer Contributions | State Planning Policy 3.6 - Development Contributions for Infrastructure, modified as set out in clause 28, is to be read as part of this Scheme. | The City does not have a strategy to guide developer contributions. Until a strategy has been adopted the City will not enforce this provision. |
| 32.1(1) – Parking | Car parking requirements and cash-in-lieu payments. (1) Except for development to which the R-Codes apply, every development shall provide on-site car parking spaces in accordance with any applicable local planning policy adopted by the local government. | The City does not have a final approved parking policy. However, Council has adopted draft LPP – Parking (see Attachment 4), which has been sent to the WAPC for approval. Due regard has been given to this policy. An assessment of this policy is provided later in this report. |
| 32.1(2) – Cash-in-lieu | <p>The requirement to provide on-site car parking spaces is subject to:</p> <ul style="list-style-type: none"> a) the local government agreeing to or requiring a cash-in-lieu payment pursuant to sub-clause 3; b) the local government accepting a shared car parking arrangement pursuant to clause 32.2; and c) any requirement to provide car parking spaces in a structure plan, local development plan or activity centre plan which applies to the development, in which case the | The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision. |

| | | |
|---------|---|--|
| | <p>requirement in the structure plan, local development plan or activity centre plan prevails to the extent of any inconsistency.</p> | |
| 32.1(3) | <p>The requirement to provide on-site car parking spaces is subject to:</p> <ul style="list-style-type: none"> a) the local government agreeing to or requiring a cash-in-lieu payment pursuant to sub-clause 3; b) the local government accepting a shared car parking arrangement pursuant to clause 32.2; and c) any requirement to provide car parking spaces in a structure plan, local development plan or activity centre plan which applies to the development, in which case the requirement in the structure plan, local development plan or activity centre plan prevails to the extent of any inconsistency. | <p>The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision.</p> <p>Parking provisions are not proposed to be administered through the Nedlands Town Centre Precinct Plan and are reliant on the LPP for Parking.</p> |
| | <p>The requirement to provide on-site car parking spaces is subject to:</p> <ul style="list-style-type: none"> a) the local government agreeing to or requiring a cash-in-lieu payment pursuant to sub-clause 3; b) the local government accepting a shared car parking arrangement pursuant to clause 32.2; and c) any requirement to provide car parking spaces in a structure plan, local development plan or activity centre plan which applies to the development, in which case the requirement in the structure plan, local development plan or activity centre plan prevails to the extent of any inconsistency. | <p>The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision.</p> |
| | <p>The amount of the cash-in-lieu payment shall be determined by the local government by reference to the cost to the local government of providing and constructing the shortfall in car parking spaces that would otherwise have been constructed on the development site in accordance with sub-clause 1 or 2(c) and may include, without limitation:</p> <ul style="list-style-type: none"> a) the value of land required for the car parking spaces, including any manoeuvring areas, as estimated by a licenced valuer appointed by the local government; b) the cost of constructing the car parking spaces including manoeuvring areas; c) any costs ancillary to providing and constructing the car parking spaces, such as the installation of signs and lighting; and | <p>The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision.</p> |

| | | |
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| | d) any other cost incurred by the local government in determining the cash-in-lieu payment. | |
| | <p>Payments made to the local government pursuant to this clause 32.1 must be held in trust and used by the local government only for:</p> <p>a) the provision and maintenance of public parking infrastructure; and</p> <p>b) any ancillary expenses incurred for the purposes of this clause, including loan repayments.</p> | <p>The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision.</p> |
| | <p>In this clause, public parking infrastructure includes but is not limited to land and facilities for public parking, whether on-street or in a designated car parking station, and includes facilities, technologies and infrastructure ancillary to this land use.</p> | <p>The City does not have a Parking Strategy to guide cash-in-lieu payments. Until such time as a strategy has been adopted the City will not enforce this provision.</p> |
| 32.2(1) – Shared Car parking | <p>Where an application for development approval is made for a non-residential use which does not provide the required number of on-site car parking spaces, the local government may permit part or all of the shortfall to be provided through an agreement to share car parking space(s) on an adjacent site (Shared Site)</p> | <p>The applicant has provided two joint car parking agreements with two adjacent businesses – Maharajas Restaurant and the ‘Surrounds’ retail outlet. A legal agreement would be required to establish legal shared parking arrangements and reciprocal use arrangements and be in a location acceptable to the City.</p> |
| 32.2(2) – Shared Car parking | <p>When considering whether to permit a proposal for shared car parking, the local government must:</p> <p>a) be satisfied that the hours of peak operation of the proposed development and those of the Shared Site do not substantially overlap;</p> <p>b) be satisfied that adequate car parking will be available at all times for both the development site and the Shared Site; be satisfied that the relationship between the development site and the Shared Site is such that the shared car parking space(s) is likely to be used by people visiting the development site; and</p> <p>c) have regard to other relevant considerations in any applicable local planning policy.</p> | <p>Maharaja’s Restaurant</p> <p>The Windsor Cinema and Maharaja’s Restaurant have a shared car parking agreement. They also provide customers with a cinema ticket and a meal offer, which reduces the total number of visitations to each business, as customers of the restaurant patronise the cinema as well. Despite having similar peak periods of activity, neither business will be substantially affected by the shared car parking agreement.</p> <p>The car parking area of the cinema and restaurant is not delineated. Administration is satisfied that customers will have access to the bays subject to a legal agreement being provided</p> |

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| | | <p>‘Surrounds’ - Home automation company</p> <p>The operating hours of Surrounds are generally between 9:00 and 17:00 Monday to Friday and 10:00 and 14:00 on Saturday. Given that the Cinema’s peak periods are generally outside of working hours, the peak periods do not overlap.</p> <p>Surrounds is adjacent to the subject site and has shared vehicle access with the Cinema. Administration is satisfied that customers will have access to the parking bays.</p> |
| <p>32.2(3) – Shared Car parking</p> | <p>An application for development approval which proposes shared parking must include:</p> <ul style="list-style-type: none"> a) information addressing the matters in the preceding sub-clause 2; b) a draft parking management plan; and c) any other relevant material referred to in an applicable local planning policy. | <p>A shared car parking agreement has been provided to Council. Administration are not currently satisfied that the shared parking arrangements can satisfy the required number of car parking bays for the additional Cinema land use</p> |
| <p>32.2(4) – Shared Car parking</p> | <p>If the local government permits a shared car parking arrangement, it may require the owner of the development site to enter into a legal agreement for the purpose of ensuring the satisfactory provision and maintenance of the shared car parking. The legal agreement:</p> <ul style="list-style-type: none"> must be to the satisfaction of the local government; a) must be made with the owner of the Shared Site, and any other person specified by the local government (which may include the local government); b) must be prepared (and if necessary, registered and lodged) at the cost of the owner of the development site; c) may, if required by the local government, provide for one or more of an easement, restrictive covenant, right-of-way, reciprocal access and circulation, lease, licence, notification, absolute caveat and any other provision necessary or convenient to ensure the shared parking arrangement is provided and maintained; and | <p>A shared car parking agreement has been provided to Council. In the event that Council elects to approve the application, a condition of approval will ensure that these agreements satisfy these provisions.</p> <p>In the event that the Council elects to approve the application by applying Clause 34 (2) of the Scheme. ‘ The local government may approve an application for a development approval that does not comply with an additional site and development requirements’ a condition of approval will be required that the development comply with Clause 32.2 (4) of the Scheme, requiring the owner of the development site to enter into a legal agreement for the purpose of ensuring the satisfactory provision and</p> |

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| | d) must not be amended, surrendered or terminated without the approval of the local government. | maintenance of share car parking. |
| 32.4(1) – Ground floor use | On land zoned Local Centre and Neighbourhood Centre, residential uses are not permitted on the ground floor facing a primary and/or secondary street, except where the use faces a right-of-way or laneway. | None proposed. |
| 32.4(2) – Ground floor use | Residential uses are not permitted on the ground floor facing primary or secondary streets, except where the use faces a right-of-way or laneway in the Mixed Use zone, or where identified in an approved local planning policy | As above |
| 32.4(3) – Active frontages | Buildings are to have active frontages to the primary and/or secondary street, except where a use faces a right-of-way or laneway | LPS 3 does not define the term active use. However, Administration is of the view that the cinema land use is consistent with the intent of this provision. |
| 32.4(4) – Tenancy Depth | Minimum tenancy depth facing a street is 10m. | The existing tenancy exceeds 10m. |
| 32.4(5) – Development Standards | In relation to developments that are not subject to the R-Codes, where development standards are not specified in an approved structure plan, local development plan and/or activity centre plan, the development standards are subject to the applicable R-Code. | Given that the application is for the expansion of an existing use, with no external work proposed; this provision is not considered applicable to the development. |

6.2 Local Planning Strategy

The site is identified as being in or close to the Town Centre in the Local Planning Strategy Map. The cinema is an anchor entrainment facility for the identified Town Centre. The development is consistent with clause 5.2 of the Local Planning Strategy, as it provides

6.3 State Planning Policy 5.4 - Road and Rail Transport Noise and Freight Considerations in Land Use Planning (SPP 5.4)

The objectives of SPP 5.4 are as follows:

- a) protect the community from unreasonable levels of transport noise;
- b) protect strategic and other significant freight transport corridors from incompatible urban encroachment;
- c) ensure transport infrastructure and land-use can mutually exist within urban corridors;
- d) ensure that noise impacts are addressed as early as possible in the planning process; and
- e) encourage best practice noise mitigation design and construction standards.

In order to achieve the above objectives, a condition of approval is recommended to require an acoustic report be prepared and approved by the City that addresses the provisions of SPP 5.4. The applicant will be required to carry out all the recommended measures of the report prior to use or occupancy of the development.

6.4 Policy/Local Development Plan Consideration

6.4.1 Draft Local Planning Policy – Parking

The development has been assessed against the provisions of draft LPP – Parking (see Attachment 4) and found to present a 170-car parking bay shortfall. The policy is a seriously entertained planning proposal as it has been adopted by Council and sent to the WAPC for approval. As such, the City must consider the provisions of the policy in this report. An assessment of the policy is provided below.

| Policy Objective |
|--|
| To facilitate the development of sufficient parking facilities for cars and other wheeled vehicles. |
| Policy Requirement |
| Public Amusement (Cinema/Theatre) is 1 car parking bay per 2 persons |
| Maximum capacity of existing cinemas: 460 persons |
| Maximum capacity of proposed cinema: 50 persons |
| Total maximum capacity of existing cinema: 510 persons |
| Required number of bays for existing cinemas: 230 bays |
| Required number of bays for proposed cinema: 25 bays |
| Total Required Bays: 255 |
| Proposed |
| Existing Cinema: 54 bays |
| Maharaja's Restaurant: 14 bays |
| Surrounds: 17 bays |
| Total available: 85 bays |
| Administration Assessment |
| Draft Local Planning Policy (LPP) – Parking requires 255 bays |
| Variations to LPP – Parking are capable of approval where the development is consistent with the above-mentioned objective of the policy. The applicant has provided a detailed justification of the shortfall (see Attachment 3). |
| Administration requested the applicant provide ticket sales for each cinema to better understand the average number of visitors to the site at any one time. The applicant provided a breakdown of patrons across all three cinemas, and the average number of visitors at any one time was calculated as 60. The proposed cinema requires a total of 25 bays. The application includes two shared car parking agreements, for 31 bays, this is insufficient given the established current level of parking shortfall. |
| The subject site does however functionally provide enough car parking bays for the average number of visitors to the site, considering the 54 bays onsite and the 31 shared parking bays. |
| The Cinema has operated with a large shortfall of 176 bays since beginning operation. According to City records, only two complaints relating to the cinema car park have been received in the last two years. Both complaints related to illegal parking; not to the availability of car parking at the site. It is further noted that City did not receive an objection |

to the application, which speaks to the limited perceived impact that the car parking shortfall has on the surrounding area.

Ordinarily a local government would apply a cash in lieu payment arrangement in such circumstances whereby it assessed that the car parking shortfall could be accepted subject to payment to the City in accordance with a Car Parking Plan. In this instance the City has not progressed the development of such a plan and therefore cash in lieu provisions cannot be applied.

Given the likelihood of LPP – Parking being formally adopted by the WAPC, Administration must have due regard to the provisions of the policy and recommend Council refuse the application due to the large parking shortfall. Given the proposed intensification of the Cinema land use, and an existing under supply of car parking, with no clearly defined alternative car parking provision administration cannot support the current proposal.

6.4.2 Draft Town Centre Precinct Plan

Council resolved to adopt for advertising draft Local Planning Policy - Town Centre Precinct Plan at its 24 September 2019 meeting. The provisions of the policy are to be given due regard in accordance with Clause 67(a) of the Planning and Development (Local Planning Schemes) Regulations 2015. The site is located in the area proposed as 'Town Heart', which is described as follows:

'The heart is the most diverse of the precincts, with mixed use development and a focus on retail, place activation and destination with active street frontages, afterhours activity and serves as the community heart'.

The policy map in the draft LPP – Town Centre Precinct Plan shows the cinema as a key entertainment facility within the Town Heart. As noted earlier in this report, a previous iteration of draft LPS 3 zoned this area as Neighbourhood Centre, and assigned the cinema use as 'P' or permitted; thereby actively encouraging cinema/theatre uses within the Town Centre. The gazetted version of LPS 3, however, designates this area as Mixed Use, which prohibits the cinema use, rendering the cinema a non-conforming use.

Considering the above, the cinema use is consistent with the draft provisions of LPP – Town Centre Precinct Plan.

7.0 Other Matters to Consider

If Council elects to approve the application in accordance with Clause 34 of the Scheme, Variations to site and development requirements of the Scheme, Administration has provided an alternate recommendation below.

Alternative Recommendation to Committee;

Council approves the development application dated 8 August 2019 for extension of non-conforming use (cinema) at No. 96 (Lot 2) and 100 (Lot 123) Stirling Highway, subject to the following conditions and advice:

1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.

2. This development approval only pertains to the extension of the cinema and associated works.
3. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.
4. The development, hereby approved, shall at all times comply with the definition of a cinema land use, as defined in the City of Nedlands Local Planning Scheme No. 3.
5. A Car Parking Management Plan shall be lodged with and approved by the City of Nedlands. All measures included in the Car Parking Management Plan shall be implemented and complied with at all times to the satisfaction of the City of Nedlands.
6. Prior to the occupation of the development, the owners/occupiers is to enter into a legal agreement with the adjoining tenancies (Maharajas Restaurant located on 96 Stirling Highway and Surrounds located on 102 Stirling Highway) to provide for reciprocal rights of vehicular parking between the lots. The legal agreement is to be vetted by the City's solicitors at the expense of the owners/occupiers.
7. An Acoustic Report prepared by a suitably qualified Acoustic Consultant or Engineer, demonstrating compliance with the Environmental Protection (Noise) Regulations 1997 shall be lodged with and approved by the City prior to the commencement of the development. All of the recommended measures included in the approved Acoustic Report shall be implemented as part of the development, to the satisfaction of the City prior to the submission of a building permit use or occupation of the development and maintained thereafter to the satisfaction of the City at the expense of the owners/occupiers.
8. Amended plans shall be submitted with the building permit demonstrating that the development has incorporated noise mitigation measures, in accordance with 'State Planning Policy 5.4 Road and Rail Transport Noise and Freight Considerations in Land Use Planning - Implementation Guidelines'. The drawings and specifications contained within that application are to be to the specifications and satisfaction of the City of Nedlands and thereafter implemented by the landowner/applicant to the satisfaction of the City of Nedlands.
9. The proposed cinema on No. 96 Stirling Highway (lot 96) shall not operate independently of the existing cinema at No. 100 (lot 123) Stirling Highway.

