

Planning and Development Reports

Committee Consideration – 13 March 2018

Council Resolution – 27 March 2018

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Council: 27 March 2018

PD07.18	(Lot 54) No. 14 Odern Crescent, Swanbourne – Amendments to DA17/275 (Two-Storey Single House with Under-croft)
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Committee	13 March 2018
Council	27 March 2018
Applicant	TPG + Place Match
Landowner	M E Hands & A M Cullen
Director	Peter Mickleson – Director Planning & Development
Reference	DA18/013
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Applicant's Site Photographs 2. Applicant's Justification

1.0 Executive Summary

Development approval is being sought to amend approved plans for a two-storey single house with under-croft at the subject property. The original plans were approved under delegated authority in December 2017.

The application proposes a lot boundary setback variation and a visual privacy variation to the deemed-to-comply provisions of the Residential Design Codes (R-Codes). One objection was received in relation to the proposed variations.

The proposed variations are considered minor in nature due to the negligible impact upon the neighbouring landowners' active outdoor living areas and major openings of their dwellings which are over 14m away from the proposed location of the variations. As such the development is considered to comply with the City's Town Planning Scheme No. 2 (TPS2) and the Design Principles of the R-Codes and therefore it is recommended that the application be approved by Council.

2.0 Recommendation to Committee

Council approves the development application dated 24 January 2018 to amend the plans for a two-storey single house with under-croft at (Lot 54) No. 14 Odern Crescent, Swanbourne, 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 (DA17/275, dated 18 December 2017) and conditions there-in, remain in effect. This excludes the plans approved as part of the previous development application.**

Advice Notes:

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

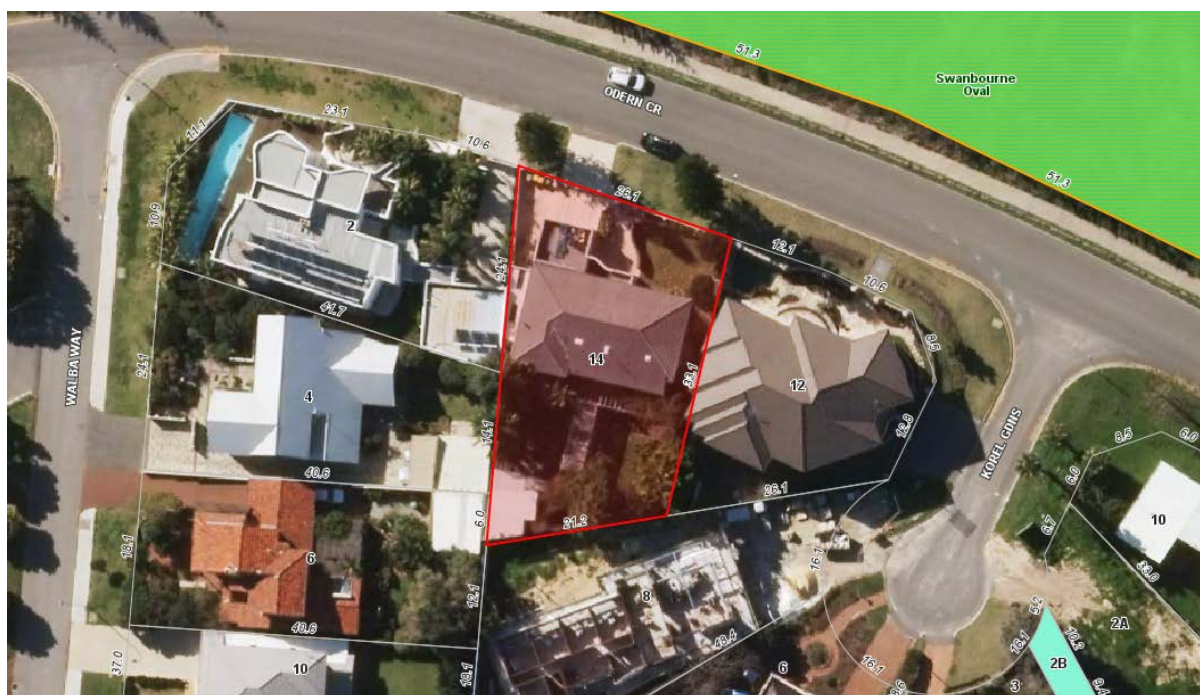
3.0 Site Details

Lot area	885m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R12.5/20
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The property is relatively level with the existing dwelling proposed to be demolished.

A subdivision application has been approved by the Western Australian Planning Commission with a side-by-side lot configuration. A clearance application is yet to be lodged with the City at the time of writing this report. The assessment has been based on the lot in its entirety.

An aerial image showing the location of the property follows.



4.0 Background

The original development application was lodged with the City in October 2017. This application was advertised with the following variations to the deemed-to-comply provisions of the R-Codes:

- Reduced minimum front setback;
- Boundary wall to western side lot boundary; and
- Reduced visual privacy setback to western side lot boundary.

As objections were received to the variations, the variations were removed from the proposal to allow approval under delegated authority in December 2017.

The application the subject of this report was lodged in January 2018 proposing the following previously advertised variations:

- Boundary wall to western side lot boundary; and
- Reduced visual privacy setback to western side lot boundary.

(These variations are explained more fully below.)

5.0 Specific Application Details

The applicant seeks approval to amend approved plans for a two-storey single house with under-croft as follows:

- The floor levels to be increased by 200mm, with the overall building height retained as approved;
- The height of the western boundary parapet wall to be increased to be 977mm above the western neighbour's parapet wall;
- The privacy screen to the Bedroom 1 window to be removed.

The following variations are proposed as a result of the amendments:

- Lot boundary setbacks – the study to laundry parapet wall has a nil setback in lieu of 1.1m to the western side lot boundary; and
- Visual privacy – Bedroom 1 has a 3m visual privacy setback to western side lot boundary in lieu of 4.5m.

The applicant has provided a design principle justification in support of the development application which has been provided as an attachment to this report (refer to attachment 2).

6.0 Consultation

The proposed variations were advertised to the affected neighbouring landowners for comment as part of the original development application. One non-objection and one objection was received in relation to the proposed variations. The following is a summary of the concerns raised:

- “Bedroom 1 should not overlook my property; and
- I would not support a boundary wall being any higher than the existing parapet wall height as it would adversely affect shading on any future development I make.”

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

7.0 Assessment of Statutory Provisions

7.1 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.

7.2 Town Planning Scheme No. 2

7.2.1 Amenity

Under clause 5.5.1 Council may refuse to approve any development if:

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

The proposed variations are considered to be minor in nature as they are not visible from major openings and active habitable space on the adjacent neighbouring properties. The dwelling has been designed to ensure major openings are orientated away from the lot boundary or to non-sensitive areas of neighbouring properties. Taking this into consideration the proposed variations are unlikely to have significant adverse impact on the locality amenity.

7.3 Residential Design Codes (State Planning Policy 3.1)

7.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings setback in accordance with Table 2A and 2B of the R-Codes; and Walls may be built up to a lot boundary behind the street setback where the wall abuts an existing or simultaneously constructed wall of similar or greater dimension.	The boundary wall is proposed to be 977mm higher than the neighbour's existing boundary wall and therefore is not considered to be a wall of similar dimension to the neighbour's existing boundary wall. The wall is therefore required to be setback 1.1m to the western side lot boundary in lieu of the proposed nil setback.	No

Design Principles

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P3.1 – Buildings set back from lot boundaries so as to:

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

P3.2 – Buildings built up to boundaries (other than the street boundary) where this:

- makes more effective use of space for enhanced privacy for the occupants or outdoor living areas;*
- does not have an adverse impact on the adjoining property;*
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- positively contributes to prevailing development context and streetscape.”*

Administration Comments

Clause 5.3.1 (b) (iii) of the City's TPS2 states that setbacks shall be as per the lower density code for properties with a split coding and therefore setbacks are to be as per the requirements within the R-Codes for the R12.5 density coding. Boundary walls are not permitted as of right within the R12.5 density code unless proposed adjacent to an existing or simultaneously constructed wall of similar dimension.

The proposed boundary wall will be adjacent to the neighbour's existing boundary wall, however the proposed boundary wall will be almost 1m (0.977m) higher. In response to this, it should be noted that a portion of this additional height will be screened by the neighbour's angled solar panels on the roof of the adjacent garage. The additional boundary wall height is over 14m away from western neighbour's dwelling and therefore not visible from the ground floor or the main outdoor living areas of the property, ensuring no visual impact on the neighbouring landowner.

The lot orientation ensures no overshadowing of the western neighbour's lot, and the location of the boundary wall ensures that the wall will not have negative impact in terms of bulk and scale as viewed from the neighbouring property. The presence of existing boundary wall development within the locality ensures that the development will not impact upon the prevailing development context of the locality and streetscape.

In response to the neighbour's concerns in relation to shading from the proposed boundary wall, it should be noted that the lot configuration is north-south and therefore shading will occur to the south of the development and only slightly to the south-west in the afternoon, ensuring that the neighbouring landowner will still have adequate access to sunlight with the current and future developments on the western neighbouring property.

7.3.2 Visual privacy

Deemed-to-Comply Requirement	Proposed	Complies?
Major opening and unenclosed outdoor active habitable spaces, which have a floor level of more than 0.5m above natural ground level and overlook any part of any other residential property behind its street setback line are setback 4.5m to major openings to bedrooms and studies or are provided with permanent screening to restrict views within the cone of vision.	Bedroom 1 is proposed to have a visual privacy setback of 3m in lieu of 4.5m to the western side lot boundary.	No
Design Principles Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions: <i>“P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</i> <ul style="list-style-type: none"> • <i>building layout and location;</i> • <i>design of major openings;</i> • <i>landscape screening of outdoor active habitable spaces; and/or</i> • <i>location of screening devices.</i> <i>P1.2 Maximum visual privacy to side and rear boundaries through measures such as:</i> <ul style="list-style-type: none"> • <i>offsetting the location of ground and first floor windows so that viewing is oblique rather than direct;</i> • <i>building to the boundary where appropriate;</i> • <i>setting back the first floor from the side boundary;</i> • <i>providing higher or opaque and fixed windows; and/or</i> • <i>screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).”</i> 		
Administration Comments The proposed bedroom 1 major opening is north facing and overlooks garage roof area on no. 2 Walba Way and a less than 1m ² portion of rear yard on no. 4 Walba. The orientation of the major opening ensures that overlooking is indirect in nature and is not within line of sight of any active habitable spaces or outdoor living areas of neighbouring properties. This ensures that privacy will be maintained between the properties accordingly.		

8.0 Other Issues Raised

In the advertised version of the application, a front setback variation was proposed. This has subsequently been removed from the proposal and is not the subject of this application. The primary street setback is compliant with the Deemed-to-comply provisions of the R-Codes.

9.0 Budget / Financial Implications

N/A

10.0 Risk management

N/A

11.0 Conclusion

The proposed amendments to the approved plans are considered minor in nature due to the negligible impact upon sensitive areas (outdoor living areas and major openings) of the adjacent neighbouring properties. As such, the variations are not considered to negatively impact the amenity of neighbouring landowners and are therefore considered compliant with the Design Principles of the R-Codes. Accordingly, it is recommended that the application be approved by Council.

Site Photography – 2 Walba Way, Swanbourne as viewed from 14 Odern Crescent Swanbourne
existing front balcony



Image 1 – View looking west south west across western property boundary to 2 Walba Way inclusive of existing boundary wall, metal garage roof and solar panels in south eastern corner of roof (panels approx. 800mm higher than roof).



Image 2 – View looking west across western property boundary to 2 Walba Way inclusive of existing boundary wall, metal garage roof, solar panels and sole eastern facing window in abutting house (blinds drawn).



Image 3 – View looking down across western property boundary to 2 Walba Way inclusive of existing driveway, yard area (not active outdoor habitable space), and vegetation.



Image 4 – View looking west across western property boundary to 2 Walba Way inclusive of metal garage roof, sole eastern facing window in abutting house (blinds drawn) and clearly showing there are no outdoor elevated habitable spaces (like balconies) orientated to the east.

The purpose of this submission is to amend the following aspects of the approved single house at Lot 54 (No. 14) Odern Crescent, Swanbourne:

- a) The floor levels have been increased by 200mm, with the overall building height retained as approved.
- b) The height of the western boundary parapet wall has been increased. As was proposed previously, it is now 977mm above the neighbour's parapet wall (to brick coursing height) in lieu of 434mm as approved (an increase of 543mm).
- c) The privacy screen to the Bedroom 1 window has been removed.

The reasons for the amendments to the approved plans are as follows:

- The impact of the increased floor level is negligible and does not raise any planning assessment issues or concerns.
- An increase to the height of the western boundary wall will have no adverse amenity or other negative impacts on the property to the west and is desirable to achieve reasonable ceiling heights within the western rooms on the ground level of the approved house (Study 2, bathroom and laundry).
- The minor privacy cone of vision encroachments from the Bedroom 1 window do not affect any sensitive areas on the adjoining properties. On this basis, screening is unnecessary and would adversely affect the amenity of the bedroom.

Detailed justifications for the amendments are set out below:

Western Boundary Parapet Wall

The additional 543mm of boundary wall height up against the neighbour's garage at 2 Walba Way is justified on the basis of the following:

- The additional height results in a boundary wall that is still less than one metre higher than that pre-existing on the adjoining property. It will have negligible impact on any sensitive areas on the adjoining property, as they are well separated. This is in large part due to the adjoining house being orientated primarily west and north away from 14 Odern Crescent, as evident by the placement of their own raised solar panels on the garage roof near the eastern property boundary.
- The use of a boundary wall in this location mirrors the location of an existing boundary wall at 2 Walba Way associated with their garage. The use of a boundary wall in this location makes effective use of space and enhances the privacy of users of the proposed ground level study (window facing Odern Crescent) and bathroom (skylight).
- The boundary wall will have negligible building bulk impact on the adjoining property at 2 Walba Way on the basis that the major openings and outdoor habitable spaces of the house are primarily orientated toward the west and north for coastal and dune views. Only one window faces east towards the

wall and is well setback from the shared property boundary. Other areas on the eastern side of the house at 2 Walba Way are characterised by metal roof tops, substantial extruding solar panels that further mitigate and screen any potential adverse bulk impacts, driveway access, informal storage and vegetated areas. There are also no outdoor living areas on the eastern side of the house at 2 Walba Way. Refer to photographs provided previously.

- Due to the location of a pre-existing boundary wall at 2 Walba Way, the relatively minor nature of the variation at less than one metre, and the relative positioning of habitable room windows and outdoor living areas on both properties (refer comments above), adequate direct sun and ventilation will be provided to the building and open spaces both on the site and the adjoining property. The design of the proposed house has in fact specifically included solar passive design and cross ventilation features.
- The boundary wall will minimize the extent of overlooking and resultant loss of privacy on adjoining properties. The only minor cone of vision encroachment onto the adjoining property at 2 Walba Way as a result of the removal of the privacy screen to Bedroom 1, falls onto the metal garage roof and pre-existing solar panels. See comments below.
- For the reasons outlined above the boundary wall will not actually be perceptible from any sensitive locations associated with the house at 2 Walba Way, and in conjunction with the minor extent of the variation and screening effect of the neighbour's solar panels, will ensure there is no adverse impact on the amenity of the adjoining property.
- The additional boundary wall height will have no impact on direct sun to major openings to habitable rooms and outdoor living areas on the adjoining property as these are well setback from the wall and generally orientated in a different direction to the west and north (as detailed above).
- The extent of the boundary wall, considered in the context of a pre-existing boundary wall at 2 Walba Way, and being well setback from Odern Crescent will positively contribute to the prevailing development context and streetscape.

Removal of Privacy Screen to Bedroom 1

The minor cone of vision encroachments from the north facing window in Bedroom 1 across the north-east corner of 4 Walba Way and the south-eastern corner of the garage located on the boundary at 2 Walba Way can be justified on the basis of the following:

- They are very minor to the point of being negligible, and only encroach a maximum of approximately one metre, and 0.68m² into the adjoining property at 2 Walba Way.
- The cone of vision does not extend over or impact adversely on active habitable spaces and outdoor living areas of adjacent dwellings. In the case of 4 Walba Way the cone of vision extends over a very small area in the north-eastern corner of the backyard of the property currently occupied by trees and shrubs and tight against pre-existing boundary fencing. In the case of 2 Walba Way the cone of vision extends over a metal garage roof

in an area occupied by solar panels and has no impact on sensitive areas of the property at all. Refer to photographs provided previously.