Advice Notes specific to this proposal:

1. In relation to Condition 4, a cinema/theatre is defined as 'a premises where the public may view a motion picture or theatre production'.
2. All works in the proposed development shall comply with National Construction Code Building Code of Australia (NCC BCA) Vol. 1.

3. The applicant is advised that separation of development across lot boundaries or to adjoining buildings will require further investigation. The City's Building department advises that the building could be considered as a "United Building" however it must be fire separated from the adjacent restaurant and shall have standalone fire services for the additional cinema which will be operated in unison with the remainder of the Windsor Cinema site.
4. The applicant is advised that in order to achieve a building permit, plans shall be provided which demonstrate compliance with Australian Standards AS1428 and Part D3 – Access for People with a Disability of the NCC BCA as applicable.
5. The applicant is advised that in order to achieve a building permit, plans shall be provided with the Building Permit Application which shall demonstrate compliance with Section E – Services & Equipment of the NCC BCA as applicable.
6. Upon completion of building works for the cinema addition the builder shall apply for an Occupancy Permit. The development shall not be occupied until such time as an Occupancy Permit is granted by the Permit Authority (City of Nedlands).
7. The applicant shall lodge with the City a Form 1 Application to Construct, Extend or Alter a Public Building, prior to the City issuing a Building Permit.
8. Upon completion of construction and/or fit-out works, applicant shall lodge with the City a Form 2 Application for Certificate of Approval and a Form 5 Certificate of Electrical Compliance which has been completed by a licensed electrician.
9. In relation to condition 5, An Acoustic Report must address the following as a minimum, with consideration of noise sensitive residences and commercial premises likely to be impacted by the development:
 - a) Noise modelling, demonstrating compliance, for the proposed development including consideration of operational times and noise from audio-visual equipment associated with the use of the cinema;
 - b) All plant, equipment, air conditioners/refrigeration/compressor equipment and any other mechanically operated systems; and
 - c) Construction noise management.
10. All internal water closets 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.
11. Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.
12. The landowner is advised that all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the Environmental Protection (Noise) Regulations 1997, in relation to noise.

13. The current Certificate of Accommodation, issued under the Health (Public Building) Regulations 1992 issued in 2013 limits the capacity of the Windsor Cinema site to 460 in total, based on the number of available female sanitary facilities. The Plans associated with this Development Application appear to provide additional toilets, which may permit an increased capacity, however more detailed plans will need to be provided to allow for this determination. Sanitary facilities provided to be compliant with the BCA;
14. As plans indicate that there is only one designated exit for Cinema 4, the maximum capacity is limited to 50 persons.

8.0 Conclusion

Despite being a non-conforming use, the development is considered consistent with the provisions that permit the expansion of non-conforming uses and all other relevant provisions of LPS 3, the Local Planning Strategy and draft Town Centre Precinct Plan. Due regard has been given to LPP – Parking, which presents a large parking shortfall. Pursuant to clause 67(s) of the development is not considered to provide an adequate number of parking bays. The City has not progressed a Parking Plan or Integrated Transport Strategy at this time, and therefore cash in lieu provisions are not able to be applied to proposed car parking shortfalls.

Administration's assessment is that the parking shortfall functionally could be considered acceptable considering the average visitor numbers and the new car parking agreements which address the parking demand of the proposed cinema. The development is considered to be a key entertainment facility of the proposed Town Centre Precinct, which has operated with minimal complaint. Administration are bound by the Policies adopted by Council and therefore in this instance a shortfall in car parking in accordance with the Council adopted LPP for Parking must be applied. Considering the above, the proposed development application is recommended to be refused.

This is the first time the draft Local Planning Policy – Parking has been applied. This policy identifies that a significant number of additional car-parking bays should be provided with this development. Council's application of the draft policy to this proposal may set the precedent for future proposals that have a significant parking shortfall.



Department of **Planning,
Lands and Heritage**

Your ref:
Our ref: P24807/45883
Enquiries: Adelyn Siew (08) 6552 4123

Chief Executive Officer
City of Nedlands
council@nedlands.wa.gov.au

Attention: Joshua Scrutton

Dear Sir

WINDSOR THEATRE AND COMMERCIAL BUILDING

Thank you for your email of 26 August 2019 regarding the proposed development at 96 Stirling Highway, Nedlands. The Heritage Council's Register Committee previously identified it as a place warranting assessment for possible entry in the State Register of Heritage Places; however, a full assessment of its cultural heritage significance has not yet been undertaken.

We thank you for forwarding information on the proposed development, which will assist with the future assessment of the place for the State Register. We note the proposed extension of the cinema use. We would appreciate being kept informed of the development proposal as it progresses through the planning stages.

Should you have any queries regarding this advice please contact me at adelyn.siew@dplh.wa.gov.au or on 6552 4123.

Yours faithfully



Adelyn Siew
Director Heritage Development

11 September 2019



mainroads
WESTERN AUSTRALIA

Enquiries: Lucas Hodgson on (08) 9323 4806
Our Ref: 19/5815 (D19#777826)
Your Ref: DA19-38386

19 September 2019

Chief Executive Officer
City of Nedlands
PO Box 9
NEDLANDS WA 6909

Email: council@nedlands.wa.gov.au

Dear Sir/Madam,

**PROPOSED EXTENSION OF NON-CONFORMING USE (CHANGE OF USE TO CINEMA) -
LOT 2 (96) STIRLING HIGHWAY NEDLANDS**

In response to your correspondence received on 19 August 2019, Main Roads has no objections subject to the following advice notes being provided:

Advice:

1. This property is affected by land reserved in the Metropolitan Region Scheme as shown on the enclosed land protection plan 1.7138-1, and will be required for road purposes at some time in the future.
2. The project for the upgrading/widening of Stirling Hwy is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided.

The support of this approval and access arrangement is valid for a period of two (2) years from the date of this letter. Any changes or date extensions relating to this development application must be referred to Main Roads for comment and recommendation.

Main Roads requests a copy of the City's final determination on this proposal to be sent to planninginfo@mainroads.wa.gov.au quoting the file reference above.

Yours sincerely

Zeljko Zagorac
Statutory Road Planning Manager

Enc. Land Protection Plan 1.7138-1



Legend

proposed reservation boundary - - - - -

Western Australian Planning Commission
 This is to certify that Plan number 1.7138/1
 was APPROVED by RESOLUTION of a meeting
 held on 25/08/2015 Minute No. WAPC 235.10.2
 Signed: *[Signature]*
 Authorised Officer
 Effective: 30/01/2017

Standard truncation



Note: all truncations are standard unless otherwise shown



Stirling Highway - Stanley Street to Bay Road Primary Regional Roads - proposed land requirement

Project manager: J. O'Hurley
 Draftsperson: T. Lynch
 Examined:
 Revised:
 Date:

N

Scale 1:2000

Plan number **1.7138/1**
 File number: 899/01/191
 Perth 1:2000 sheets 08, 21, 29, 22, 10, 21 & 10, 22
 Managesheet: Perth: Scheme 1:2000 sheet 18
 Managesheet: 1:2000/2
 Changes plan: 1.7145/1

**Supersedes plan
 1.7138**

Luna Palace have been leasing the Windsor Cinema for over 12 years and it must be acknowledged that the existing car parking has been successfully operating without any ongoing car parking issues.

Windsor Cinemas have an existing access agreement with the owners of 102 Stirling Highway, presently occupied by Surround Sounds. This provides patrons of 102 access through the Windsor car park to their site in exchange for Windsor Cinema patrons to access up to 8 of the car bays, during their normal operating hours, and the full 16 car bays for after-hours use. We are not aware of any car parking agreement between the Windsor Cinema and the owners of 96 Stirling Highway (Indian restaurant and previous Rug showroom)

We have recently completed the refurbishment of an existing building for 4 new cinemas at Luna Palace Cinemas in Leederville and are conversant with the Town of Vincent car parking requirements. These are 1 Bay per 6 seats in the cinema which is then reduced by various factors including proximity to train stations, bus routes and being in the defined Town Centre.

We have also investigated car parking requirements for various nearby councils, and are tabled below for reference.

| | |
|-----------------------|--|
| Town of Vincent | 1 bay / 6 seats |
| Town of Victoria Park | 1 bay / 4.5 m ² of NFA (Net floor area) |
| Town of Cambridge | 1 bay / 5 m ² of seating area (roughly 8 - 9 seats) |
| Town of Claremont | 1 bay / 6 seats |
| City of Subiaco | 1 bay / 4 m ² of seating area (roughly 6 - 7 seats) |
| City of Stirling | 1 bay / 4 seats |

Our research and recent experience with the Town of Vincent would suggest that Nedlands Council's present requirement for 1 car bay per 2 cinema seats is excessive, especially as there is a bus stop outside the cinema.

Present ratios at the Windsor Cinema are

During Day

681 Seats 54 bays + 8 (102 Stirling Highway)= 62 Bays Ratio 1 car bay / 11 seats

After Hours

681 Seats 54 bays + 16 (102 Stirling Highway)= 70 Bays Ratio 1 car bay / 10 seats

Please also note that the Windsor Cinema has a max capacity limit under their liquor licensing requirements of 460 seats. This level of patronage is rarely, if ever, reached and trades well below these levels on a day to day basis.

We reiterate that at these levels the Windsor Cinemas has been successfully in operation for over 90 years, without any ongoing car parking issues. With the increased competition to Cinemas from electronic sources the continued success of the Windsor Cinema is not in increasing numbers to specific screenings but by providing increased multiple screening opportunities.

Our considerations

If Nedlands present car parking provisions of 8.3 bays / 100 m² were applied to the previous carpet shop (78 m²) this would result in an allocation of 6.474 car bays, say 7 car bays.

Using the present ratio of car bays for the Windsor Cinema of say 1 bay per 11 (worst case scenario - during the day) the car parking requirement for the additional 67 seats would be 6 seats

We would therefore consider that proposal to convert the retail space on Lot 96 would not significantly impact on the functionality and demand for additional car bays.

Site Visit photos – 96-100 Stirling Highway



Figure 1 – Rear shared car parking area of 96 and 100 Stirling Highway



Figure 2 – Rear shared car parking area of 96 and 100 Stirling Highway



Figure 3 – The subject site (96 Stirling Highway), formerly a shop.



Figure 4 – Shared car parking area between 100 and 102 Stirling Highway



LOCAL PLANNING POLICY – PARKING

1.0 PURPOSE

- 1.1 The purpose of this policy is to define standards for car parking for residential and non-residential developments.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all residential and non-residential development on land that is reserved or zoned under Local Planning Scheme 3 (LPS 3), within the City of Nedlands.
- 2.2 This policy is to be read in conjunction with LPS 3 and State Planning Policy 7.3 – Residential Design Codes Volumes 1 & 2 (R-Codes).
- 2.3 Where this policy is inconsistent with the provisions of a specific Local Planning Policy, Precinct Plan or Local Development Plan that applies to a particular site or area, the provisions of that specific Local Planning Policy, Precinct Plan or Local Development Plan will prevail.

3.0 OBJECTIVES

- 3.1 To facilitate the development of sufficient parking facilities for cars and other wheeled vehicles.

4.0 POLICY MEASURES

4.1 Minimum parking requirements

- 4.1.1 All development shall provide car parking on-site in accordance with Table 1, unless otherwise approved by the City.

Table 1: Parking Requirements

| Land Use | Minimum no. of Car Parking Bays Required |
|--|---|
| Amusement parlour Art gallery Betting agency Cinema/theatre Club premises Exhibition centre Recreation – private | 1 per 2 persons. |
| Animal Establishment | 1 per employee; and 1 drop off/pick up bay per 6 animals. |
| Bed and breakfast Holiday accommodation | 1 per guest bedroom, in addition to any bays required under the R-Codes for the dwelling (if applicable). |



| | |
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| Holiday house | |
| Hotel Motel | 2 spaces per 5 guest rooms. |
| Bulky goods showroom Garden centre Motor vehicle, boat or caravan sales Trade display Trade supplies Warehouse/storage | 2.2 per 100m ² net lettable area or 1 per employee (whichever is greater). 1 space in every 3 to be set aside for employees. |
| Child care premises | 1 per employee; 1 per every 6 children in attendance; and 1 drop off/pick up bay per 30 children (or part thereof). |
| Civic use Community purpose Funeral parlour Place of worship Reception centre | 1 per 4 persons. |
| Consulting rooms Hospital Veterinary centre Medical centre | 12 or 1 per every 4 beds (whichever is greater). |
| Convenience store Liquor store – small Market Shop | 8.3 per 100m ² of net lettable area. 1 space in every 5 to be set aside for employees. |
| Lunch bar Restaurant/café Fast food outlet | 1 per 2.6m ² of restaurant seating area or 1 per 2 persons (whichever is greater). |
| Educational establishment - Pre-primary/ Primary - Secondary/ Tertiary/ Technical | 1.2 per employee. 2 of every 10 spaces (or part thereof) to be set aside for visitors. 2 per employee; 1 per rostered canteen worker and an additional 2 for each 10 provided (or part thereof). Additional spaces to be set aside for visitors. |
| Family day care | 1 bay in addition to the requirements of the R-Codes for the dwelling. |
| Home business | Additional spaces as required by the number of staff and customers coming to the property, in addition to the requirements of the R-Codes (where applicable). |
| Industry - light | 2.2 per 100m ² of net lettable area or 1 per employee (whichever is greater). 1 space in every 3 to be set aside for employees. |



| | |
|---|--|
| Motor vehicle repair Motor vehicle wash Service station | 5 per working bay and 1 per employee. |
| Office | 4.75 per 100m ² of net lettable area. 2 spaces in every 3 to be set aside for employees. |
| Residential aged care facility | 12 or 1 per every 4 beds (whichever is greater). |
| Serviced apartment | 1 per unit and 1 per 2 employees. |
| Small bar Tavern | 1 per 1.3m ² of bar and public areas (excluding toilets); and 1 per employee. |
| Residential | 2 spaces per dwelling unit 3 spaces per dwelling unit on lots greater than 1000 square meters |

Notes:

- a) **Persons** means the number of persons for which a building has been designed or for whom seating is provided. **Employee** means any person employed in the building.
- b) Where spaces are to be set aside for visitors or employees, they must be clearly marked as such.

4.2 Land uses which are not listed within Table 1

- 4.2.1 Where a land use is not listed within Table 1 of this Policy, the parking ratio will be determined having regard to the objectives of this policy, similar uses and surrounding uses. This is the same as 'Uses not Listed' within LPS 3.

5.0 VARIATIONS TO THIS POLICY

- 5.1 Where a proposal does not increase an existing approved shortfall of car parking (in accordance with the car parking requirements in Table 1) then the proposal is not considered a variation to this Policy.
- 5.2 Variations to this Policy shall be determined in accordance with the objective of this Policy.
- 5.3 Applicants seeking variations to this Policy are required to submit a detailed written statement addressing the objective of this policy for the City's assessment.

6.0 RELATED LEGISLATION

- Planning and Development Act 2005
- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Planning Scheme No. 3
- State Planning Policy 7.3 – Residential Design Codes



| | |
|---------------------------|-----------------------------------|
| Council Resolution Number | PD39.19 |
| Date Adopted | 24 September 2019 Council Meeting |

| | |
|---|---|
| PD46.19 | No. 72 Louise Street, Nedlands – Two Grouped Dwellings |
| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | Timothy Jones |
| Landowner | Mary Uttamchandani & Thui Wong |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | Nil. |
| Report Type Quasi-Judicial | When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| Reference | DA19/34945 |
| Previous Item | Nil |
| Delegation | In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received. |
| Attachments | <ol style="list-style-type: none"> 1. Site photographs 2. SAT case – Corp and Town of Cambridge [2019] WASAT 65 <ol style="list-style-type: none"> 1. Plans (Confidential) 2. Assessment (Confidential) 3. Submissions (Confidential) |

1.0 Executive Summary

The purpose of this report is for Council to determine a development application received from the applicant on the 13 March 2019, for two grouped dwellings at No. 72 Louise Street, Nedlands.

The application does not meet the minimum non-discretionary site area requirements and requires assessment under the design principles for street setbacks, lot boundary setbacks and open space. The development was advertised to adjoining neighbours in accordance with the City's Local Planning Policy – Consultation of Planning Proposals. Two objections were received during the advertising period.

It is recommended that the application be refused by Council as the grouped dwellings are not considered to achieve the objectives and design principles of the Residential Design Codes (R-Codes) and are likely to adversely affect the local amenity, character and orderly and proper planning of this area. This recommendation is supported by recent SAT case law.

2.0 Recommendation to Committee

Council refuses the development application dated 13 March 2019 for two grouped dwellings at No. 72 (Lot 189) Louise Street, Nedlands for the following reasons:

1. The development does not satisfy the deemed-to-comply requirements of clause 5.1.1 - Site area of the Residential Design Codes, which are not subject to variation or Clause 67 (a) of the Planning and Development Regulation (Local Planning Schemes) Regulations 2015.
2. The development does not comply with non-discretionary clause 2.5.3 of the Residential Design Codes, in so far as the development varies the minimum site area requirement set out in Table 1.
3. The development does not satisfy the design principles for clause 5.1.2 - Street setback of the Residential Design Codes, due to the proposed street setback of the development which is inconsistent with the established streetscape.
4. The development does not satisfy the design principles for clause 5.1.3 – Lot boundary setback Residential Design Codes, due to the proposed rear setback which will add to the perception of bulk and adversely affect the amenity of the locality and streetscape.
5. The development does not satisfy the design principles for clause 5.1.4 – Open space and Residential Design Codes, as the development is not consistent with or contribute to the existing streetscape character.
6. The proposal is not considered an ancillary dwelling due to its size and scale. Regardless, if it were to be considered an ancillary dwelling by Council, it does not satisfy the design principles of the clause 5.5.1 - Ancillary Dwellings of the Residential Design Codes
7. The development does not comply with Clause 67 (a), (m) and (n) of the Planning and Development Regulation (Local Planning Schemes) Regulations 2015 as the proposed size and design of the development will negatively impact on the character of the locality and relationship of the building to the existing streetscape context and surrounding properties.
8. The development does not satisfy the clause 1.3.1 – General objectives for residential development of the Residential Design Codes in so far as the development is not an appropriate design for the intended density and development context.

3.0 Background

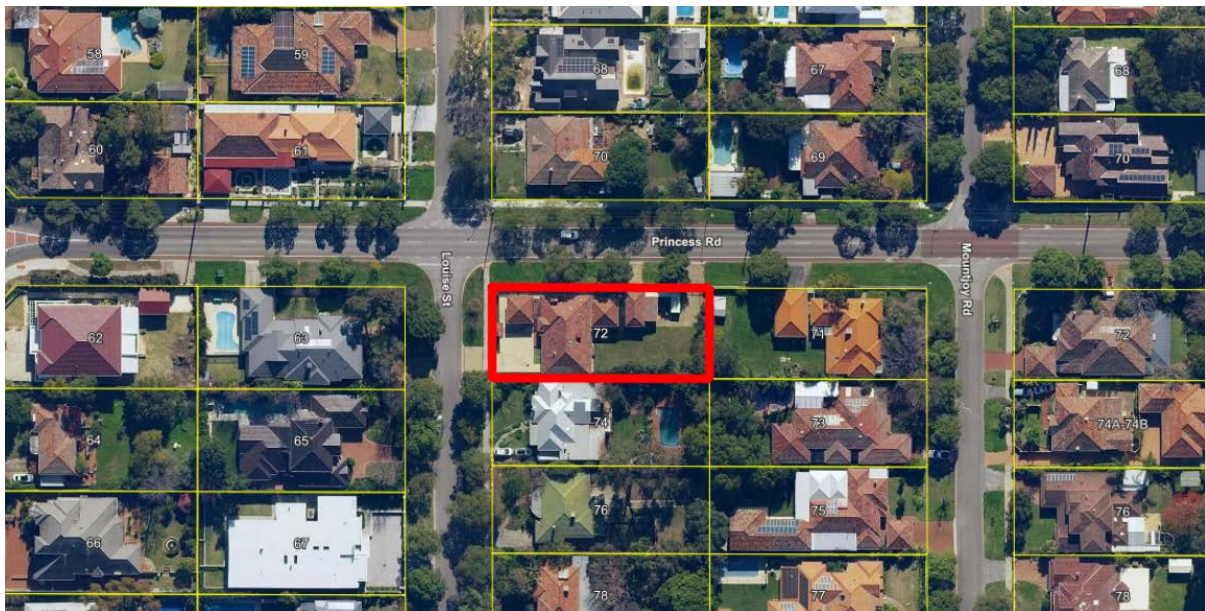
3.1 Land Details

| | |
|--|----------------------|
| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Residential |
| R-Code | R10 |
| Land area | 1047.1m ² |

| | |
|-------------------------------|---|
| Additional Use | No |
| Special Use | No |
| Local Development Plan | No |
| Structure Plan | No |
| Land Use | Existing – Single house Proposed – Two grouped dwellings |
| Use Class | Proposed – P |

3.2 Locality Plan

The subject site is zoned Residential with a density code of R10. The site is located within the street block bounded by Princess Road to the north, Mountjoy Road to the East, Melvista Road to the south and Louise Street to the west. The site lies in an area that has not experienced re-zoning or up-coding, and records indicate that there are no other grouped dwellings or subdivided properties located within close proximity of the site.



Administration approved two storey additions to the existing single dwelling development on 6 March 2018. The application was approved subject to a condition that required the kitchen be removed from the proposed additions. The applicants have not elected to proceed with this development application and the approval in effect.

Were the applicant to lodge the previously approved development application today, administration would consider the development as two grouped dwellings, not an addition to the existing single house.

4.0 Application Details

The applicant seeks development approval to convert the existing single house to a grouped dwelling and construction of a second grouped dwelling.

By way of justification in support of the development application the applicant asserts that the development is in fact additions to a single house on the basis that the existing dwelling will have its kitchen removed and replaced with a ‘bar area’.

5.0 Consultation

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

- Site area
- Street Setback
- Lot boundary setback
- Open space
- Setback of garages and carports

The development application was therefore advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to adjacent residents and landowners. At the conclusion of advertising, two objections, were received.

The following table is a summary of the concerns raised and the City's response and to each issue:

| Submission | Officer Response | Action Taken |
|---|-----------------------|--|
| Objects to the second proposed dwelling on the basis that the density code does not permit such a development. | Supported | This objection has been given due regard and informs one of the reasons for refusal. |
| Objects to the non-compliant street setback | Supported | This objection has been given due regard and informs one of the reasons for refusal. |
| Objects to the non-compliant rear setback | Supported | This objection has been given due regard and informs one of the reasons for refusal. |
| Objects to the non-compliant open space | Supported | This objection has been given due regard and informs one of the reasons for refusal. |
| Objects to the size of the second dwelling and agrees that the dwelling is not consistent with an ancillary dwelling. | Supported | This objection has been given due regard and informs one of the reasons for refusal. |
| Concerned about the impact of the proposed retaining wall on the dividing fence | Not a planning matter | The impacts of construction are addressed in the Building Permit. |
| Concerned about the finished floor level of the proposed rear dwelling | Noted | The finished floor level falls within the deemed to comply level. |
| Concerned about the southern lot boundary setback | Noted | The southern lot boundary setback is considered deemed to comply. |

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

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

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

In accordance with provisions (a),(m),(n) and (y) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development's land use (grouped dwelling), its incompatibility with surrounding development, the requirements of orderly and proper planning and the potential impact it will have on the local amenity and character of this area

Approval of the application would create a significant undesirable precedent in the consideration of similar proposals on all other sites coded R10-R15 within the City.

6.2 Local Planning Scheme No. 3

Clause 17 – Zoning Table (Land Use)

The applicant asserts that the development is for additions to a single house. Administration have assessed the application and consider the development to be two grouped dwellings in accordance with the definition in the R Codes.

Single house is defined in the R-Codes as:

‘A dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property’.

Grouped dwellings are defined in the R-Codes as:

‘A dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above or below another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property’.

The City is mindful of the needs of its diverse residents and the City has approved a number of dwellings that cater for intergenerational families however, in these approved applications, the various habitable and non-habitable areas were integrated with one another and functioned as a single dwelling.

Determining whether a building is a single house is a non-discretionary exercise as it either meets the definition or it does not. Administration is of the view that the development cannot be considered a single house, nor a single house with an ancillary dwelling, due to:

- The scale of both dwellings;
- The duplication of all functions;
- The ease by which the development can be separated into two dwellings (under building legislation as well); and
- The bar area noted in the existing house, is of a size that could easily function as a kitchen.

The proposed dwelling to the rear of the property features separate entry, vehicle access, double carport, laundry facility, and living areas to the existing dwelling. The subject application is not integrated and if the 'sunroom' were to be removed or partitioned, the homes would be two separate dwellings under building legislation as well.

The proposed new dwelling is approximately 198m² in area, while the existing single house will be approximately 205m² in area. The size of the two dwellings far exceed the intent of clause 5.5.1 – Ancillary dwellings of the R-Codes, and with minimal alterations, would function separately.

Notwithstanding the above, LPS 3 does not distinguish between the different forms of residential dwellings, rather it classifies all residential dwellings or buildings as 'Residential'.

Clause 16 – Table 2 Residential Zone Objectives

Clause 2.5.2 of the R-Codes requires the decision maker to have regard to the LPS 3 objectives when making its decisions. The objectives for the Residential Zone are as follows:

- "To provide for a range of housing and a choice of residential densities to meet the needs of the community.
- To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.
- To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
- To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks."

The development is not considered to be compatible with the desired streetscape, as the second grouped dwelling is not setback in accordance with the prescribed 9m setback in clause 26(1)(a) of LPS 3. Further the development is not set back 6m from the rear boundary in accordance with clause 5.1.3 of the R-Codes. Grouped dwellings on lots less than 2000m² are not considered compatible with nor complementary to the development context, which is comprised of single houses on lots with generous setbacks and open space. If approved the development will adversely affect the orderly and proper planning of this area and set an undesirable precedent in this locality.

6.3 Policy Consideration

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

Administration have determined that the development application is for two grouped dwellings. As such, the applicant is seeking assessment under the Design Principles of the R-Codes for site area, street setback, lot boundary setback, open space and setback of carports and garages as addressed in the below tables.

Administration notes that, in isolation, some elements of the proposal are capable of support through the exercise of discretion. Nevertheless, the development varies the site area requirements of the R-Codes, which are non-discretionary. The application should be refused pursuant to clause 2.5.3 of the R-Codes which states that:

‘The decision-maker shall not vary the minimum or average site area per dwelling requirements set out in Table 1 (except as provided in the R-Codes Volume 1 or the scheme)’.

Cumulatively, the application is considered to be an overdevelopment of the site, one that is inconsistent with its density code and that will have an adverse impact on the streetscape and locality. Administration’s assessment is provided below.

Element 5.1.1 - Site area

| Design Principles |
|---|
| <p>P1.1 Development of the type and density indicated by the density code designated in the scheme.</p> <p>P1.2 The WAPC may approve the creation of a lot, survey strata lot or strata lot of a lesser minimum and/or average site area than that specified in Table 1, and the WAPC in consultation with the local government may approve the creation of a survey strata lot or strata lot for a single house or a grouped dwelling of a lesser minimum site area than that specified in Table 1 provided that the proposed variation would be no more than five per cent less in area than that specified in Table 1; and</p> <ul style="list-style-type: none"> • facilitate the protection of an environmental or heritage feature; • facilitate the retention of a significant element that contributes toward an existing streetscape worthy of retention; • facilitate the development of lots with separate and sufficient frontage to more than one public street; • overcome a special or unusual limitation on the development of the land imposed by its size, shape or other feature; • allow land to be developed with housing of the same type and form as land in the vicinity and which would not otherwise be able to be developed; or • achieve specific objectives of the local planning framework. <p>P1.3 The WAPC, in consultation with the local government, may approve the creation of a survey strata lot or strata lot for an existing authorised grouped dwelling or multiple dwelling development of a lesser minimum and average site area than that specified in Table 1, where, in the opinion of the WAPC or the local government, the development on the resulting survey strata or strata lots is consistent with the objectives of the relevant design elements of the R-Codes, and the orderly and proper planning of the locality.</p> |
| Deemed-to-Comply Requirement |
| <p>C1.1 Development which complies with the dwelling type and site area requirements set out in Table 1 and the following provisions.</p> <p>Extract from Table 1 Minimum Site area: 875m² Average site area: 1000m²</p> <p>Requires Site area for two grouped dwellings: 2000m²</p> |
| Proposed |
| <p>The area of the subject site is 1047.1m², which is approximately 953m² below the required area for a development of this type and size.</p> |
| Administration Assessment |
| <p>As noted previously, the development directly contradicts clause 2.53 of the R-Codes, which makes the deemed to comply criteria non-discretionary.</p> <p>The site is not able to accommodate two grouped dwellings and is not considered to be of a type that is consistent with the amenity expectations of the R10 density code.</p> |

If approved, this development will set an undesirable precedent that could be repeated throughout the City’s R10, R12.5 and R15 coded lots.

Administration is of the view that there are a sufficient number of properties within the City that permit this form of development. The subject application should be refused to ensure the integrity of the R10-R15 density codes and to prevent infill by stealth. Approval of such a development is considered to adversely affect the amenity of this locality.

Clause 5.1.2 – Street setback

| Design Principles |
|--|
| <p>Buildings set back from street boundaries an appropriate distance to ensure they:</p> <ul style="list-style-type: none"> • contribute to, and are consistent with, an established streetscape; • provide adequate privacy and open space for dwellings; • accommodate site planning requirements such as parking, landscape and utilities; and • allow safety clearances for easements for essential service corridors. <p>P2.2 Buildings mass and form that:</p> <ul style="list-style-type: none"> • uses design features to affect the size and scale of the building; • uses appropriate minor projections that do not detract from the character of the streetscape; • minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework. |
| Deemed-to-Comply Requirement |
| <p>Clause 26 of LPS 3 modifies the Deemed to comply criteria of the R-Codes as follows:</p> <p>(1) In relation to land coded R10, R12.5 and R15, other than lots identified in Schedule 2 - St John's Wood and Schedule 3 - Hollywood:</p> <p style="padding-left: 20px;">a) clause 5.1.2 (Street setback) of the R-Codes is modified by replacing deemed-to-comply requirement C2.1 i to iv with:</p> <p style="padding-left: 40px;">i. a minimum of 9m.</p> |
| Proposed |
| <p>The proposed street setback from Princess Road of the rear grouped dwelling is, in general, 3.17m, which represents a 5.83m variation to the prescribed standard.</p> |
| Administration Assessment |
| <p>The City has assessed the application in accordance with the above design principles.</p> <p>Design Principle P1.1</p> <p>It is noted that in terms of privacy, the development is not considered to impact the privacy of the adjoining neighbours. Further, in terms of easements, the City is not aware of an easement as it is not shown on the Certificate of Title.</p> <p>Notwithstanding, if the development were to be approved, the proposed rear grouped dwelling is considered to impact the established streetscape and set an undesirable precedent for future development on Princess Road. It is not considered consistent with established streetscape, which in this area is characterised by east-west oriented dwellings setback 9m from the roads running north-south. In terms of open space, the development is not provided with the expected proportion of Open space (see assessment of Open space later in the report).</p> |

Design Principle P2.2

In terms of the size and scale of the dwelling, it is noted that the development is single storey and that the dwelling does employ features that reduce the bulk associated with the façade such as varied materiality and minor articulation. However, the City is of the view that these interventions do not satisfactorily mitigate the impact of having a second dwelling setback 3.17m from the street alignment. Together with the existing dwelling, the setback of the rear grouped dwelling will negatively affect the streetscape and development context of the area. The comments received from adjoining neighbours support this view.