- The owners of 4 Walba Way have previously signed a set of the plans indicating that they have no objections to the proposed development of the single house at 14 Odern Crescent, Swanbourne, including the cone of vision diagram that overlaps their property. These plans have been forwarded previously to the City.
- Minimal direct overlooking and maximum visual privacy are also achieved due to the Bedroom 1 window being at right angles to the property boundary, ensuring that the technical cone of vision encroachment is oblique rather than direct across the boundary from the extreme western point of the north facing window. It is actually highly improbable that anyone would view the adjoining property from that part of the window.

PD08.18	(Lot 136) No. 77 Viking Road, Dalkeith – Proposed Cabana
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Committee	13 March 2018
Council	27 March 2018
Applicant	T Grapsas
Landowner	T Grapsas
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2018/14
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Nil.

1.0 Executive Summary

Development approval is being sought to construct a cabana at the rear of the property.

The cabana is proposed to be setback 5m in lieu of 6m from the northern (rear) boundary and would result in 58.5% open space in lieu of 60%.

One objection and one non-objection were 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).

The portion of the proposed development which encroaches within the rear setback area equates to approximately 6.3sqm which is unlikely to have a significant adverse impact on the local amenity.

The amount of open space proposed equates to approximately 15.2sqm less than what is required under the R-Codes and is as a result of a covered area which is over 50sqm in aggregate (the proposed cabana and an alfresco).

The proposal complies with the building height, side setback, overshadowing and overlooking requirements. It also responds to the local development context.

Given this, the proposal is unlikely to have a significant adverse impact on the local amenity.

2.0 Recommendation to Committee

Council approves the development application to construct a cabana at the rear of (Lot 136) No.77 Viking Road, Dalkeith, received on 24 January 2018, 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 pertains to the proposed cabana only.
3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.

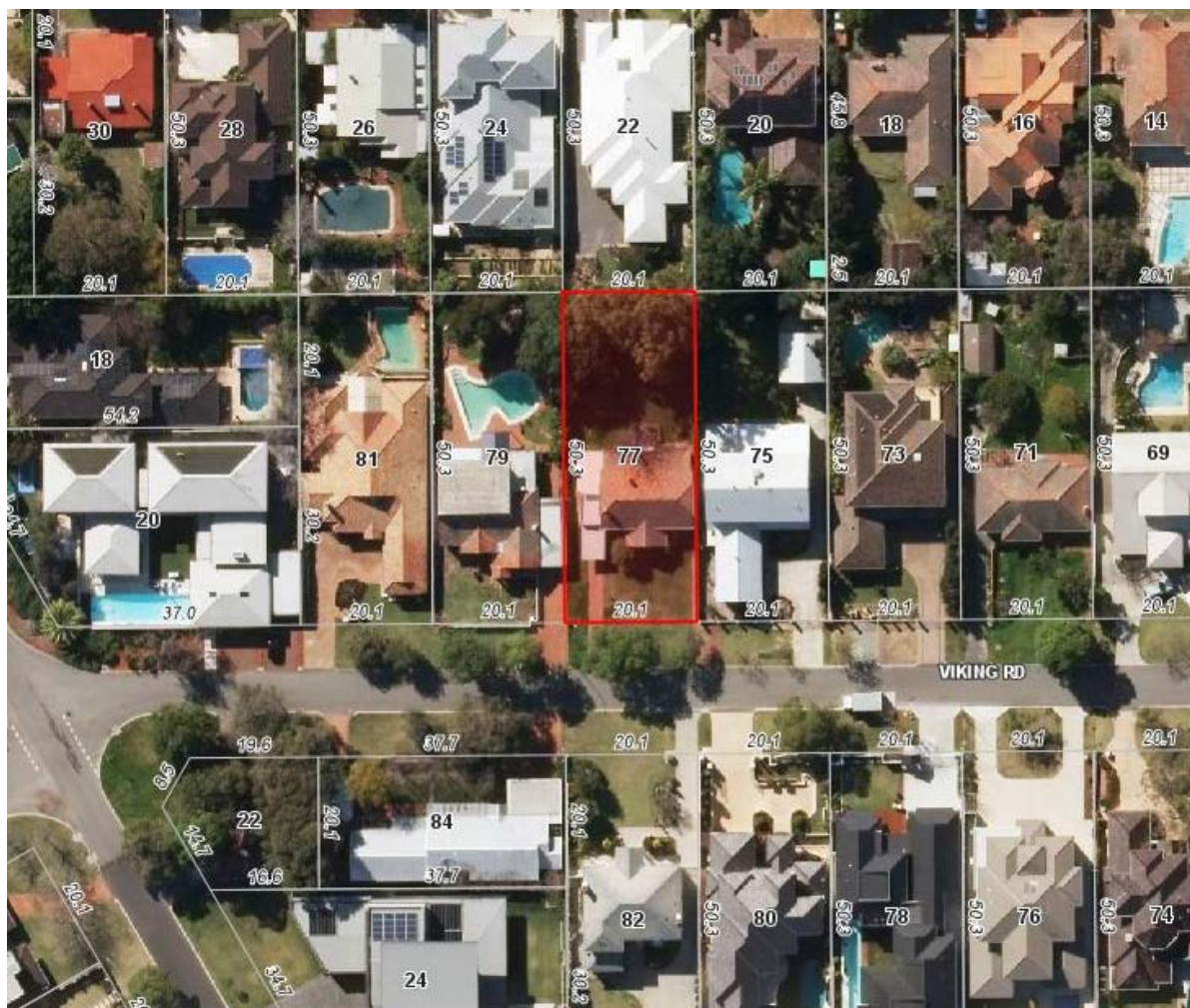
Advice Notes specific to this approval:

1. Stormwater to be contained on site by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
2. The swimming pool shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
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.

3.0 Site Details

Lot area	1,011m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings. The subject property's topography is relatively flat as shown on the locality plan on the following page.



By way of justification in support of the application the applicant has advised the following:

1. *“The size of the proposed residence footprint itself is not oversized and is only non-compliant due to the minor extra over amount above the 50sqm maximum allowance for roof covered open outdoor structures. This extra area constitutes 1.5% more site coverage. The Alfresco & Pool Cabana structures promote outdoor activities and as such would complement the open space around it.*
2. *With the North orientation at the rear; the proposed residence living areas are also located appropriately to the rear of the property to enjoy this aspect and its outdoor amenities. The Pool Cabana is sufficiently setback away from the proposed residence to allow winter sun penetration into the Living area*
3. *The Pool Cabana's 5.09m reduced setback in lieu of 6m to the rear of the property is negligible due to the structure 3.2m overall height above ground level and its minimal bulk impact on the neighbouring properties. The R-Codes do state a rear setback of 6m and also Table 2a & 2b which implies that it's up to Council discretion on the appropriate setback. The owner approached the neighbors at the rear and it seems that they do not have any dilemma with the proposed reduced setback.*
4. *The owner has previously had a cancerous skin melanoma removed and feels it necessary for her and her family to have appropriate shade structures around her pool during the hot summer months. This point in itself is the major justification for having the Pool Cabana approved.”*

7.0 Assessment of Statutory Provisions

7.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) of the Regulations 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.

7.2 Town Planning Scheme No. 2

7.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

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

In 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.

The cabana is proposed to be setback 5m in lieu of 6m from the northern (rear) boundary and would result in 58.5% open space in lieu of 60%.

Having had regard to the matters stipulated under the Regulations and the submissions received, the following is advised:

- The structure is proposed to be setback 1.5m from the eastern (side) boundary, 5m from the northern (rear) boundary and 12.2m from the western (side) boundary.

The proposal complies with the side lot boundary setback and building height requirements.

Solid dividing fencing of 1.8m in height above natural ground level exists along the lot boundaries which will partially screen the proposed cabana.

On some of the adjacent properties mature vegetation and outbuildings exist within close proximity to where the cabana is proposed.

Considering the above, the cabana will be partially screened from the adjoining properties.

- The portion of the proposed development which encroaches within the rear setback area equates to approximately 6.3sqm, and will be 3.2m in height above natural ground level and setback 1.5m from the nearest side lot boundary.