Clause 5.1.3 – Lot boundary setback

| Design Principles |
|--|
| P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to: <ul style="list-style-type: none"> • 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. |
| Deemed-to-Comply Requirement |
| In accordance with Table 1 of the R-Codes, the rear setback requirement is 6m. |
| Proposed |
| The proposed carport is setback 1m from the rear boundary. |
| Administration Assessment |
| Administration is of the view that cumulatively, the proposed carport and dwelling at the rear of the property, will add to the perception of bulk and will negatively impact both the street and adjoining neighbours. The comments received during advertising support this view. The proposal builds to within 1m of the rear lot boundary and is considered to undermine the intent and therefore amenity expectations of the Residential R10 code. This variation is not supported. |

Clause 5.1.4 – Open space

| Design Principles |
|---|
| P4 Development incorporates suitable open space for its context to: <ul style="list-style-type: none"> • 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. |
| Deemed-to-Comply Requirement |
| The deemed to comply proportion of open space relative to the lot is 60%. |
| Proposed |
| The development proposes approximately 54.3% or 567.6m ² of open space. |
| Administration Assessment |
| The variation, noted above, confirms that the development is an overdevelopment of the site, which if approved will set an undesirable precedent. The matters below demonstrate that the development does not achieve the abovementioned design principles: <ul style="list-style-type: none"> • The development does not reflect the desired or existing streetscape character, in so far as the proposal features two double width carports |

- The development exceeds the level of bulk expected of a single dwelling within this density code.
- The development reduces the amount of open space for landscaping, vegetation which is expected in a property within this density code.

In terms of the remaining elements of Design Principle P4, the development is considered to have adequate space for outdoor pursuits and external fixtures and access to sunlight. These elements do not compensate for the impact the development will have on the amenity and orderly and proper planning of this area. This variation is not supported.

Clause 5.2.1 – Setback of Garages and Carports

| Design Principles |
|---|
| P1 The setting back of carports and garages to maintain clear sight lines along the street and not to detract from the streetscape or appearance of dwellings; or obstruct views of dwellings from the street and vice versa. |
| Deemed-to-Comply Requirement |
| Clause 26(1)(b) of LPS 3 Clause 5.2.1 (Setback of garages and carports) of the R-Codes is modified by replacing deemed-to-comply requirements C1.1 to C1.5 with: C1.1 Garages and carports setback 9m from the primary street. C1.2 Garages and carports setback 1.5m from the secondary street. |
| Proposed |
| The proposed carport is setback 3.17m from the primary street alignment (Princess Road). |
| Administration Assessment |
| Administration notes that if the development was a single house, the location and setback of the proposed carport would be acceptable. However, as a second grouped dwelling, the site will have two double bay carports within the front setbacks which will negatively impact the streetscape. This variation is not supported. |

Clause 5.5.1 – Ancillary dwellings

| Design Principles |
|---|
| P1 Ancillary dwelling for people who live either independently or semi-dependently to the residents of the single house, sharing some site facilities and services and without compromising the amenity of surrounding properties. |
| Deemed-to-Comply Requirement |
| C1 Ancillary dwelling associated with a single house and on the same lot where: <ol style="list-style-type: none"> i. the lot is not less than 450m² in area; ii. there is a maximum plot ratio area of 70m²; iii. parking provided in accordance with clause 5.3.3 C3.1; and iv. complies with all other R-Code provisions, only as they apply to single houses, with the exception of clauses: <ol style="list-style-type: none"> a) 5.1.1 Site area; b) 5.2.3 Street surveillance (except where located on a lot with secondary street or right-of-way access); and c) 5.3.1 Outdoor living areas. |
| Proposed |
| In relation to C1 the proposal has been assessed as follows: <ol style="list-style-type: none"> i. the lot is 1047.1m²; 597.1m² greater than the minimum lot size ii. the plot ratio of the existing dwelling is 205m² and the proposed dwelling is 198m²; exceeding the maximum plot ratio by 135m² and 128m² respectively. iii. Both dwellings are provided with two car bays; satisfying the parking requirements of clause 5.3.3 C3.1. iv. This report has noted the variations in relation to street setback, lot boundary setback, open space, and setback of garages and carports. |

Administration Assessment

The applicant asserts that the development is for additions to a single house. Administration has considered the potential for the development to be considered a single house and an ancillary dwelling.

The development is not consistent with the intent of the ancillary dwelling provisions. At almost three times the prescribed size, both dwellings are too large to be ancillary and instead should be considered distinct dwellings. Minor variations to the prescribed plot ratio can be supported in cases where one building functions as the primary residence, and another much smaller building is ancillary to that house. This is a matter of reasonable evaluation, which is supported by the findings of Corp and Town of Cambridge [2019] WASAT 65.

The plans show a bar in lieu of a kitchen (making the existing dwelling dependent on the proposed dwelling). The ease in which kitchen features such as cupboards, fridge/freezer etc. could be retrofitted into this area precludes the development from being a merely additions.

Notwithstanding the above, the City is of the view that even if the development were to be considered a single house and ancillary dwelling, the development would not satisfy Design Principle P1 as the development on the whole does compromise the amenity of the locality, by virtue of the development type, overall footprint, bulk and proposed setback. The variation to the plot ratio is not supported.

Other Matters to Consider

Administration's evaluation of the development as two grouped dwellings and its recommendation that the application be refused is supported by a recent State Administration Tribunal (SAT) case Corp and Town of Cambridge [2019] WASAT 65.

In the abovementioned case, an application for two storey additions was made to the Town of Cambridge, which subsequently deemed it be two grouped dwellings on the basis that the additions created two distinct albeit connected dwellings, which functioned independently of one another. The Town of Cambridge refused the application as it did not conform to the standards of Residential R12.5 code and provisions of their town planning scheme. An application for review was made to the SAT, which was later dismissed due to SAT affirming the Town of Cambridge's decision to refuse the application on the basis that the application involved two or more dwellings contrary to the scheme and R-Codes provisions.

There are several similarities between the subject application and the above SAT matter, which confirms the City's view that this application should be refused for the reasons outlined previously in this report.

7.0 Conclusion

The development proposes to replicate the functions of the existing single house, with separate entries, vehicle access, carports, living areas, bedrooms and laundries proposed to each dwelling. Administration is of the view that the bar area noted in the existing dwelling is capable of being used for food preparation and/or storage and as such allows for two distinct dwellings, capable of independent use and hence requires the development to be assessed as two grouped dwellings.

The subject site's density code does not permit the construction of grouped dwellings on a lot of this size and so the application requires assessment under the design principles for the site area provisions of the R-Codes, which are non-discretionary.

On that basis alone, the application should be refused in the interests of orderly and proper planning. Notwithstanding, the development does not satisfy the design principles for street setbacks, lot boundary setbacks, open space and the setback of garages and carports – which if approved would adversely affect the amenity of the area and streetscape. Considering this, the application is recommended for refusal.

Site Visit Photos – 72 Louise Street, Nedlands





JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : PLANNING AND DEVELOPMENT ACT 2005 (WA)

CITATION : CORP and TOWN OF CAMBRIDGE [2019] WASAT
65

MEMBER : MR S WILLEY, MEMBER
MR B HUNT, SENIOR SESSIONAL MEMBER

HEARD : 2 AND 3 JULY 2019

DELIVERED : 23 AUGUST 2019

FILE NO/S : DR 12 of 2019

BETWEEN : STUART ADRIAN CORP
Applicant

AND

TOWN OF CAMBRIDGE
Respondent

Catchwords:

Town planning - Development application - *State Planning Policy 7.3 Residential Design Codes - Volume 1* - R-Codes definitions: single house; grouped dwelling; multiple dwelling; dwelling; lot and parent lot - Land use classification - Principles of interpretation for planning instruments - Whether proposed development is a single house - Evaluative judgment

Legislation:

Interpretation Act 1984 (WA), s 5, s 56(2)
Planning and Development Act 2005 (WA), s 4, s 68(1), s 241(1), Pt 3

State Administrative Tribunal Act 2004 (WA), s 27

State Planning Policy 7.3 Residential Design Codes - Volume 1, cl 1.2, cl 2.2.1, cl 8.1

Strata Titles Act 1985 (WA)

Town of Cambridge Local Planning Scheme No 1, cl 8(3), cl 11(2), cl 12, cl 19(3), cl 74

Result:

Application for review dismissed

Summary of Tribunal's decision:

Stuart Adrian Corp applied for development approval for what he described as a 'two storey single dwelling'. Mr Corp explained in his application that he and his partner (Ms Katavatis) wished to live together in a dwelling that allowed them to continue to 'permit their independent lifestyles'. The design involved two identical ground floor wings with some shared elements. The second storey component was designed to allow guests to stay or a future carer if and when required.

The Town of Cambridge refused the application on the basis that it considered that the proposed development was not a single house and was therefore prohibited on land coded R12.5 in the *Town of Cambridge Local Planning Scheme No 1*.

The question for the Tribunal in these proceedings was whether the proposed development was a single house and therefore permissible in the residential zone. It was common ground that if the proposed development was classified as a grouped or multiple dwelling, it was not capable of approval.

The applicant put forward two arguments as to why the proposed development was a single house. The first was that, having regard to the various definitions contained in *State Planning Policy 7.3 Residential Design Codes - Volume 1 (R-Codes)*, the absence of a strata scheme meant, in effect, that the proposed development could not be a grouped or multiple dwelling under the R-Codes. The Tribunal did not agree that the presence of, or current intention to create, a strata scheme under the *Strata Titles Act 1985 (WA)* had the effect of controlling the classification of land uses in a planning sense. The Tribunal considered that this argument conflated land use with land tenure.

The second argument was that the proposed development, properly assessed, was a single house and therefore permissible. The Tribunal considered that the question of whether the proposed development was a single house (or not) was an evaluative judgment.

In making that judgment, the Tribunal considered that the proposed dwelling was,

in fact, two ground floor dwellings. This was because the two residential wings were separate and identical and no one wing could reasonably be interpreted to be the focus of family living. After careful consideration of the plans and other supporting information, the duplication of the residential wings compelled the Tribunal to find that what was proposed was not a single house. The Tribunal did not accept the applicant's contention that one of the residential wings would function as a 'retreat'.

The application for review was dismissed.

Category: B

Representation:

Counsel:

Applicant : Mr M Flint
Respondent : Mr CA Slarke

Solicitors:

Applicant : Flint Legal
Respondent : McLeods

Case(s) referred to in decision(s):

Australian Unity Property Ltd v City of Busselton [2018] WASCA 38
Cabell v Markham 148 F (2d) 737 (1945)
Casey City Council v Kelly [2004] VCAT 1838
Ellis and City of Stirling [2014] WASAT 172
Filton Pty Ltd and Town of Vincent [2006] WASAT 70
GMF Contractors Pty Ltd and Shire of Serpentine-Jarrahdale
[2006] WASAT 353; (2006) 48 SR(WA) 1
Goldrange Pty Ltd v Western Australian Planning Commission
[2018] WASC 350; (2018) 233 LGERA 276
Jensen v Nationwide News Pty Limited [No 12] [2019] WASC 250
Johnson v Minister for Planning [2018] WASC 334
Low & Anor v Swan Cove Holdings Pty Ltd & Anor [2003] WASCA 115;
(2003) 127 LGERA 36
Manningham City Council v Jurkic [2005] VCAT 324

Nairn v Metro Central Joint Development Assessment Panel [2018] WASCA 18;
(2018) 230 LGERA 319
Re Shire of Mundaring; ex parte Solomon [2007] WASCA 132
Scutti v City of Wanneroo [2018] WASCA 175; (2018) 53 WAR 417;
232 LGERA 395
Shogunn Investments Pty Ltd v Public Transport Authority of Western Australia
[2016] WASC 42
University of Western Australia v City of Subiaco (1980) 52 LGRA 360

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 These proceedings relate to a proposed dwelling at No. 17
(Lot 1407) Ulster Road, Floreat (Land) within the Town of Cambridge
(Town or respondent).

2 The proposed dwelling was refused by the Town for a number of
reasons. By the time of the final hearing there was only one issue left in
dispute. That issue is whether the proposed development is a single
house and, if it is not, whether the proposed development is permissible.

Facts

3 Mr Stuart Adrian Corp (the applicant) is a co-owner (as a joint
tenant) of the Land.

4 The Land:

- (a) is located on the corner of Chandler Avenue and
Ulster Road in Floreat;
- (b) has an area of 923 square metres and is currently vacant;
and
- (c) is zoned residential R12.5 under *Town of Cambridge
Local Planning Scheme No 1* (LPS 1) and is located in
Precinct 3 Floreat.

5 There is an existing Camphor Laurel (*Cinnamomum camphora*)
adjacent to the Land on the Chandler Avenue verge. This street tree has
caused damage to the existing crossover. There was some dispute as to
what conditions ought to be imposed in the context of this street tree.
By reason of the decision the Tribunal has come to, it is not necessary to
deal with that dispute.

6 On 13 August 2018 the Town received an application for
development approval for what was described as a 'two storey single
dwelling'.

7 Submitted with the application for approval was a letter from
Chindarsi Architects dated 10 August 2018 which stated that:

...

The clients are a male 68 and a female 59 who have been a couple for 14 years albeit living independently. Currently they live in two apartments, one above the other. This allows them to enjoy their individual preferred lifestyles mainly regarding exercise, food and television without disadvantaging the other and still spend time together. They now wish to live in the same house and to create within that house two separate living areas. This will allow them to be closer, continue to live as a couple and to enjoy their independence. They have bought 17 Ulster Road jointly and intend to live in the proposed house for as long as possible.

The clients believe people should be proactive regarding suitable housing as they age. The house has been designed to provide all the required accommodation on the ground floor level with easy access to the outside gardens and courtyards. To achieve this, the footprint of the house may be considered large however this avoids negotiating stairs as they age. Wider doorways, halls and bathroom access are included to allow for the use of mobility aids. The upstairs living area is designed as a guest area for occasional use by family and to accommodate a nurse or carer in the future when the clients need assistance to remain in their home as they age.

- 8 Also lodged with the application was a letter from Veris (a town planning consultancy) dated 10 August 2018 which set out the following:

...

The landowners are a long term couple, close to retirement age, who up until now have lived in separate apartments in the same complex, permitting their independence while continuing their relationship. The design of this proposed residential dwelling is such that each individual will have their own living areas on the ground floor giving them the opportunity to stay together and age in place, while still permitting their independent lifestyle.

The large footprint of the proposed dwelling permits ease of access through the limitation on stairs and permitting wider rooms, windows, doorways and halls, all of which will be beneficial, if and when, the landowners will require mobility aids to move around in later retirement years.

A further feature of the residential design is the upstairs guest room. This is intended for occasional use by either a family member or carer, further facilitating the ability for the landowners to live in the residential dwelling for as long as possible.

- 9 The plans submitted for the development show two separate 'mirror image' wings - each containing a living room, kitchen, dining, bedroom, bathroom and study area. A common laundry area and toilet shown

centrally on the ground floor, adjacent to the stairway to the upper floor. There is also a centrally located single two-car garage.