By way of comparison, the R-Codes permit an outbuilding of up to 60sqm and 4.2m in overall height to be setback as close as 1m from the side and rear boundaries.

Considering the above, the appearance of the proposed cabana is unlikely to have a significant adverse impact on the local amenity.

7.3 Residential Design Codes - State Planning Policy 3.1

7.3.1 Lot Boundary Setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
For properties coded R10, the rear lot boundary setback required is 6m as per Table 1	The cabana is proposed to be setback 5m in lieu of 6m from the rear (northern) lot boundary	No
Design Principles Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions: <i>“P3.1 – Buildings set back from lot boundaries so as to:</i> <ul style="list-style-type: none"> • <i>reduce impacts of building bulk on adjoining properties;</i> • <i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i> 		

Administration Comments

The proposed cabana which will encroach into the rear setback area complies with the side lot boundary setback, overlooking, overshadowing and building height requirements.

As advised under the previous section of this report, the appearance of the cabana will unlikely have a significant adverse impact on the local amenity due to a 6.3sqm portion being setback less than 6m from the rear boundary. Any visual impact will also be minimised due to the existence of solid dividing fencing and mature vegetation.

Taking into consideration the above, the proposal satisfies the design principles.

7.3.2 Minimum Open Space

Deemed-to-Comply Requirement	Proposed	Complies?
For properties coded R10, a minimum of 60% open space is required as per Table 1.	Open space of 58.5% in lieu of 60% is proposed.	No
Design Principles Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions: <i>“P4 Development incorporates suitable open space for its context to:</i> <ul style="list-style-type: none"> <i>reflect the existing and/or desired streetscape character or as outlined under the local planning framework;</i> <i>provide access to natural sunlight for the dwelling;</i> <i>reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;</i> <i>provide an attractive setting for the buildings, landscape, vegetation and streetscape;</i> <i>provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and</i> <i>provide space for external fixtures and essential facilities.</i> 		
Administration Comments Under the R-Codes cabanas and alfrescos which are greater than 50sqm individually or in aggregate are taken into consideration when calculating the amount of open space proposed to be available. The open space variation proposed for the subject property is as a consequence of the aggregate area of an alfresco and the cabana being 57sqm. The site coverage proposed equates to 15.2sqm in excess of what is permitted under the R-Codes. The variation is proposed due to the aggregate area of the covered areas (an alfresco and the cabana) being 15.2sqm in excess of what is permitted when calculating open space. The proposal complies with the overshadowing requirements. Solid dividing fencing and vegetation on adjoining properties will partially screen the proposed development. Development similar or larger in scale exists at nearby properties (e.g. 20 Hynes Road, 78 Viking Road, and 8 and 24 Neville Road). Taking the above into consideration, the proposal satisfies the design principles.		

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

The reduced rear (northern) boundary setback will unlikely have a significant adverse impact on the amenity of adjoining properties due to only a 6.3sqm portion of the cabana being setback less than 6m, the structure being open on 3 sides and being sufficiently screened by solid dividing fencing and vegetation on adjoining properties.

The small scale (1.5% variation) and the location of the development means that the open space variation is unlikely to be apparent when viewed from the adjoining properties unless the neighbours are well versed with the requirements.

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

PD09.18	(Lot 271) No. 37 Weld Street, Nedlands – Proposed Home Business (Occupational Therapy Paediatric)
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Committee	13 March 2018
Council	27 March 2018
Applicant	J Colegate and P Farrer-Smith
Landowner	J Colegate and P Farrer-Smith
Director	Peter Mickleson – Director Planning & Development Services
Reference	DA2018/9
Previous Item	Nil.
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Photograph of the subject property

1.0 Executive Summary

Development approval is being sought to commence operating a home business at the property.

A home business is an 'AA' use on properties zoned Residential under Town Planning Scheme No. 2 (TPS 2), which means that the use is not permitted unless development approval is granted. The application was advertised to nearby landowners and occupants for comment. During the advertising period 3 objections and 2 non-objections were received.

It is recommended that the application be approved by Council as considering the nature and scale of the proposed use it is unlikely to have a significant adverse impact on the local amenity in terms of car parking, traffic volume and noise.

2.0 Recommendation to Committee

Council approves the development application to operate a home business (occupational therapy paediatric) at (Lot 271) No.37 Weld Street, Nedlands, received on 17 January 2018, 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 proposed use complying with the home business definition stipulated under the City's Town Planning Scheme No. 2 (refer to advice note 1).**
- 3. Patients visiting the property by prior appointment only.**
- 4. A maximum of 6 patients per day.**

5. The home business only being permitted to operate at the following times:

Tuesdays – 9.00am to 6.00pm

Fridays – 4.00pm to 6.00pm

Saturdays – 9.00am to midday

Sundays – 9.00am to 3.00pm

Advice Notes specific to this approval:

1. With regard to Condition 2, The applicant is advised that the use 'Home Business' is defined as being the following under the City's Town Planning Scheme No. 2:

"Home Business - means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which:

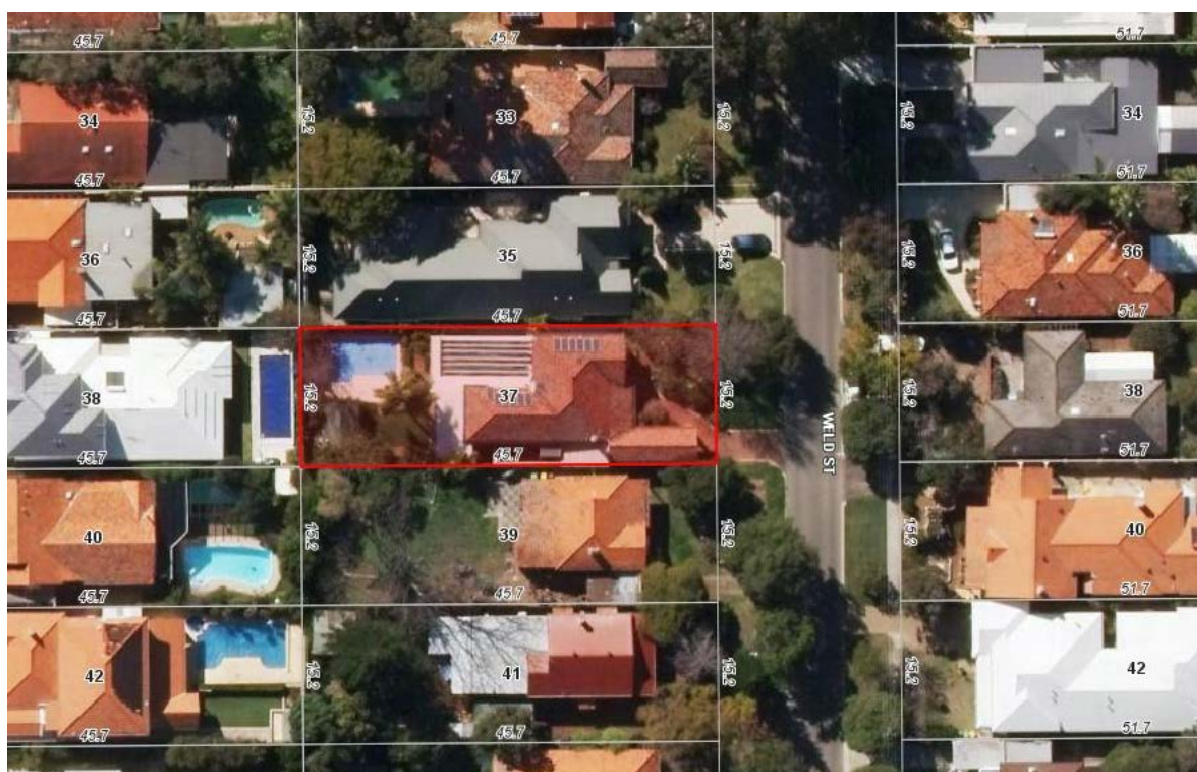
- i) does not employ more than 2 people not members of the occupier's household;*
- ii) will not cause injury to or adversely affect the amenity of the neighbourhood;*
- iii) does not occupy an area greater than 50 square metres;*
- iv) does not involve the retail sale, display or hire of goods of any nature;*
- v) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and*
- vi) does not involve the use of an essential service of greater capacity than normally required in the zone."*

2. Noise levels are to comply with the *Environmental Protection (Noise) Regulations 1997*.
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.

3.0 Site Details

Lot area	696m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential R15
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property and those nearby contain single dwellings and associated outbuildings as shown on the locality plan below.



4.0 Specific Application Details

The applicant seeks development approval to commence operating a home business at the property.

Details of the application are as follows:

- The home business is to provide occupational therapy treatment and support services/respite to children with neurological disability.
- The home business will only be operated by those residing at the property.
- Patients will visit the property by prior appointment only.
- The home business shall occupy up to 15sqm in the dwelling.
- The home business shall only operate at the following times (excluding public holidays):
 - Tuesdays – 9.00am to 6.00pm
 - Fridays – 4.00pm to 6.00pm
 - Saturdays – 9.00am to midday
 - Sundays – 9.00am to 3.00pm
- Up to 6 patients per day will visit the home business.
- Appointments will typically be between 45 minutes to 1 hour.
- No signage is proposed. The home business will be advertised online.

By way of justification in support of the application the applicant has advised the following:

- *“Our intention is to work with one child at a time.*
- *The children we are looking to work with have had childhood stroke, brain injury or have recovered from brain cancer. These children frequently have speech impairments. They have difficulty with movement and thinking skills but are not able to project their voices and are quiet due to their neurological issues. I can assure the community this work is very gentle and quiet.*
- *Outside activities in our garden with 1 child at a time could include: ball throwing and catching, skittles, or bubble popping, unfortunately these children can be limited in their ability to use their arms and hands. Swimming pool therapy with 1 child at a time is for gentle movement and relaxation. This will only occur in the heat of the summer as this group of children have poor temperature control and get very cold quickly. Other outdoor activities will be off site including picnics at Matilda Bay, Claremont and Pelican Point or kayaking on the river.”*

5.0 Consultation

Three objections and two non-objections were received during the advertising period. The following is a summary of the concerns received:

- The proposal potentially creating car parking difficulties within the local area.
- The use being inappropriate within a residential area.
- The proposal potentially creating excessive amounts of noise if outdoor activities are undertaken.
- The number of children visiting the property potentially being excessive.

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) of the Regulations 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.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 of TPS 2 Council may refuse to approve any development if:

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

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the compatibility of the proposed development within its setting and the potential impact it will have on the local amenity.

Having had regard to the matters stipulated under the Regulations and the submissions received, the following is advised:

- The home business is proposed to operate within a room which is currently used as a bedroom, and at times within the property's outdoor living area.

A maximum of 6 patients per day will visit the property.

The applicant has advised that it is their intention to work with 1 patient at a time. Outdoor activities would include ball throwing and swimming pool therapy, amongst others.

Given this, noise from the proposed home business is unlikely to be excessive.

- There is space available for up to 3 cars to park on the property, one in an existing garage and 2 beneath an existing carport.

No parking is permitted along the section of Weld Street within close proximity to the subject property, however cars are permitted to park on the verge.

The home business will only be operated by those residing at the property.

Patients will visit the property by prior appointment only

In accordance with the Residential Design Codes 2 on site car parking spaces are required to be provided for those residing at the property. Therefore one space is available on site for those attending an appointment.

Space is also available for one car to park on the adjoining portion of verge, despite an existing street tree, should a patient arrive early for an appointment.

Given this, the home business is unlikely to create car parking difficulties.

Considering the above, the operation of the home business is unlikely to have a significant adverse impact on the local amenity.

7.0 Other Matters of Concern

During the advertising period concerns were also received with regard to the use being inappropriate within a residential area.

In response it is advised that in accordance with Table I (Use Class Table) of TPS 2 the use 'Home Business' can be considered on a Residential zoned property subject to development approval being obtained.

8.0 Budget / Financial Implications

N/A

9.0 Risk Management

N/A

10.0 Conclusion

Considering the nature and the scale of the proposed home business is it unlikely to have an adverse impact on the local amenity.

The proposal complies with the home business requirements stipulated under TPS 2.

Accordingly it is recommended that the application be approved by Council.



PD10.18	(Lot 101) No. 8 Bishop Road, Dalkeith – Two Storey Single House
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Committee	13 March 2018
Council	27 March 2018
Applicant	Boughton Architecture
Landowner	J L Jones
Director	Peter Mickleson – Director Planning & Development
Reference	DA17/298
Previous Item	PD03.18 – February 2018
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Site Photographs 2. Applicant's response to submissions

1.0 Executive Summary

Development approval is being sought to demolish the existing single house and construct a new two storey single house at the subject property.

At the February Council meeting, Council deferred the item to the March Committee and Council Meetings for determination.

The application proposes two lot boundary setback variations and a fill and retaining variation to the deemed-to-comply provisions of the Residential Design Codes (R-Codes), as well as over-height fencing and the dwelling being constructed of material other than brick, stone or concrete for more than 25% of the facade.

Two objections were received during the advertising period regarding the R-Code variations and over-height dividing fencing. No submissions were received regarding the material of construction. Concerns were also received regarding the front setback of the development.

With regard to the variations and the front setback concerns it is considered:

1. The proposed boundary wall to the eastern side lot boundary is of similar height to the existing dividing fence.
2. The proposed building is setback further from the northern lot boundary as the wall increases in height with the wall length shortened accordingly for this higher section of wall, ensuring compliance with the general design principle to have buildings setback further as the building height increases.
3. The fill and retaining proposed in the north-eastern corner of the property seeks only to fill back up to the level preceding the previous excavation ensuring no additional impact.
4. The proposed increase to the dividing fencing of up to 1m above the existing fence height is considered to be excessive and therefore recommended to be decreased to comply with the City's Fill and Fencing Policy requirement of 1.8m above approved levels.
5. The front setback is considered to comply with the City's Town Planning Scheme No.2.

As such the development is considered to comply with the City's TPS2 and the Design Principles of the R-Codes, with the exception of the over-height fence, and therefore it is recommended that the application be approved by Council subject to a condition to reduce the height of the proposed dividing fencing.

2.0 Recommendation to Committee

Council approves the development application received on 19 October 2017 and amended plans received 20 November 2017, for a Two Storey Single House at (Lot 101) No. 8 Bishop Road, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. This development approval only pertains to the two-storey single house, associated dividing fencing and site works.**
- 3. Amended plans shall be submitted with the building permit showing the proposed dividing fencing to the northern and eastern side lot boundaries being a maximum of 1.8m above the higher of the ground levels at the lot boundary.**
- 4. The parapet wall being finished to a professional standard within 14 days of the proposed development's practicable completion and be maintained thereafter by the landowner to the City's satisfaction.**
- 5. All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property's Certificate of Title.**
- 6. All visual privacy screens and obscure glass panels to Major Openings and Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2015*. The visual privacy screens and obscure glass panels shall be installed prior to the development's practicable completion and remain in place permanently, unless otherwise approved by the City.**
- 7. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
- 8. No soil, building materials, rubbish or any other deleterious matter shall be placed on the Parks and Recreation Reserve or be allowed to enter the river as a result of the demolition and construction works.**
- 9. There shall be no access to the site via the Parks and Recreation reserve unless authorised by the City of Nedlands to do so.**
- 10. No wastewater or backwash from the swimming pools are to be discharged onto the land, into the river or into the local government drainage system.**

11. Stormwater drainage shall be contained on site, or connected to the local government stormwater drainage system, to the satisfaction of the City of Nedlands.

Advice Notes specific to this proposal:

1. In relation to Department of Biodiversity, Conservation and Attractions, conditions, the following advice notes are applicable:
 - a) In regard to condition 11, stormwater runoff from constructed impervious surfaces generated by 1 year, 1 hour average occurrence interval (ARI) events (approximately a 15mm rainfall depth) should be retained and/or detained on the lot.
 - b) The applicant is advised that it is an offence under the *Swan and Canning Rivers Management Regulations 2007* to destroy, pull up, cut back or injure any tree, shrub or perennial plant that is on land within the Swan Canning Development Control Area, except with the approval of the Department of Biodiversity Conservation and Attractions or unless otherwise exempt by the Regulations.
2. A separate development application is required to be submitted to and approved by the City prior to erecting any fencing within the street setback area which is not compliant with the deemed-to-comply provisions of the Residential Design Codes.
3. The crossovers to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for the crossover from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
4. Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.
5. All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Development approval.
6. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
7. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.

8. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
9. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
10. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

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

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

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

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

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

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

3.0 Site Details

Lot area	1051m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	Yes
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The subject property contains a single dwelling which is proposed to be removed. The subject property has previously been levelled with excavation to the east and retaining to the west – the levels of the property are not proposed to be significantly altered as part of this application. Around the property, the topography of the land slopes down from the east to west towards the river. Adjoining the total length of the property's eastern boundary is a landscaped access leg (not constructed or used for vehicle access) of between 4m and 5m in width. The property fronts onto an unconstructed portion of road reserve.

An aerial image showing the location of the property follows.



4.0 Background

The landowner has previously obtained development approval from the City under delegated authority in 2015 for a two-storey single dwelling with a different design. The approved design included a boundary wall of 14.6m length and approximately 3.2m height (as measured above the subject property level – approximately 1.9m above the eastern neighbour's level).

The landowner has elected not to proceed with this design and the development approval has since expired.

The City's current Town Planning Scheme No. 2 (TPS2) has Controlled Development Area (CDA) provisions which the proposed design complies with.

5.0 Specific Application Details

The application seeks approval to construct a two-storey single house, swimming pools, dividing fencing and associated site works. The development proposes the following variations to the City's TPS2, deemed-to-comply provisions of the R-Codes and Fill and Fencing Local Planning Policy:

- Lot boundary setbacks:
 - The garage is proposed to be built up to the eastern side lot boundary in lieu of being setback 0.61m; and
 - The bulk of ground floor setback 3.8m in lieu of 4.4m to the northern side lot boundary;
- Site works and Setback of retaining walls – Up to 1m of fill and retaining is proposed to the northern and eastern side lot boundaries;
- Materials of construction – More than 25% of the ground floor is constructed of material other than stone, concrete or brick with the building compromising of a large amount of glazing and alternative materials such as aluminium composite panelling and split faced basalt; and
- Over-height Dividing Fencing – The dividing fencing is proposed to be 3.45m to the eastern side lot boundary and 2.95m to the northern side lot boundary as measured from the subject property's ground level (natural) in lieu of 1.8m above natural ground level.

By way of justification in support of the development application the applicant has advised the following:

- *“Front setback – Bishop Road is not a constructed carriage way for the full extent of the front boundary with access to the site is via a single lane drive built within the road reserve. We propose to provide a compliant 9.0m front setback to the garage and entrance porch and beyond this point, the building has been setback in accordance with the required side lot boundary setbacks required as per the R-Codes.*
- *Boundary wall to eastern side lot boundary – the 7.5m Controlled Development Area (CDA) setback to the western side boundary limits the building width. It is proposed to construct the garage and utility room as a wall on the boundary for a 15m length. As the proposed floor level of the new home is lower than the adjoining site, this wall is proposed to be constructed at a height no greater than the highest portion of the existing fence. The construction of the wall on the boundary will not adversely affect the amenity of the adjoining owner as:*
 - The land immediately adjacent to the wall is a landscaped unused drive access;
 - The visual impact of the wall is no greater than the existing dividing fence;
 - Overshadowing is not impacted as the wall faces east; and
 - The proposed wall will not affect access to views from neighbouring properties.
- *Building Materials – The dwelling is intended to fit discretely into the existing residential fabric. The building's low profile and use of dark non-reflective materials and colours fit the natural colour and form of the escarpment creating a low-impact home on the bank of the swan river.”*

6.0 Consultation

The development application was advertised to affected landowners for comment as the property is within the controlled development area and there are variations proposed to the deemed-to-comply provisions of the R-Codes and TPS2. Two objections were received during the consultation with the following summarising the concerns raised:

Objection to the front boundary setback:

- *“The entirety of the southern boundary of Lot 101 (No. 8) abuts the road reserve of Bishop Rd. The full extent of this boundary is therefore the primary street boundary for the purposes of the R-Codes. As the primary street boundary, the proposed setbacks of 3m to 4m, are non-compliant with the 7.5m setback requirement of the R-Codes.*
- *The 3m and 4m setbacks proposed for the development are inconsistent with the setbacks of the adjacent residences and therefore it does not comply with the deemed-to-comply requirements of the R-Codes which are generally a minimum of 7.5m, or the design principles – given the proposed does not positively contribute to the prevailing development context and streetscape under design principle 2.2.*
- *The setbacks proposed for this development do not maintain the amenity, streetscape and views of the adjacent residences and therefore does not comply with the objectives of the R-Codes.”*

Objection to the nil setback to the eastern side lot boundary:

- *“Required access to the neighbouring landowners’ property to facilitate this boundary wall with damage likely to their landscaping and path on the neighbouring property;*
- *Further information required as to how the works will be carried out to avoid damage to landscaping the and path in the future;*
- *Potential stormwater run-off from the pitched roof of the garage which will cause damage to the landscaping – especially due to leaf litter preventing collection and storing of stormwater wholly within the subject property; and*
- *Further information required as to how stormwater will be contained on site to avoid stormwater overflow onto neighbouring property.”*

Objection to the reduced rear setback:

- *“The north and eastern walls of the ‘spa’ building will be setback only 1.5m from the northern lot boundary and 1.2m from the eastern lot boundary along with 1m of fill and retaining in this location. The combination of these factors will result in significant loss of amenity as the ‘spa’ will be visually intrusive as viewed from the neighbouring property in terms of appearance at the proposed height.*
- *The removal of the establish palm trees along the northern boundary will exacerbate the excessive height and unacceptable setbacks because there will be insufficient screening to soften the impact of the ‘spa’ building.*
- *The north-eastern part of the proposed will be located directly below the neighbouring landowners’ balcony and family/games room and hence will suffer from a loss of privacy as a result of the reduced setback.”*

Objection to the additional dividing fence height proposed to the northern rear and eastern side lot boundaries

- *“The height of the proposed dividing fencing along the eastern and northern boundaries of the property is significantly higher than the existing boundary fencing, when viewed from the impacted neighbouring property, adversely impacting the amenity of the neighbouring property.”*

The applicant has addressed the above submissions in Attachment 2 of this report.

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

7.0 Assessment of Statutory Provisions

7.1 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.

7.2 Town Planning Scheme No. 2

7.2.1 Amenity

Under clause 5.5.1 Council may refuse to approve any development if:

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

One of the submissions raised concerns in relation to the front setback provided being less than that required within the R-Codes for the R12.5 zone. In this case, the front setback under the R-Codes do not apply as the City's TPS2 Clause 5.3.3 stipulates the required front setback, which is 9m from a street alignment. The concern however, more specifically relates to the front setback not being provided where it adjoins an unconstructed portion of the road reserve.

The City's TPS2 does not define the term 'street alignment'. However, the planning purpose served by setbacks from the street principally deals with visual amenity of the streetscape. The significance of issues of visual amenity of the streetscape are greatly reduced where it is a practical certainty that there will never be a street constructed adjacent to a lot.

The balance of the unconstructed road reserve contains a mature tree, stormwater drainage infrastructure and a significant slope down to the river foreshore. The slope is such, that the road reserve effectively disappears from line of sight at the end of the formed portion of road (refer Attachment 1 – site photographs). As a result, the road reserve functions essentially as a foreshore reserve.

It is therefore considered the application of the 9m setback for the area of unconstructed road reserve frontage would be unreasonable given that the road is very unlikely to be built further towards the river. Further to this, the slope of the land will ensure that the streetscape amenity will not be negatively impacted as a result of the setback being reduced.

The methodology of applying the required 9m front setback only to the portions of constructed road adjacent to the subject property has been applied previously (in 2003 & 2005) to development applications for a single dwelling at No. 3 Adelma Place, Dalkeith. This property also has river frontage and a road which terminates prior the end of the road reservation. The City obtained legal advice regarding the reduced setback to the portion of land adjacent to unconstructed road reservation which advised that the City could consider the reduced setback based on the reasoning outlined in the above discussion. The development application was approved by the Western Australian Planning Commission in accordance with advice from the City in March 2006.