10 The upper floor plan shows a third living area described as a guest lounge as well as a kitchenette, a bedroom with an ensuite, and a gym.

11 The Town refused the proposed development on 18 December 2018. The refusal reasons were as follows:

1. The proposal does not satisfy the requirements of Clause 39 of [LPS 1] as the development proposes a primary street setback which will negatively impact on the streetscape and locality and which is incompatible with existing and desired future primary street setback of the locality and does not meet the objectives of the low density area;
2. The proposal does not meet the design principles of the R-Codes in relation to Clause 5.1.3 - Lot Boundary Setback, as the proposed rear setback of the development creates an adverse impact on amenity of the locality as it does not meet the objectives of the low density area;
3. The proposal does not meet the design principles of the R-Codes Clause 5.3.5 Vehicular Access as the proposed location of the driveway and crossover proposes the removal of a mature street tree, and the proposed width of the driveway at 7.1 metres in lieu of 6 meters will result in more hardstand area at the expense of landscaping and an established street tree and this will have a negative impact on the streetscape;
4. The proposal does not meet the design principles of the R-Codes Clause 5.5.1 Ancillary Dwellings or Clause 67 of the Planning and Development Regulation (Local Planning Schemes) Regulations 2015 Clauses (a), (m) and (n) as the proposed design of the ancillary dwellings and plot ratio area will compromise the amenity of the area in relation to the impact on the character of the locality and relationship of the building to the streetscape and surrounding properties;
5. The cumulative impact of the proposed reduced setbacks, street tree removal and larger crossover, will create undue impacts in relation to building bulk, building presentation and loss of mature vegetation which is inconsistent with orderly and proper planning[;]
6. The proposal should be classified as a group dwelling under [TPS 1]. A Grouped Dwelling is an 'X' (prohibited) use, which is a use that is not permitted by the Scheme.

12 Following mediation the proposed plans were revised (and then
revised further prior to the final hearing). Instead of proposing two
identical residential wings, the plans included different labels for rooms
in each wing although the built form of the proposed development is
unaltered.

13 For example, what was originally shown as a 'walk-in-robe' on one
of the wings is now shown as a 'storeroom' in the revised plans. Likewise
two rooms that were originally shown as 'study 1' and 'study 2' have been
relabelled to be a 'computer room' and a 'study' in the revised plans.

14 The original labels for the two identical kitchens of 'kitchen 1' and
'kitchen 2' are now shown as a 'kitchen' and 'formal kitchen/dining room'.
The dual 'living areas' were amended in the revised plans to be a 'living
area' and a 'formal lounge' despite there being no changes to the physical
built form.

15 Of some initial significance was the fact that the two wings were
able to be closed-off by the inclusion of doors at the entrance to each
wing. However the plans were revised such that there was no ability to
exclude access from any part of the proposed dwelling. The revised
plans also proposed access arrangements that allowed the existing street
tree to be retained. These latest plans - which are the subject of the
hearing - will be referred to in these reasons as the 'proposed
development'.

16 As stated, the only issue that was left for determination is whether
the proposed development was a 'single house' for the purposes of
planning assessment. If the Tribunal finds that the proposed
development is a single house then the Town concedes that it should be
approved subject to conditions. Likewise, if we find it is not a single
house then it was not in contest that the proposed development is
prohibited by LPS 1.

17 The Tribunal had the benefit of evidence from three witnesses.
The applicant gave evidence. The Town called two experts:
Mr Ben Doyle a consultant town planner and Mr Rod Mollett a
registered architect who reviewed the proposed plans.

18 Whilst the classification of the proposed dwelling is a question of
law, both parties considered, and the Tribunal agreed, that expert
evidence (in particular) may be of assistance in evaluating whether the
dwelling as presented for consideration - in the context of the applicant's
proposal - is a single house.

The issue

19 The following issue falls for determination:

Whether the proposed development is a single house and if it is not, whether it is permissible.

20 The Tribunal is to hear the matter de novo and to produce the correct and preferable decision: s 27 of the *State Administrative Tribunal Act 2004* (WA).

Planning framework

21 In this instance the applicable planning framework, in relation to the issue that arises in this proceeding, comprises LPS 1 and the *State Planning Policy 7.3 Residential Design Codes - Volume 1* (R-Codes). By reason of the decision we have reached on the classification of the proposed development, it is unnecessary to set out the respondent's polices in relation to street trees.

LPS 1

22 LPS 1 is a local planning scheme gazetted on 31 March 1998 which continues in force and to have effect as if enacted by the *Planning and Development Act 2005* (WA) (PD Act): s 68(1) of the PD Act. LPS 1 is therefore a 'written law' for the purposes of s 5 of the *Interpretation Act 1984* (WA) (Interpretation Act).

23 Clause 12 of LPS 1 includes a zoning table. Clause 11(2) explains how the zoning table is to be interpreted. The following land uses are recognised in LPS 1. Dwelling (Single), Dwelling (Grouped) and Dwelling (Multiple). It is immediately apparent that these forms of residential dwellings do not precisely mirror the definitions of such dwellings in the R-Codes. Clause 8(3) of LPS 1 is in the following terms:

Where a word or term is defined in the Residential Design Codes then, notwithstanding anything else in this Scheme, that word or term when used in respect of residential development has the meaning given to it in the Residential Design Codes.

24 It is not in contest that if the Tribunal finds that the proposed development is a 'dwelling single' (being a 'single house') then it is permissible in the residential zone on land coded R12.5. Likewise the parties agree that if the Tribunal finds the dwelling is either a 'grouped' or 'multiple' dwelling then the proposed development is not capable of approval on land in the residential zone which is coded R12.5 in LPS 1.

25 Clause 19(3) of LPS 1 provides that:

Unless otherwise provided for in the Scheme the development of land for any of the residential purposes dealt with by the Residential Design Codes shall conform to the provision of those Codes.

26 The use of the word 'shall' in cl 19(3) of LPS 1 means that development of land for residential purposes must comply with the R-Codes: s 56(2) of the Interpretation Act. The provisions of a local planning scheme, which have the force of law, can operate such that their effect is to require development to comply with the requirements of a planning policy: *Scutti v City of Wanneroo* [2018] WASCA 175; (2018) 53 WAR 417; 232 LGERA 395 at [125] (Buss P, Murphy JA, Allanson J). Clause 19(3) of LPS 1 has the effect that residential development is to comply with the R-Codes.

27 This proceeding is therefore essentially a land-use classification exercise having regard primarily, but not exclusively, to the R-Codes.

The R-Codes

28 The R-Codes is a State planning policy prepared pursuant to Pt 3 of the PD Act. The purpose of the R-Codes is to provide a comprehensive basis for the control of residential development throughout Western Australia: cl 1.2 of the R-Codes. Appendix 1 of the R-Codes includes the following definitions:

Dwelling: A building or portion of a building being used, adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family.

Grouped dwelling: A dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partially vertically above another, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property.

Lot: For single houses, a lot as defined under the *Planning and Development Act 2005*, as amended. For multiple or grouped dwellings, the parent lot.

Multiple dwelling: A dwelling in a group of more than one dwelling on a lot where any part of the plot ratio area of a dwelling is vertically above any part of the plot ratio area of any other but:

- does not include a grouped dwelling; and

- includes any dwellings above the ground floor in a mixed use development.

Parent lot: Relating to multiple or grouped dwellings, the lot inclusive of common areas to which the strata scheme, as defined under the *Strata Titles Act 1985*, as amended, relates.

Single house: A dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property.

The Evidence

Mr Stuart Corp

29 As stated, Mr Stuart Adrian Corp gave evidence as the applicant. He explained the intentions behind the making of the application as well as the revisions that have been made to the plans as a result of discussions with the Town (including in the context of mediation).

30 As stated, these revisions were primarily changes to the labels attached to rooms in the proposed development.

Mr Ben Doyle

31 The respondent called two experts. Mr Ben Doyle gave detailed evidence on the operation of the R-Codes having regard to his planning experience.

32 His evidence went to the question of whether the proposed development was a single house.

Mr Rod Mollett

33 The respondent also called Mr Rod Mollett who, as stated, is an architect. Mr Mollett reviewed the plans on behalf of the respondent again on the question of whether the proposed development was a single house.

Submissions

Applicant's submissions

34 The applicant's submissions on the question of whether the proposed development is a single house centres on two propositions.

35 The first being that the proposed development does not propose any multiple dwellings. This submission proceeds on the basis that the definition of multiple dwelling in the R-Codes starts with '[a] dwelling in a group of more than one dwelling on a lot ...'. The definitions of 'lot' and 'parent lot' are set out at [28] above.

36 The applicant therefore submits that the definition of 'multiple dwelling' in the R-Codes requires the existence of a related strata scheme under the *Strata Titles Act 1985* (WA) (ST Act). As the proposed development does not involve a strata scheme it cannot, by definition, be a multiple dwelling.

37 The second proposition advanced by the applicant is that the proposed development involves only one (single) dwelling as that term is defined in the R-Codes.

38 The applicant notes that the internal arrangement of buildings is not something which the R-Codes (and therefore the definitions of dwelling, single house, grouped dwelling and multiple dwelling) is concerned: cl 2.1.2 of the Explanatory Guidelines for the R-Codes.

39 The applicant submits that the entirety of the proposed development is 'adapted, or designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, a single family, or no more than six persons who do not comprise a single family'. The applicant submits that no portion of the dwelling is to be put to any other use. It follows that, on the applicant's case, the proposed development is properly classified as a 'single house'.

Respondent's submissions

40 The respondent contends that the two 'mirror-image' living areas on the ground floor are each properly described as a portion of a building designed or intended to be used for the purpose of human habitation on a permanent basis by a single person, single family or no more than six persons who do not comprise a single family. Therefore, the respondent submits, the ground floor contains two dwellings.

41 As a consequence of the ground floor containing two dwellings, the proposed development cannot be a single house (or 'dwelling single' for the purposes of LPS 1), as neither dwelling stands on its own green title or survey strata lot. The upper floor is either itself a third dwelling or, alternatively, is a component of one or more of both of the ground floor dwellings. If the upper floor is a separate dwelling, the respondent

contends that the proposed development is properly classified as three multiple dwellings.

42 The respondent further submits that if the upper floor is a component of one or both of the ground floor dwellings, the proposed development is properly classified as two multiple dwellings. As multiple dwellings are prohibited on land coded R12.5, the proposed development cannot be approved.

Principles of interpretation

43 The closing submissions of both counsel included detailed analysis of the definitions of 'dwelling', 'multiple dwelling', 'grouped dwelling', 'single house', 'lot' and 'parent lot' which are all drawn from the R-Codes.

44 The R-Codes is a planning policy that we are required to give 'due regard' to: s 241(1) of the PD Act. However, as stated above, in this instance the effect of cl 19(3) of LPS 1 is that development for residential purposes shall conform to the provisions of the R-Codes.

45 Both counsel submitted that in construing the various definitions contained in the R-Codes, the Tribunal should apply the orthodox canons of construction including those applicable to planning schemes. This includes the principle that the R-Codes should be read and applied in a sensible and practical manner: *Australian Unity Property Ltd v City of Busselton* [2018] WASCA 38 at [84] (Buss P, Murphy JA and Mitchell JA) (*Australian Unity*); *Re Shire of Mundaring; ex parte Solomon* [2007] WASCA 132 at [25] (McLure JA, Steytler P and Pullin JA agreeing) and *Johnson v Minister for Planning* [2018] WASC 334 at [125] (Smith J).

46 At [82] of *Australian Unity*, the Court of Appeal noted that:

[T]he terms of planning schemes are regularly referred to, often without the assistance of professional legal advice, by planners, government officials, landowners and prospective landowners to identify the permissible uses of land to which the scheme applies. Placing a counter-intuitive judicial gloss on the plain language of a planning scheme reduces the capacity of those persons to comprehend its meaning.

47 The Tribunal is also mindful of the recent comments of Chief Justice Quinlan in *Goldrange Pty Ltd v Western Australian Planning Commission* [2018] WASC 350; (2018) 233 LGERA 276 where, at [61] he referred, inter alia, to the seminal decision of the

United States Court of Appeals for the Second Circuit in *Cabell v Markham* 148 F (2d) 737 (1945) at 739 (Hand L):

[I]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

48 The Tribunal agrees with counsels' submissions on the correct approach to construction but, consistent with their observations, the Tribunal is mindful that the R-Codes is not a statutory instrument per se, rather it is a policy.

Analysis and disposition

49 The term 'development' is a planning concept that encompasses two separate (but often related) limbs. The definition of 'development' in s 4 of the PD Act includes both (physical) 'development' as well as the 'use of any land'. The seminal decision of Burt CJ in *University of Western Australia v City of Subiaco* (1980) 52 LGRA 360 discusses the two limbs of development in the context of town planning: at 363-364.

50 Very often an application for development approval seeks approval to both erect and use a structure for a particular activity. In this instance, the application is to erect and use a structure for residential purposes.

51 What provides a level of complication in this instance is the respondent does not consider that what has been put forward by the applicant is a single house. It appears to be accepted by the respondent that the applicant seeks to use the Land for residential purposes. The contest is that the Town considers the applicant is seeking approval for something other than a single house. The respondent says that what is put forward is actually either two or three multiple dwellings within the shell of a single structure. Having regard to the definitions set out in the R-Codes, the respondent says that the dwellings are multiple dwellings on the basis that the plot ratio of the upper floor is vertically above the plot ratio of the ground floor dwellings. The respondent submits that because the proposed development is not a single house it cannot not be approved.

52 We will now address each of the applicant's primary submissions as to why the proposed development is a single house.

Does the absence of a strata scheme control the classification of the proposed development?

53 Whilst the applicant's written submissions only addressed the question as to whether multiple dwellings could be located on a single 'lot', in his closing submissions, Mr Flint, counsel for the applicant, outlined 'that the same reasoning applies [to] grouped dwellings': ts 75, 3 July 2019.

54 The applicant's submissions on this issue are to the effect that the touchstone for identifying (or classifying) the proposed development as anything other than a single house is the presence of, or intention to subsequently create, a strata scheme under the ST Act. The absence of any intention by the applicant to subdivide the proposed development under the ST Act leads to the conclusion, it is submitted, that the proposed development cannot be either a grouped or a multiple dwelling and therefore, by a process of deduction, must be a single house.

55 The Tribunal cannot accept that submission for three overlapping reasons. The first is that the submission tends to elide land use with land tenure. As a matter of development control, there is actually no basis or requirement for the strata titling of developments. At the point that development approval for grouped or multiple dwellings is given there is the entitlement (subject to compliance with any conditions) to *use* the land for multiple or grouped dwellings. For example, the definition of grouped dwelling is 'a dwelling that is one of a group of two or more dwellings on the same lot ...'. There is nothing in that definition that requires, evinces or otherwise implies a *planning* need for a strata scheme.

56 The establishment of a strata scheme (to create strata lots) is not so much about facilitating the residential land use per se but is more focused on establishing the appropriate tenure for the dwellings and for on-going governance and management arrangements between the proprietors. To suggest that the absence of an intention to create a strata scheme controls the classification of a proposed development in a planning sense is to conflate land use classification with land tenure. We do not accept that.

57 The second reason is that it is very often the case that a strata scheme is proposed at a point well after a development has been completed. A strata scheme may be imposed on an existing structure that was being put to another use. An example may be a development that was constructed as a hotel which is to subsequently be converted for use

as residential apartments. No new external physical structures would be required to effect that change. The only planning requirement would be the need for an application to change the use to allow for permanent residential occupation.