7.2.2 Materials of construction

TPS2 Requirement	Proposed	Complies?
<p>Clause 5.5.2 states:</p> <p>“Unless otherwise approved by the Council, no person shall erect or add to any building unless the external walls are constructed of brick, stone or concrete except that up to 25% of the external elevation of any wall of a building in any residential zone may be of materials other than brick, stone or concrete.</p>	<p>The dwelling is proposed to be constructed of more than 25% alternative materials such as full height glazing, aluminium composite panelling and split faced basalt.</p>	No
<p>Administration Comments</p> <p>This provisions under the City’s TPS2 is not mandatory with the Council having discretion to approve alternate materials subject to application being made to Council. It is considered that the use of the alternate materials (glazing, aluminium composite panelling and split faced basalt) is not proposed to negatively impact the amenity of the locality with the darker colour palate being more sympathetic to the river landscape. No objections were received from neighbouring landowners in relation to the materials of construction.</p>		

7.3 Residential Design Codes (State Planning Policy 3.1)

7.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings setback in accordance with Table 2A and 2B of the R-Codes.	The garage and utility room wall is proposed to have a nil setback to the eastern side lot boundary in lieu of 0.61m (reduction permitted as adjacent to battle-axe leg)	No
	The bulk of ground floor is proposed to be setback 3.8m in lieu of 4.4m to the northern side lot boundary.	No

Design Principles

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P3.1 – Buildings set back from lot boundaries so as to:

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

P3.2 – Buildings built up to boundaries (other than the street boundary) where this:

- makes more effective use of space for enhanced privacy for the occupants or outdoor living areas;*
- does not have an adverse impact on the adjoining property;*
- ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- positively contributes to prevailing development context and streetscape.”*

Administration Comments

Boundary wall to eastern side lot boundary

Boundary walls are permitted under the deemed-to-comply provisions within the R12.5 zone when the boundary wall is proposed to be adjacent to existing or simultaneously proposed boundary wall of similar or greater height and length. Although the boundary wall is not adjacent to another boundary wall – it is adjacent to a dividing fence of similar height and greater length – essentially facilitating the same outcome.

The boundary wall will not have an adverse impact on the amenity of the adjoining property being adjacent to a battle-axe drive-way leg (currently landscaped and used for pedestrian access only) and the lot orientation ensuring no overshadowing of active habitable space. Concerns received during neighbour consultation regarding stormwater overflow into the eastern neighbouring property can be addressed with condition requiring stormwater being contained on site. Stormwater being contained on site is usually achieved through guttering systems and the building design. Further to this, concerns raised during the consultation period in relation to the construction of the wall impacting upon the neighbouring property is covered in the building permit process and the construction methods used to underpin the neighbour's levels.

Ground floor setback to northern lot boundary

As the subject property has the CDA setback applied to the western side lot boundary, the northern lot boundary functions as a side setback and the western side lot boundary functions as the rear lot boundary. For this reason, the lot boundary setback requirements applied are as per Table 2A and 2B of the R-Codes to the northern lot boundary.

The R-Codes requires the use of figure series 4c of the R-Codes for measuring the bulk of a wall length between two closer sections of wall with no major openings. Setbacks are required to be measured per a building level with the use of the total wall length and maximum wall height for the bulk of the wall setback calculation.

The section of wall with the 3.8m setback is a separate wall to the rest of the ground floor which is 3.5m in height and setback 1.5m. This portion of wall is also shorter than the entire wall length of the ground floor. If these walls were permitted to be assessed separately rather than per floor level, the lot boundary setback to the northern side lot boundary would be compliant with the deemed-to-comply provisions of the R-Codes.

The design breaks up building bulk and complies with the general principle that the longer and higher the wall, the further it should be setback with the design having the higher sections of wall shorter in length and setback further from the northern lot boundary. Directly adjacent to the subject property on the northern neighbouring property are landscaped gardens, ensuring that active habitable spaces such as outdoor living areas and habitable rooms of the dwelling will not be impacted by the reduced setback. Further to this, the height of dwelling in this location is single storey and lower than the northern neighbour's dwelling.

During the consultation period, concerns were raised in relation to the spa setback to the northern and eastern lot boundaries. This portion of the dwelling is compliant with the lot boundary setbacks of the R-Codes to the northern and eastern side lot boundaries inclusive of the proposed fill in this location.

7.3.2 Site works and Retaining walls

Deemed-to-Comply Requirement	Proposed	Complies?
Up to 0.5m of fill and retaining is permitted within 1m of lot boundaries.	Up to 1m of fill and retaining is proposed to the northern and eastern side lot boundaries	No
Retaining over 0.5m in height setback from the side and rear lot boundaries in accordance with Table 2A and 2B of the R-Codes.		
Design Principles		
Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:		
<i>“P7.1 – Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i>		
<i>P7.2 – Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.”</i>		
<i>“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.”</i>		
Administration Comments		
The fill and retaining is proposed to increase the ground level up to the level prior to excavation and therefore the proposed finished level will be level with the natural ground level at the adjoining property. This fill will therefore not have any impact on the neighbouring property and would not be considered a variation if the contour mapping was done prior to the excavation on the subject property.		

7.4 Local Planning Policy – Fill and Fencing

Policy Requirement	Proposed	Complies?
Fencing over 1.8m in height above fill and retaining of a maximum of 0.5m requires an over-height dividing fence agreement to be completed by all impacted landowners.	The fencing is proposed to be 3.45m to the eastern side lot boundary and 2.95m to the northern side lot boundary as measured from the subject property ground level.	No
Policy Objectives The following objectives are stipulated under the Policy: <i>“To outline the City’s requirements with regard to fill and the minimum standard of fencing to ensure that the amenity of neighbouring properties and the streetscape is maintained.”</i>		
Administration Comments The City advertised the additional dividing fencing height variation and received an objection to the additional height of up to 1m proposed to the eastern and northern side lot boundaries. The heights of the fencing have been measured from the level at the subject property, however as viewed from the neighbouring property to the north and east – the new fencing will be a maximum of 2.25m in height from the eastern elevation and a maximum of 3.8m and minimum of 2m in height from the northern elevation (including existing retaining). The applicant has advised in their submission that the additional height is required, to provide privacy to the ground floor of the proposed dwelling as the finished floor level of the neighbouring dwelling to the north is significantly higher than the proposed dwelling (approximately 3m higher). The existing dividing fencing to the eastern side lot boundary is already over 1.8m in height as measured above the higher side of the lot boundary and the fencing to the northern side of the subject property has been stepped to suit the natural ground level. Whilst the City acknowledges there may be line of sight from the northern neighbour’s dwelling into the proposed dwelling due to the slope of the land, the neighbour’s property has compliant visual privacy setbacks to lot boundaries from major openings of the dwelling and outdoor living areas to the lot boundary. The City believes that it is not an appropriate response to provide over-height fencing of up to 1m above existing fencing to provide privacy from a dwelling built higher on a slope, with fencing to be more appropriately stepped with the natural ground level and other measures such as landscaping or building design to address the natural overlooking in these circumstances. Fencing 1.8m above the higher side of the lot boundary will afford adequate privacy with additional privacy more appropriately obtained through other methods such as landscaping or obscured glazing. Therefore, a condition of planning approval has been recommended to reduce the height of the proposed dividing fencing.		

8.0 Other Issues Raised

The submitters raised concerns in the submissions regarding removal of mature palm trees and modification of levels within the verge.

There are no planning controls around the removal of mature vegetation on the subject property as this does not require planning approval.

Additionally, there are no levels proposed to be modified within the road or verge. The applicant will need to apply for Nature Strip Development Approval from the City prior to commencing any works in the verge.

9.0 Budget / Financial Implications

N/A

10.0 Risk management

N/A

11.0 Conclusion

The dwelling complies with the City's height requirements being less than 8.5m total height and the controlled development area 7.5m western side setback as well as open space requirement for the R12.5 density code. The slope of the land down to the river ensures that the neighbouring properties will still have views to the river and the relatively modest upper floor and mostly west facing major openings to ensure a high level of privacy is maintained between neighbouring properties.

The fill and retaining seeks to fill up to the level preceding the previous excavation ensuring no impact on the neighbouring landowner and the boundary wall is of similar height to the existing dividing fence. The proposed building is setback further from the lot boundary where the wall height is higher, and the section of higher wall is shorter than the rest of the ground floor. Therefore, it is considered that the deemed-to-comply variations comply with the relevant design principles of the R-Codes.