58 The point being that the question as to whether a development is a single house or otherwise cannot be resolved merely by reference to the presence of, or a current intention to create, a strata scheme. Put shortly, there is more to the question of land use classification than merely checking as to whether a strata scheme is present or intended.

59 The third and final reason is that the R-Codes, considered as a whole and applied in a practical and common sense manner, do not support the applicant's suggested construction. The definition of 'multiple' or 'grouped' dwellings do not, on their terms, require a strata scheme. However, we accept that the definitions of 'lot' and 'parent lot' do indicate that a single house is on a lot and that multiple and grouped dwellings are located on a parent lot. The definition of parent lot indicates the presence of a strata scheme.

60 However, the Tribunal does not accept that just because the proposed development is to be located on its own 'lot' that it must therefore be a single house. For the Tribunal to accept that would be to allow form to triumph over substance. By that the Tribunal means that if that submission is correct, no matter what design was proposed, no matter how many 'self-contained' dwellings appeared to be present, no matter how many bedrooms or kitchens or car bays were included - and so long as the number of persons living permanently on the lot was less than seven (at which point the classification of 'residential building' may apply) - any residential development on that lot (where there is no strata scheme) must be classified as a single house. We do not agree. To construe the definitions as the applicant submits would not be to read and apply R-Codes in a sensible and practical manner.

61 Rather, properly construed and taking account of their evident *planning* purpose, it is clear that the R-Codes provide for a range of dwelling types for the purposes of planning assessment. The R-Codes focus on the development of land for residential purposes; they are not an instrument that establishes and regulates land tenure and land titles.

62 The first dwelling type recognised under the R-Codes is a single house which is a dwelling that stands wholly on its own lot (or survey-strata lot). The second is grouped dwellings which involve at

least two dwellings co-located on a lot (which may be a parent lot if a strata scheme is present). The third is multiple dwellings which are dwellings which may be located in a vertical arrangement on a lot (which may be a 'parent lot' if a strata scheme is present).

63 The above analysis is broadly consistent with previous Tribunal decisions which have addressed the question of what is a grouped or multiple dwelling such as: *Ellis and City of Stirling* [2014] WASAT 172 at [26]; and *Filton Pty Ltd and Town of Vincent* [2006] WASAT 70 at [64].

64 Contrary to Mr Flint's submissions, the answer to the construction question before the Tribunal is not whether the Land is a 'lot' or a 'parent lot' for the purposes of the R-Codes. The question we must address is whether the proposed development comprises a 'single house' for the purpose of land use classification. That is the issue to which we will now turn.

Is the proposed development a single house?

65 Consistent with the parties' submissions, we consider that this case turns on whether the proposed development - for the purposes of the R-Codes and LPS 1 - is a single house.

Victorian authorities

66 It is not surprising that the question of how many dwellings are being proposed (or have been built) on a single lot has been considered elsewhere. The Victorian Civil and Administrative Tribunal (VCAT) has considered the question on more than one occasion.

67 In *Casey City Council v Kelly* [2004] VCAT 1838 (DP Gibson) (*Kelly*) the local government was applying for an enforcement order against the landowners on the basis that a second dwelling was being constructed on their land in the absence of an approval. The question for the VCAT was whether the construction related to a second dwelling or whether it was an extension to the existing dwelling. The Council contended that because the proposed construction would entail an additional kitchen, bathroom and toilet that it constituted a second dwelling.

68 In *Kelly*, DP Gibson set out, at [4], that cl 74 of LPS 1 defined a 'dwelling' to mean:

A building used as a self-contained residence which must include:

- a) a kitchen sink;
- b) food preparation facilities;
- c) a bath or shower; and
- d) a closet pan and wash basin.

It includes out-buildings and works normal to a dwelling.

69 Deputy President Gibson in *Kelly* stated:

[9] The Council referred to a number of decisions where the Tribunal has grappled with how to characterise developments with multiple kitchen, bathroom and other facilities. The view expressed by the Tribunal in *Biasin v Mornington Peninsula Shire Council* [2000] VCAT 1149 and other Tribunal decisions is that the number of kitchens, bathrooms and other elements of dwelling design are not determinative that the land is used for more than one dwelling. I agree. It is not just the physical characteristics of development that will determine the purpose for which land is used but rather the way in which that development functions or is used that will determine its purpose. As Barry J stated in *Bakes v Huckle* [1948] Vlr 29; [1948] VLR 159 at 160:

Whether the particular premises are a dwelling is a question to be decided on the facts of each case.

[10] Thus I agree with Council that the presence or absence of a laundry in the house building is not relevant. But similarly, the issue of separate entrances, separation between buildings etc, which are matters that previous Tribunals have found useful in determining how to characterise development, are not necessarily determinative in the present instance either. This case must be decided on its own facts.

70 In *Kelly*, DP Gibson ultimately found that the development was for the intent and purpose of a single dwelling. The Deputy President also found that the Council had formed its view on the nature of the development on what was a half completed project (at [14]) and that it was not reasonable to 'disaggregate the development in the way the Council has done and to look at each building from a different time perspective': at [15]. The determinative question was whether the 'building (or buildings) is (are) used or intended for use as a self-contained residence': at [16].

71 *Manningham City Council v Jurkic* [2005] VCAT 324 (*Manningham*) also involved enforcement proceedings brought by the

local government on the basis that the landowners were constructing two dwellings on their land without approval. The landowners contended that they were constructing a single dwelling and were therefore not in breach of LPS 1.

72 The term 'dwelling' was defined in LPS 1 to mean: 'a building used as a self-contained residence which must include: a) a kitchen sink; b) food preparation facilities; c) a bath or shower; and d) a closet pan and wash basin. It includes out-buildings and works normal to a dwelling': *Manningham* at [4].

73 In *Manningham* an inspection of the building (the construction of which was well underway) indicated that two almost mirror or identical dwellings were being constructed which were separated by a central dividing wall. The dimensions of each of the respective rooms (although different descriptors were used) were identical: *Manningham* at [6] to [10]. Dual services and dual rainwater tanks were also provided: *Manningham* at [11].

74 In her reasons Member Rickards outlined the considerable planning history that attached to the land. That history indicated a number of efforts by the landowners to seek approval for and otherwise seek to erect (or to adapt a single dwelling to create) two dwellings on the property: *Manningham* at [15] to [23].

75 Member Rickards then addressed the question of the intention of the landowners:

[26] [I]s it their intention to construct two dwellings on the land? In reaching a conclusion to the answers to these questions it is necessary to consider the form the plans take, the physical characteristics of the development, the planning history and the expressed or inferred intentions of the Respondents drawn from their statements and actions.

76 Member Rickards also gave weight to earlier plans and commented that:

[28] Whilst Deputy President Gibson and Member Taranto in the recent decision of *GM & DK Cotsonis v ME & ML Pekin & Darebin City Council* [2005] VCAT 232 (15 February 2005) gave no weight to earlier plans, having in their view been considered earlier and then discarded, the plans, in this matter, relied upon at the same time for a building permit for a single dwelling and a planning permit for two dwellings before Tribunal are almost identical. It is not considered that the plans for two

dwellings were considered earlier and later discarded making it clear there was no intention to proceed with them.

77 Member Rickards then commented:

[30] As stated by Senior Member Byard in *C & V Beckwith and J & P Donges v Shire of Mornington and Arnold Reginald Wallace and Gail Eleanor Wallace* (1992/12953) an inference can be drawn that having two of everything results in a use as two separate units. Mr Jurkic submitted that the dual services provided would allow for flexibility, this may be so, but to go to the extent of dual services for everything, including separate rainwater tanks leads to an inference that the land will be used for two dwellings not one.

[31] The conclusion reached by Senior Member Byard in *Beckwith* is I consider an apt conclusion that could be reached in this matter, that 'a person inspecting the plans of the building who had no further information would be likely to come to the conclusion that this is in fact a building, containing two residences. It would be a simple matter, with or without some minor alterations, to use the building that way'. In this instance the mirror imaging of the development and the result of merely closing a ground level and upper level doorway.

78 Member Rickards then made the point that each case turns on its own facts with reliance placed on plans, physical characteristics, history and intent: *Manningham* at [33]. Member Rickards found that the two dwellings were being constructed which were to be used as two self-contained residences.

79 The Tribunal considers that these VCAT authorities are of some assistance. However, we note the very different statutory context in which those decisions were made. It is also the case that Victorian planning schemes define 'dwelling' much more prescriptively than is the case in Western Australia.

Consideration of the evidence

80 The applicant and Ms Katavatis have been a couple for 14 years and currently live in the same apartment complex. They now wish to co-locate into the same building. The proposed plans, in the applicant's words, seek to preserve their current independent lifestyles.

81 In cross-examination Mr Corp was asked about the revisions to the plans undertaken to address the respondent's concerns with the proposed development. As discussed, these amendments were primarily changes

to the labels attached to the rooms in each of the residential wings. The following exchange took place:

SLARKE, MR: What's the purpose of changing that label?

CORP, MR: Irony

SLARKE, MR: Right. Can you explain that?

CORP, MR: Yes. We changed the room names to show the irony of this whole exercise that they are just rooms. The fact that you call them bedroom 1, bedroom 2, en suite 1, en suite 2, you could call them whatever you like. They're just rooms.

...

SLARKE, MR: Okay. It's not for the purpose of improving the design?

CORP, MR: No, not at all. It's purely ironic.

(ts 25, 2 July 2019)

82 Not too much can be read into this aspect of Mr Corp's evidence. We consider his response that the revisions to the plans were undertaken out of a sense of 'irony' was probably, in truth, an expression of his frustration with the planning process. We agree it is unusual for a planning assessment to involve itself in too much detail as to how people seek to live. As Mr Corp quite reasonably observed, he was being asked questions about his 'lifestyle': ts 24, 2 July 2019. However, that said, Mr Corp has put forward this design and an explanation of how it is proposed to be utilised. The planning assessment of the dwelling in the context of its proposed use is therefore appropriate.

83 While we understand Mr Corp's responses as to the revisions to the plans, we should also say that his evidence that these amendments to the plans were undertaken out of 'irony' did not really advance his cause. His evidence confirmed that the relabelling of some of the rooms in each wing and the removal of the internal doors did not reflect any change in intention on behalf of the applicant.

84 Mr Corp was also asked in cross-examination which of the 'wings' of the residence was to be his. He answered that that was a matter that was 'yet to be decided': ts 24, 2 July 2019. When asked whether he and Ms Katavatis would each lay claim to one 'wing' he answered that '[t]hat may well be the result': ts 25, 2 July 2019.

85 On the issue of whether there was intent to occupy one wing each (and who would occupy each wing), the Tribunal considered that Mr Corp was being less than candid. For example, we do not accept his evidence the proposed living arrangements were 'yet to be decided' (which was expressed in a manner which suggested that it was a subject that he had not yet been discussed with Ms Katavatis).

86 It may well be the case that the proposed living arrangements are not yet fully resolved. However, to imply, in the manner that Mr Corp did, that it was an issue that they were yet to get to is, in our view, unrealistic given the point that they have reached in the design and planning assessment process. While we do not accept this aspect of his evidence, we do note and appreciate that Mr Corp was being asked questions about how he and Ms Katavatis choose to live and there may have been some natural defensiveness around that.

87 Mr Doyle gave evidence about how the proposed development ought to be characterised for the purposes of planning assessment under the R-Codes. The following exchange took place in cross-examination:

FLINT, MR: Well, at the moment this structure, if you enter it, you are able to go to all areas. The applicant considers it a single house. You're saying that the way it's designed means it's two multiple dwellings. So this approach of yours has consequences for the way people have to design what they think is single houses?

DOYLE, MR: Yes

FLINT, MR: Is it about the second kitchen, having a second kitchen?

DOYLE, MR: That is a part of it.

FLINT, MR: If there was no second kitchen would the issue go away?

DOYLE, MR: I would say it largely would.

FLINT, MR: Largely would or would?

DOYLE, MR: Well, you're asking me to consider a hypothetical, which I haven't turned my mind to.

FLINT, MR: All right. Do many houses, single houses, these days have two kitchens?

DOYLE, MR: Some do, yes.

FLINT, MR: It's not rare?

DOYLE, MR: Well, I would say it's uncommon.

FLINT, MR: Is it about the location of this kitchen?

DOYLE, MR: It is about the ability to occupy each wing of the building and perform the functions associated with living without reliance on any aspect of the other wing.

(ts 47-48, 2 July 2019)

88 The Tribunal asked Mr Doyle if there was any particular element that was inconsistent with a dwelling being classified as a single house. Mr Doyle responded that: 'There's - there's not - I would suggest that there's not any one component that you can say "with the inclusion of that, it is no longer a single house": ts 60, 2 July 2019.

89 The Tribunal then queried whether the question of whether or not the proposed development was a single house was essentially an 'evaluative judgement'. Mr Doyle agreed that it was an evaluative judgment: ts 61, 2 July 2019.

90 Whilst the classification of the proposed development is a question of law, Mr Doyle's planning evidence was of great assistance to the Tribunal in illuminating the various planning concepts that fall to be considered.

91 Mr Doyle was candid but firm. He was an impressive witness.

92 Mr Mollett's opinion was that the proposed development comprised two separate dwellings on the ground floor and that the first floor was readily able to be used as a dwelling as that term is defined in the R-Codes. He was also of the view that the applicant's revisions to the plans did not alter the functionality of the proposed development in any substantive way. His evidence on functionality was of assistance to the Tribunal.

93 However, Mr Mollett also expressed a concern that the proposed development was able to be utilised for Airbnb. The use of the proposed development for short-stay accommodation would require approval under LPS 1. The applicant is not proposing that kind of use and therefore his concerns in that regard are speculative and irrelevant.

An evaluative judgment: the proposed development is not a single house

94 As stated above, during the hearing the Tribunal queried whether the question of whether the proposed development was a single house

was, in effect, an evaluative judgment. In their closing submissions, both parties' counsel agreed that that was the correct approach: ts 79, 3 July 2019; ts 97, 3 July 2019.

95 Having now considered the question at some length and in the light of both the planning framework (in particular the R-Codes) and the VCAT authorities which deal with this issue, the Tribunal considers that the question as to the proper characterisation of the proposed development is an evaluative judgment in the sense explained by the Court of Appeal in *Nairn v Metro Central Joint Development Assessment Panel* [2018] WASCA 18; (2018) 230 LGERA 319 at [90] (Buss P, Murphy JA, Beech JA). It is plainly an evaluative judgment that involves questions of fact and degree.

96 The applicant's closing submissions emphasised the following 'objective' considerations which point to a conclusion that the proposed development was a single house. These included: (i) there being no physical exclusion within the structure; as well as (ii) the shared aspects of the design such as the hallway, the garage, laundry and services: ts 79, 3 July 2019.

97 To borrow the recent observations of Chief Justice Quinlan in *Jensen v Nationwide News Pty Limited [No 12]* [2019] WASC 250 'this application raises, in our view, a finely balanced matter of discretion' at [26].

98 In our view, planning authorities should be slow to probe too far into the internal living arrangements proposed by an applicant. However, in this instance there is a legitimate planning question as to whether the proposed development is, as a matter of law, a single house. As part of that assessment, the applicant's intentions as to the manner in which proposed development is to be used (based on materials put forward by the applicant) arises for consideration.

99 However, we are also mindful that a planning approval generally operates as a *right in rem* and therefore the identity and intentions of the particular user is not the only focus of the inquiry: *Low & Anor v Swan Cove Holdings Pty Ltd & Anor* [2003] WASCA 115; (2003) 127 LGERA 36 at [182] per Roberts-Smith J; *Shogunn Investments Pty Ltd v Public Transport Authority of Western Australia* [2016] WASC 42 at [250].

100 In *GMF Contractors Pty Ltd and Shire of Serpentine-Jarrahdale*
[2006] WASAT 353; (2006) 48 SR(WA) 1 the Tribunal at [67]
commented that:

Planning law is 'concerned with the use of land – not with the identity of
the user' ... Development approval is not personal to an applicant for
approval, but rather runs with the land[.]

101 The classification of a dwelling that is presented as a 'single house'
that is to be used by a 'single family' should not be approached in a
narrow, formulaic way. Western Australia enjoys a culturally and
demographically diverse population. Planning authorities need to
approach the question of what is a 'single house' in a flexible, sensible
and pragmatic manner.

102 However, in the end, the Tribunal has reached the conclusion that
the proposed development is not a single house but is instead two
separate ground floor dwellings. The Tribunal does not need to make a
definitive finding as to whether the first floor is, in fact, a third (multiple)
dwelling. However, the first floor is plainly set up to operate with a level
of independence from the ground floor. We do not need to take that
analysis any further.

103 The first point to note is that there are no set criteria that are to be
worked through in making an assessment of this type. There can be no
fixed or rigid principles. In each instance, it will be an evaluative
judgment and each application will turn on its own facts: *Manningham*
at [33].

104 As stated, it is not in contest that the intentions of the applicant and
Ms Katavatis are to co-locate to the proposed development. However,
the question before the Tribunal is not whether Mr Corp and
Ms Katavatis are a single family. Rather, the question before us is
whether the proposed development is a single house.

105 Mr Corp's evidence about the intended use of the proposed
development does not satisfy us that what is proposed is a single house.
It is not that his evidence is not accepted. In large part it is. But in
evaluating the proposed development and its intended use by Mr Corp
and Ms Katavatis, we are not satisfied that it is a single house for the
purposes of the R-Codes.

106 The main problem the Tribunal has is that when we read and
interpret the plans we do not see a single house. We see (at least) two

separate dwellings that have some shared elements; namely the garage, the laundry/communal bathroom and the front lobby. The two residential wings are plainly two separate and identical dwellings in functional terms. The problem is not that there are two kitchens. A second kitchen is not, of itself, proof of anything. For example, as was discussed in oral submissions, a Jewish family may have a separate kitchen for Passover. That does not mean that a Jewish family cannot live in a single house.

107 However, what is proposed here are *two separate and identical* kitchens in the context of *two separate and identical* residential wings. It is the proposed duplicated wings - with each wing identical to the other in terms of size, shape and function that - in the end, compels the Tribunal to find that the proposed development is not a single house.

108 The Tribunal does not accept, as Mr Corp suggested, that one of the wings would function as a 'retreat': ts 20, 2 July 2019. The proposed plans do not in any way establish that one of the wings will be the primary residence and the focus on family living with the other wing operating as a private retreat. The two wings are identical in form and function; neither is subservient to the other.

109 The Tribunal finds that the proposed development is not a dwelling standing wholly on its own green title. The proposed development comprises more than one dwelling and is therefore not a single house for the purposes of the R-Codes.

110 There will plainly be designs where two people who wish to co-locate can do so in the context of a single house. However, this is not such a design.

111 The joint facilities are a relevant consideration that do lend weight to the applicant's arguments. However, they do not persuade us to the view that this is a single house. A separate laundry is not a mandatory element of an independent 'self-contained' dwelling. For example, there is no requirement for a separate laundry in ancillary accommodation: cl 8.1 of the R-Codes Explanatory Guidelines. The joint garage is of limited relevance. Many grouped or multiple housing developments have shared parking facilities.

112 The front lobby and hallway are again of limited relevance. If the applicant and Ms Katavatis are driving home, they will likely enter through the garage which will place them between the two separate residential wings. The fact that there are no longer doors separating each wing (and therefore there are no excluded areas) is again relevant but

does not persuade the Tribunal that the proposed development is a single house. The question for the Tribunal is not answered only by whether the plans show any internal restrictions or exclusions on access. The question as to whether the proposed development is a single house is ultimately one of functionality.

113 The fact that there is only one service point to the proposed dwelling is relevant but not highly persuasive. The presence of a single service point says nothing about whether the proposed development will function as one or more dwellings.

114 Mr Flint made submissions that in order for there to be two separate dwellings each dwelling must be able to be clearly identified on the plans. He submitted that a failure to be able to clearly demarcate the two dwellings is an indicator that it is but one dwelling. The Tribunal agrees with that to a point but we do not regard it as conclusive. We are making an evaluative judgment in an overall sense. There will be things that point each way in that assessment.

115 The Tribunal considers that it does not need to be able to mark out with a pen the exact limits of each 'separate' dwelling. What the Tribunal must do is evaluate whether there is, in fact, a single house or more than one dwelling proposed. In our view, there is more than one dwelling but some elements are shared.

Conclusion

116 The applicant has put forward a dwelling design that is not a single house. The proposed development comprises at least two multiple dwellings. Pursuant to LPS 1, multiple dwellings are prohibited in areas that are coded R12.5.

117 The Tribunal therefore affirms the Town's decision to refuse the development.

Order

1. The application is dismissed.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MR S WILLEY, MEMBER

23 AUGUST 2019

| | |
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| PD47.19 | Local Planning Scheme 3 – Local Planning Policy Short Term Accommodation |
|----------------|---|

| | |
|---|--|
| Committee | 12 November 2019 |
| Council | 26 November 2019 |
| Applicant | City of Nedlands |
| Director | Peter Mickleson – Director Planning & Development |
| Employee Disclosure under section 5.70 Local Government Act 1995 | The report writer previously worked with an Urban Planner who is now employed by a consultancy which provided a price estimate to the City for traffic services. |
| Previous Item | Council Meeting 27 August 2019 – PD31.19 |
| Attachments | 1. Draft Short Term Accommodation LPP 2. Draft Short Term Accommodation LPP – tracked changes |

1.0 Executive Summary

The purpose of this report is for Council to adopt the Short Term Accommodation Local Planning Policy (LPP), post advertising. It is proposed that the policy be adopted with one modification. This can be viewed clearly in Attachment 2.

The purpose of this policy is to provide guidance and development provisions for operators seeking to establish short-term accommodation land uses within the City of Nedlands.

Once Council adopts the LPP, the policy must be taken into consideration by the decision maker in determining a Development Application. This is particularly important when the decision maker is not the Council, that is, the JDAP or SAT. LPP's allow Council's views on a particular issue to have some influence on the decision maker and thus be considered in any decision.

The LPP adopted as part of this report, will have effect once the notification of adoption is published in a local newspaper.

2.0 Recommendation to Committee

Council:

- 1. Adopt the Short Term Accommodation Local Planning Policy, with modifications as set out in Attachment 1, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4; and**
- 2. Approve a 6-month amnesty period from December 2019 until May 2020 (inclusive) for any retrospective change of use applications received for short-term accommodation uses as defined in the Short Term Accommodation Local Planning Policy where they will be charged the standard change of use fee rather than the retrospective (3 times) fee.**

3.0 Background

At the Council Meeting 27 August 2019 Council resolved to prepare and advertise the policy for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4.

The policy was amended through Councils resolution at the Council Meeting, prior to being advertised, to:

- Under section 7.0 Management Plan 7.1 add an additional clause (k) to provide details of waste disposal; and
- remove former clauses 4.2(b) and 4.4(b) which were in relation to short term accommodation uses having to be within 250m of a high frequency bus stop or 800m of a high frequency train station or 400m from a hospital or university.

4.0 Detail

The policy was adopted for the purpose of being advertised at the Council Meeting in August 2019. Since this, the West Australian Parliament has released a paper titled 'Managing the impact of the rapid increase of Short-Term Rentals on Western Australia'. This paper is part of the parliamentary inquiry into short-term accommodation uses. The main findings of this paper were in relation to applying consistency throughout Western Australia regarding short-term accommodation use approval whilst retaining the ability for Local Governments to create policies to respond to local context. The paper also alluded to future changes to the Planning and Development (Local Planning Schemes) Regulations 2015 to include changes to the land use definitions to help differentiate between hosted and un hosted short-term accommodation, size and capacity. The recommendations in the paper do not currently affect the proposed LPP which seeks to introduce regulatory controls to assist decision makers in assessing potential amenity impacts that could be caused by short-term accommodation land uses whilst there is a current lack of guidance.

The City will await the State Governments eventual amendments to the deemed provisions and will respond accordingly, whether that be a Local Planning Policy revision or an amendment to the Local Planning Scheme where it is deemed required at a later date.

There are over 100 short-term accommodation uses already operating within the City of Nedlands with very few of these having the appropriate planning approvals in place. The cost of a development application for a change of use application required for a short-term accommodation use is \$295. If this application is retrospective the cost is three times the amount, making the cost \$885. Due to the nature of short-term accommodation becoming more popular in recent years and the confusion around approval being required Administration suggests a 6-month amnesty period for retrospective short-term accommodation applications to be applied. This will encourage people currently operating such a use without approval to seek the correct planning approvals without fear of prosecution and a penalty fee as it is proposed that that the City waive the penalty fee and that applicants be charged the standard \$295 development application fee.

Although this will likely create more development applications within the 6-month period, it will also mean that more short-term accommodation land uses have the appropriate approvals and operate in accordance with the City's policy.

5.0 Consultation

This policy was advertised from the 14 September 2019 until the 5 October 2019 in accordance with the City's Consultation Local Planning Policy and the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4. Two submissions were received during the advertising period.

One submitter strongly objected to short-term accommodation land use in Nedlands particularly in residential areas, no reasons for this were provided. The submission and its concerns have been noted.

The second submitter raised concerns in relation to the scale of short-term accommodation uses. Specifically, the differences between a single house versus grouped or multiple (apartments) dwellings operating as short term accommodation. The City believes that this is addressed through the different land use definitions in the scheme as shown below:

Holiday Accommodation – means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot.

Holiday House – means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.

Serviced Apartments – means a group of units or apartments providing;

- a) self-contained short stay accommodation for guests; and
- b) any associated reception or recreational facilities

The different land use definitions as well as separate provisions in the policy for each allows for there to be clear distinction in terms of scale and management. Therefore, Administration believes that this issue has been addressed through both the Scheme and the Policy.

The second submission also brought up concerns around creating a policy before the West Australian Parliamentary Inquiry had been completed. Having discussed the paper released in September 2019 Levelling the Playing Field; Managing the impact of the rapid increase of Short-Term Rentals in Western Australia, Administration believes that at this time there are no changes needed or required in light of this inquiry and will update the policy in the future if required.

6.0 Proposed modifications to policy

Administration propose to remove the parking provisions from the Short Term Accommodation LPP. This is to remove any potential inconsistencies with the City's adopted Parking Local Planning Policy.

It is preferred that all parking provisions are to be in one policy to minimise both contradictions and any future changes needed to parking provisions. For example, if the ratio for parking for holiday house changes currently both the Parking and the Short Term Accommodation LPP would need to be updated. This would require both policies going back to Council and out for community advertising. Removal of parking standards from the policy would mean only the Parking LPP would be required to be updated if changes were made.

If parking standards remain, the policy will need to be referred to the West Australian Planning Commission (WAPC) in relation for approval of the parking provisions. Similar to that of the City's Parking LPP. If the parking provisions are removed as recommended, the policy will not need referral to the WAPC and instead will only require adoption from Council to be enforced.

7.0 Statutory Provisions

Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 2, Clause 4(3) of the Regulations, sets out that after the expiry of the 21-day advertising period, the local government must review the proposed policy in light of any submissions made and resolve to:

- a) Proceed with the policy without modification;
- b) Proceed with the policy with modification; or
- c) Not to proceed with the policy.

Administration recommends that Council resolves to proceed with the Short Term Accommodation Local Planning Policy with modifications, having been advertised in from the 14 September 2019 until the 5 October 2019.

8.0 Conclusion

The policy provides the City with an operative local planning framework in place under LPS 3 to adequately address the operation and management requirements associated with short-term accommodation uses. The modifications proposed to the draft policy provide consistency with other adopted policies such as the Parking LPP.

LOCAL PLANNING POLICY – SHORT TERM ACCOMMODATION

1.0 PURPOSE

- 1.1 The purpose of this policy is to provide guidance and development provisions for operators seeking to establish short-term accommodation within the City of Nedlands.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all short-term accommodation proposals captured by the following land use categories as defined in Local Planning Scheme No. 3, within all zones:
- Bed and breakfast;
 - Holiday house;
 - Holiday accommodation; and
 - Serviced Apartments.
- 2.2 Where this Policy is inconsistent with a Local Development Plan or Local Planning Policy that applies to a specific site, area or R-Code, the provisions of that specific Local Development Plan or Local Planning Policy shall prevail.

3.0 OBJECTIVES

- 3.1 To ensure the location and scale of short-term accommodation uses are compatible with the surrounding area.
- 3.2 To maintain a high standard of amenity for the surrounding neighbourhood through required management controls.
- 3.3 To ensure properties used for a short-term accommodation uses do not have an undue impact on the residential amenity of the area by way of noise, traffic, or parking.
- 3.4 To establish a clear framework for the assessment and determination of applications for short-term accommodation.

4.0 POLICY MEASURES

Holiday house

- 4.1 Applications for Holiday House where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.2 Applications for Holiday House, where a keeper does not reside on-site may be supported where:
- (a) The number of guests is limited to 6 persons; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: A *Holiday house land use relates to short term accommodation within a single house. Where a variation is sought, Clause 11.1 of this policy applies.*

Holiday accommodation



- 4.3 Applications for Holiday Accommodation where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.4 Applications for Holiday Accommodation, where a keeper does not reside on-site may be supported where:
- (a) The occupancy is limited to 6 persons or less; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: *A Holiday Accommodation land use relates to short term accommodation within grouped or multiple dwellings.*

Where a variation is sought, Clause 11.1 of this policy applies.

Bed and Breakfast Requirements

- 4.5 Management:
- (a) The keeper of the bed and breakfast accommodation must always reside at the premises while the Bed and Breakfast is in operation;
 - (b) Breakfast is required to be provided to guests;
 - (c) Breakfast (and other meals if provided) are provided to bed and breakfast guests only;
 - (d) Access to a separate bathroom must be provided for bed and breakfast guests; and
 - (e) Access to a dining area and laundry facilities should be provided for bed and breakfast guests.

Serviced Apartments

- 4.6 Design:
- (a) Applications for Serviced Apartments shall be subject to the siting and design requirements applicable to the site for Multiple Dwellings under the Residential Design Codes (excluding Plot Ratio requirements), and any relevant Precinct Policy, Local Planning Policy or Local development Plan applicable for the area; and
 - (b) Applications for Serviced Apartments shall include within the entrance, foyer or lobby a reception desk which shall always be attended by staff when apartment check-ins and check-out can occur.



4.7 Servicing Strategy:

4.7.1 In addition to the Management Plan in accordance with Clause 7.1, all applications for Serviced Apartments shall include a Servicing Strategy detailing the level of servicing containing, but not limited to the following:

- (a) Opening hours for guest check-ins and checkouts;
- (b) Method of reservations/bookings;
- (c) Means of attending to guest complaints;
- (d) Cleaning and laundry services, where available;
- (e) Company name and relevant experience of management/operator; and
- (f) Management and accommodation of servicing vehicles within the context of the overall car parking for the development.

5.0 CAR PARKING

5.1 Car parking is to be in accordance with the requirements of the Parking Local Planning Policy.

SIGNAGE

5.2 Signage is limited to, 1 x Name Plates and wall signs and 1 x Portable sign (within property boundary) and is to be in accordance with the requirements of the Signs Local Planning Policy.

6.0 CONSULTATION

6.1 Consultation with affected landowners will be undertaken in accordance with the City's Consultation of Planning Proposals Local Planning Policy.

6.2 Applications where a short-term accommodation uses are listed as 'A' in the Zoning Table of the Scheme or where a variation is proposed to this Policy are to be advertised in accordance with the requirements of the Consultation of Planning Proposals Local Planning Policy.



7.0 MANAGEMENT PLAN

7.1 The Management Plan report is to include the following, **as a minimum**:

- (a) Establishing the maximum number of guests which will stay, in addition to (if applicable) those which reside at the property on a permanent basis.
- (b) Establishing a code of conduct detailing the expected behaviour and obligations of guests. The code of conduct shall be displayed in a prominent position within the premises.
- (c) Details of how complaints regarding anti-social behaviour, car parking and noise, amongst other matters, will be managed by the landowner(s).
- (d) The contact details of the landowner(s) if a neighbour wants to lodge a complaint.
- (e) Details regarding guest check-in and check-out procedures (i.e. days and times).
- (f) Details of how car parking for those staying at the property and (if applicable) those residing at the property on a permanent basis, will be managed by the landowner(s). The measures proposed are to ensure vehicles will always have easy access to on site car parking spaces.
- (g) Details of how the guests will be informed of the requirements for parking.
- (h) Details regarding how guests are expected to maintain the property.
- (i) Details whether pets and guests associated with those staying at the property will be permitted, and if so, how this will be managed.
- (j) Details of compliance with Strata By-laws (if applicable) in the form of a Statement of Compliance.
- (k) To provide details of waste disposal.

Notes: An example of a Management Plan is shown in Appendix 1.

8.0 BUSHFIRE MANAGEMENT

8.1 Where a property is within a designated Bushfire Prone Area, applications for Development approval will be required to comply with State Planning Policy (SPP 3.7) Planning in Bushfire Prone Areas, and any building requirements as required by the Building Code of Australia.

8.2 Short term accommodation is a vulnerable land use under SPP3.7 and may require a Bushfire Management Plan (BMP) submitted by a certified Level 2 or 3 Bushfire Management Consultant to the satisfaction of the City. Where a property is within a Bushfire Prone Area the application may require a referral to the Department of Fire and Emergency Services (DFES). The City will take into consideration comments from DFES in making their determination.

9.0 OTHER CONSIDERATIONS – HEALTH AND BUILDING APPROVAL

9.1 The applicant is advised to consult with the City's Building Services & Environmental Health Services to determine if a Building Permit, Food Business Registration or Aquatic facilities approval is required for a short-term accommodation use.



10.0 APPROVAL PERIOD

10.1 The City may grant temporary development approval for short-term accommodation uses for an initial 12-month period.

10.2 Following this initial 12-month period, a subsequent development approval will be required to be submitted for the renewal of the approval for the short-term accommodation which may then be on a permanent basis.

10.3 As part of considering a renewal, the City will give regard to any substantiated complaints against the operation of the short-term accommodation in accordance with the conditions of its development approval. Should a subsequent approval be granted, this may also be for a time limited period if the City is not satisfied that the use has not caused amenity impacts on neighbouring properties.

11.0 VARIATIONS TO POLICY

11.1 Where a variation to this policy is sought, consideration shall be given to objectives of the policy.

12.0 ADDITIONAL DEVELOPMENT APPLICATION REQUIREMENTS

12.1 In addition to the general requirements for an application for development approval, the following are required:

(a) Detailed management plan, as per clause 9.1.

12.2 In Strata Title situations the consent of the Strata Company is required in accordance with the provisions of the Strata Titles Act 1985 and associated By-Laws. The Strata Company are to complete and sign the landowner section of the City's Development Application Form prior to lodgement.

13.0 RELATED LEGISLATION

13.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

13.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Planning Scheme No. 3
- State Planning Policy 7.3 – Residential Design Codes
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas
- Parking Local Planning Policy
- Consultation of Planning Proposals Local Planning Policy
- Signs Local Planning Policy

**14.0 DEFINITIONS**

14.1 For this policy the following definitions apply:

| Definition | Meaning |
|---------------------------------|--|
| Bed and breakfast | Means a dwelling - (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and, (b) containing not more than 2 guest bedrooms. |
| Grouped dwelling | As per the R-Codes, being, a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise and includes a dwelling on a survey strata with common property. |
| Guest | Means a person who accommodates a short-term accommodation for a fee. |
| Keeper | Means a person who permanently resides on site and is responsible for its upkeep and management of the accommodation. |
| Holiday accommodation | Means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot. |
| Holiday house | Means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast. |
| Multiple dwelling | As per the R-codes, being, a dwelling in a group of more than one dwelling on a lot where any part of the plot ratio of the dwelling is vertically above any part of the plot ratio area of any other but: <ul style="list-style-type: none"> • does not include a grouped dwelling; and • includes any dwellings above the ground floor in a mixed-use development. |
| Serviced Apartment | Means a group of units or apartments providing- (a) self-contained short stay accommodation for guests; and (b) any associated reception or recreation facilities. |
| Single house | As per the R-Codes, being, a dwelling standing wholly on its own green title or survey strata lot, together with any easement over adjoining land for support of a wall or for access or services and excludes dwellings on titles with areas held in common property. |
| Self-contained | Means accommodation having its own kitchen, bathroom and bedroom facilities. |
| Short term accommodation | Means temporary accommodation provided either continuously or from time to time with no guest/s accommodated for periods totalling more than 3 months in any 12-month period. |
| Strata Company | Means a body corporate constituted under section 32 of the Strata Titles Act 1985 whether for a strata scheme or a survey-strata scheme. Council of Owners means an elected representative council of a strata company constituted or deemed to have been constituted under the Strata Titles Act 1985. |

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Appendix 1 – Management Plan Template

Note: When developing a Management Plan, the headings below are to be followed as a minimum guide in terms of level of detail required by the City of Nedlands.

1.0 Introduction

Property address and overview of the short-term accommodation you wish to conduct at the property.

2.0 Check In

Check in time for guests.

3.0 Check out

Check out time for guests.

4.0 Complaints Management

How will you deal with complaints how do you wish for complaints to be received and whom to?

5.0 Use of Premises

How many people will the property be rented to at any given time and for how long?

6.0 On-Site Register

An onsite register should be provided for all residents to provide their full name, usual place of residence and check in and out dates.

7.0 Maintenance

Refers to both maintenance of the gardens and the buildings.

8.0 Guest Guide

Information to be provided in the Guest Guide e.g.:

- *Manager and contact details*
- *Code of Conduct*
- *Wi-Fi Device name and password*
- *Key lockbox code*
- *TV Information*
- *Air Conditioner operation*
- *Location of the first aid kit*
- *Extra towels and sheets*
- *Hot water systems operation*
- *Rubbish bin location*
- *Check in time*
- *Check out time*
- *Local restaurant and shopping*



- *Local parks and recreation services*
- *Important contact numbers*
- *Other major attractions*
- *Any other information required*

9.0 Managers Guide

A guide shall be prepared for the manager and kept in a folder by the manager, documenting tasks and processes for the following:

- *General hosting (Including liaisons with clients, providers and Local Government)*
- *Cleaning information between occupants*
- *Laundry requirements*
- *Garden preventative maintenance*
- *Building preventative maintenance*

10.0 Code of Conduct for Guests and Visitors

Provide information under all below headings to show how each of these requirements will be adequately managed.

10.1 General Principles

Short term Accommodation is a unique experience and the guiding principles of this Code of Conduct are as follows.

10.2 General Requirements

General Requirements Guests must adhere to.

10.3 Noise and Residential Amenity

Noise requirements for guests.

10.4 Visitors

Will visitors other than those who have booked be able to stay or visit the property?

10.5 Gathering or Functions

Are gatherings or functions allowed at the property?

10.6 Parking

How much parking is provided for guests?

10.7 Garbage and Recycling

How will rubbish and recycled goods be disposed of?



10.8 Security

What security measures will be at the property?

10.9 Smoking

Will smoking be tolerated at the property?

10.10 Pets

Will pets be allowed at the property?

10.11 Damages and Breakages

How will damages and breakages be dealt with at the property?

10.12 Compliance

How will breaches of this code of conduct be dealt with?

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LOCAL PLANNING POLICY – SHORT TERM ACCOMMODATION

1.0 PURPOSE

- 1.1 The purpose of this policy is to provide guidance and development provisions for operators seeking to establish short-term accommodation within the City of Nedlands.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all short-term accommodation proposals captured by the following land use categories as defined in Local Planning Scheme No. 3, within all zones:
- Bed and breakfast;
 - Holiday house;
 - Holiday accommodation; and
 - Serviced Apartments.
- 2.2 Where this Policy is inconsistent with a Local Development Plan or Local Planning Policy that applies to a specific site, area or R-Code, the provisions of that specific Local Development Plan or Local Planning Policy shall prevail.

3.0 OBJECTIVES

- 3.1 To ensure the location and scale of short-term accommodation uses are compatible with the surrounding area.
- 3.2 To maintain a high standard of amenity for the surrounding neighbourhood through required management controls.
- 3.3 To ensure properties used for a short-term accommodation uses do not have an undue impact on the residential amenity of the area by way of noise, traffic, or parking.
- 3.4 To establish a clear framework for the assessment and determination of applications for short-term accommodation.

4.0 POLICY MEASURES

Holiday house

- 4.1 Applications for Holiday House where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.2 Applications for Holiday House, where a keeper does not reside on-site may be supported where:
- (a) The number of guests is limited to 6 persons; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: *A Holiday house land use relates to short term accommodation within a single house. Where a variation is sought, Clause 11.1 of this policy applies.*



Holiday accommodation

- 4.3 Applications for Holiday Accommodation where a keeper resides on-site are generally supported in all zones where allowed under the scheme.
- 4.4 Applications for Holiday Accommodation, where a keeper does not reside on-site may be supported where:
- (a) The occupancy is limited to 6 persons or less; and
 - (b) Bookings must be for a minimum stay of 2 consecutive nights.

Notes: *A Holiday Accommodation land use relates to short term accommodation within grouped or multiple dwellings.*

Where a variation is sought, Clause 11.1 of this policy applies.

Bed and Breakfast Requirements

- 4.5 Management:
- (a) The keeper of the bed and breakfast accommodation must always reside at the premises while the Bed and Breakfast is in operation;
 - (b) Breakfast is required to be provided to guests;
 - (c) Breakfast (and other meals if provided) are provided to bed and breakfast guests only;
 - (d) Access to a separate bathroom must be provided for bed and breakfast guests; and
 - (e) Access to a dining area and laundry facilities should be provided for bed and breakfast guests.

Serviced Apartments

- 4.6 Design:
- (a) Applications for Serviced Apartments shall be subject to the siting and design requirements applicable to the site for Multiple Dwellings under the Residential Design Codes (excluding Plot Ratio requirements), and any relevant Precinct Policy, Local Planning Policy or Local development Plan applicable for the area; and
 - (b) Applications for Serviced Apartments shall include within the entrance, foyer or lobby a reception desk which shall always be attended by staff when apartment check-ins and check-out can occur.



7.0 MANAGEMENT PLAN

7.1 The Management Plan report is to include the following, **as a minimum**:

- (a) Establishing the maximum number of guests which will stay, in addition to (if applicable) those which reside at the property on a permanent basis.
- (b) Establishing a code of conduct detailing the expected behaviour and obligations of guests. The code of conduct shall be displayed in a prominent position within the premises.
- (c) Details of how complaints regarding anti-social behaviour, car parking and noise, amongst other matters, will be managed by the landowner(s).
- (d) The contact details of the landowner(s) if a neighbour wants to lodge a complaint.
- (e) Details regarding guest check-in and check-out procedures (i.e. days and times).
- (f) Details of how car parking for those staying at the property and (if applicable) those residing at the property on a permanent basis, will be managed by the landowner(s). The measures proposed are to ensure vehicles will always have easy access to on site car parking spaces.
- (g) Details of how the guests will be informed of the requirements for parking.
- (h) Details regarding how guests are expected to maintain the property.
- (i) Details whether pets and guests associated with those staying at the property will be permitted, and if so, how this will be managed.
- (j) Details of compliance with Strata By-laws (if applicable) in the form of a Statement of Compliance.
- (k) To provide details of waste disposal.

Notes: An example of a Management Plan is shown in Appendix 1.

8.0 BUSHFIRE MANAGEMENT

8.1 Where a property is within a designated Bushfire Prone Area, applications for Development approval will be required to comply with State Planning Policy (SPP 3.7) Planning in Bushfire Prone Areas, and any building requirements as required by the Building Code of Australia.

8.2 Short term accommodation is a vulnerable land use under SPP3.7 and may require a Bushfire Management Plan (BMP) submitted by a certified Level 2 or 3 Bushfire Management Consultant to the satisfaction of the City. Where a property is within a Bushfire Prone Area the application may require a referral to the Department of Fire and Emergency Services (DFES). The City will take into consideration comments from DFES in making their determination.

9.0 OTHER CONSIDERATIONS – HEALTH AND BUILDING APPROVAL

9.1 The applicant is advised to consult with the City's Building Services & Environmental Health Services to determine if a Building Permit, Food Business Registration or Aquatic facilities approval is required for a short-term accommodation use.

10.0 APPROVAL PERIOD

- 10.1 The City may grant temporary development approval for short-term accommodation uses for an initial 12-month period.
- 10.2 Following this initial 12-month period, a subsequent development approval will be required to be submitted for the renewal of the approval for the short-term accommodation which may then be on a permanent basis.
- 10.3 As part of considering a renewal, the City will give regard to any substantiated complaints against the operation of the short-term accommodation in accordance with the conditions of its development approval. Should a subsequent approval be granted, this may also be for a time limited period if the City is not satisfied that the use has not caused amenity impacts on neighbouring properties.

11.0 VARIATIONS TO POLICY

- 11.1 Where a variation to this policy is sought, consideration shall be given to objectives of the policy.

12.0 ADDITIONAL DEVELOPMENT APPLICATION REQUIREMENTS

- 12.1 In addition to the general requirements for an application for development approval, the following are required:
- (a) Detailed management plan, as per clause 9.1.
- 12.2 In Strata Title situations the consent of the Strata Company is required in accordance with the provisions of the Strata Titles Act 1985 and associated By-Laws. The Strata Company are to complete and sign the landowner section of the City's Development Application Form prior to lodgement.

13.0 RELATED LEGISLATION

- 13.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.
- 13.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:
- Planning and Development (Local Planning Schemes) Regulations 2015
 - Local Planning Scheme No. 3
 - State Planning Policy 7.3 – Residential Design Codes
 - State Planning Policy 3.7 – Planning in Bushfire Prone Areas
 - Parking Local Planning Policy
 - Consultation of Planning Proposals Local Planning Policy
 - Signs Local Planning Policy

14.0 DEFINITIONS

14.1 For this policy the following definitions apply:

| Definition | Meaning |
|---------------------------------|--|
| Bed and breakfast | Means a dwelling - (a) used by a resident of the dwelling to provide short-term accommodation, including breakfast, on a commercial basis for not more than 4 adult persons or one family; and, (b) containing not more than 2 guest bedrooms. |
| Grouped dwelling | As per the R-Codes, being, a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above another, except where special conditions of landscape or topography dictate otherwise and includes a dwelling on a survey strata with common property. |
| Guest | Means a person who accommodates a short-term accommodation for a fee. |
| Keeper | Means a person who permanently resides on site and is responsible for its upkeep and management of the accommodation. |
| Holiday accommodation | Means 2 or more dwellings on one lot used to provide short-term accommodation for persons other than the owner of the lot. |
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