The dividing fencing is considered an excessive response to the north-eastern neighbouring dwelling having a finished floor level higher than the proposed dwelling. The City recommends a condition to reduce the height of the proposed dividing fencing to comply with the City's Fill and Fencing Local Planning Policy with additional privacy able to be obtained through other measures such as landscaping or obscured glazing.

The City considers that the front setback is compliant with the City's TPS2 as the application of the 9m setback for the area of unconstructed road reserve frontage would be unreasonable given that the road is very unlikely to be built further towards the river. Further to this, the slope of the land will ensure that the streetscape amenity will not be negatively impacted as a result of the front setback requirement being reduced.

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

Image 1: End of constructed road within the Bishop Road reservation



Image 2: Stormwater drainage and steep drop down to river front



Image 3: Subject property's road frontage to Bishop Road



Image 4: Landscaped access to neighbouring property at no. 116 Victoria Road



Image 5: Existing dividing fencing along subject property's eastern side lot boundary



Image 6: Neighbouring residence to the east of the subject property



Image 7: Existing front fencing – to be retained



Image 8: view of river from existing entrance



Image 9: Controlled Development Area setback – existing dwelling demolished with new dwelling to be setback 7.5m



Submission 1

No 8 Bishop Rd is located at the end of Bishop Rd and adjoins the Swan River Rd on its long boundary, the Council Applies a 7.5 m setback to the long boundary and as such the capacity to build a home on this lot is considerably impaired by this setback. Although the road reserve abuts our southern boundary it is impractical to construct the road in this location and access to No 8 is via a single lane drive, considered a residents' only drive.

Similar lots exist within the City of Nedlands and the accepted outcome has been:

- Front set Back of 9m only applies for the extent of street access, side boundary setbacks thereafter are employed
- Rear setback is to be swapped with side setback for the extent of the river boundary
- Side setbacks in accordance with the R Codes apply to remaining boundaries

The proposed development has been extensively discussed with Council officers and is consistent with the precedents established for the development of similar lots (ref both lots at the river end of Adelma Place). The streetscape is considered atypical by the Council in the past and a reduced front setback in this location has been deemed to be permitted variation to the front setback and streetscape. As such the proposal presented to the council is consistent with the Councils established development parameters.

Submission 1 refers to loss of amenity (views). Any impact this proposal has on views to the eastern neighbour would be from major openings to windows and balconies that overlook the side boundary and as such are non-compliant with the Deemed-to-comply provisions of the R-Codes. The proposed building is located at least 14m away from the our neighbour's front balcony and is located between significant existing trees (these trees are to be retained). The existing trees limit views with the proposed building located within the cone of restricted vision as determined by the existing trees and as such has no significant impact on views.

Submission 2

Due to the limitations of the lot we seek Councils permission to Construct the Garage wall with a nil setback. Due to the significant level difference between the two lots the height of the boundary wall shall not exceed the maximum height of the existing fence and as such has no significant impact on the existing amenity of our neighbour. A previous application for this lot had a similar boundary wall approved by Council.

Setbacks and overlooking requirements to the gym and spa are complaint with the R Codes. Views the neighbour has enjoyed by overlooking the existing pool and back garden of the existing home will no longer be available. It should be noted that the neighbour has spectacular river views from the majority of the home as it too has a significant uninterrupted river frontage.

We have proposed over-height fencing to portions of the East and North Boundary. The floor level of the neighbouring home is higher than existing ground level and significantly higher than our proposed floor level. A 1.8m high fence will not prevent neighbours from looking into each other's homes from their respective ground floor levels. In the interest of protecting mutual privacy between neighbours we propose higher fences be constructed.

Submission 2 refers to a number of building and other matters, these are not specific Planning issues however we comment as follows:

- All stormwater as required by Building regulations will be contained on site
- Building of the Boundary wall could be undertaken with minimal interruption of the existing wall, landscaping and path. Construction process will be confirmed prior to commencement of Building
- Existing Palm trees are to be removed as they are located within the near vicinity of the public sewer. The proposed house is to be built over the top of the sewer and as such extensive works are required to build a tunnel over the sewer. This work precludes the retention of any of the existing landscaping in the existing pool area.

PD11.18	(Lot 46) No. 154 Adelma Road, Dalkeith – Two Storey Single House with Under-croft
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Committee	13 March 2018
Council	27 March 2018
Applicant	Seacrest Homes
Landowner	58 Ocean Drive Pty Ltd T/A Seacrest Homes
Director	Peter Mickleson – Director Planning & Development
Reference	DA17/127
Previous Item	PD53.17 (withdrawn)
Delegation	In accordance with Clause 6.7.1a) and d) of the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
Attachments	1. Site Photographs 2. Applicant Justification

1.0 Executive Summary

Development approval is being sought to construct a two-storey single house with an under-croft at the subject property.

The development proposes variations to the deemed-to-comply provisions of the Residential Design Codes (R-Codes) relating to lot boundary setbacks, open space and site works. The application was advertised for a period of 14 days inviting neighbouring landowners to comment on the variations. Four (4) objections were received.

The applicant has amended the plans to address the objections and remove or reduce the variations. As a result, the development is considered to comply with the relevant design principles.

The additional site cover can be attributed to additional covered unenclosed area (i.e. patios, porches and verandahs), and the lot boundary setbacks reduce the impact of building bulk through articulations in the ground and upper floors. It is therefore recommended that Council approves the application.

2.0 Recommendation to Committee

Council approves the development application dated 01 June 2017 with amended plans dated 31 January 2018 to construct a two-storey single house with an under-croft at (Lot 46) No. 154 Adelma Road, Dalkeith, subject to the following conditions and advice:

- 1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. This development approval only pertains to the two-storey single house with an undercroft, associated landscaping, fill & retaining and fencing.**
- 3. The dwelling shall not be used as a display home without further planning approval from the City being obtained.**

4. The upper floor of the dwelling shall not be used for short-term accommodation or ancillary accommodation without further planning approval from the City being obtained.
5. The use of the basement level shall be restricted to the uses of plant and equipment, storage, toilets and/or the parking of wheeled vehicles. Prior to occupation of the dwelling, the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the basement level is subject to the restriction set-out above.
6. The north and south facing obscured windows to habitable rooms are fixed obscured up to 1.6m above the finished floor level.
7. The front fencing in-fill panels shall be visually permeable in accordance with the Residential Design Codes.
8. All footings and structures to retaining walls and fences, shall be constructed wholly inside the site boundaries of the property's Certificate of Title.
9. All dividing fencing, visual privacy screens and obscure glass panels to Major Openings and Unenclosed Active Habitable Spaces as shown on the approved plans, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2015*. The dividing fencing, visual privacy screens and obscure glass panels shall be installed prior to the development's practicable completion and remain in place permanently, unless otherwise approved by the City.
10. The pool pump area shall not have water permeable roofing without obtaining further planning approval.
11. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.

Advice Notes:

1. Should the cost of development exceed the amount stated in the development application, the development application fee required to be paid will increase. This remainder of the required development application fee shall be paid prior to the processing of the building permit.
2. All crossovers to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
3. The redundant crossover shall be removed and the nature-strip (verge) reinstated to the City's satisfaction.

4. Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.
5. All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Development approval.
6. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
7. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
8. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
9. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
10. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

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

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

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

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

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

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

3.0 Site Details

Lot area	1011.7m ²
Metropolitan Region Scheme Zoning	Urban
Town Planning Scheme No. 2 Zoning	Residential – R10
Detailed Area Plan/Outline Development Plan	No
Controlled Development Area	No
State Heritage Listed	No
Listed in Municipal Heritage Inventory	No

The existing single storey house has been demolished and the site cleared of all vegetation to facilitate the proposed development. The subject property's topography slopes down 2.5m from the street to the north-eastern rear corner of the lot.

An aerial image showing the location of the property follows.



4.0 Specific Application Details

The applicant seeks approval to construct a two-storey single house with an under-croft inclusive of primary street fencing, fill and fencing, decking, a below ground swimming pool, garden beds and landscaping.

The development proposes variations to the City's Town Planning Scheme No. 2, Fill and Fencing Local Planning Policy and the deemed-to-comply provisions of the R-Codes as listed below:

- Lot boundary setbacks:
 - The upper floor wall length from the retreat to lift is setback 1.53m in lieu of 1.9m to the southern side lot boundary;
 - The upper floor wall length from the ensuite 2 to balcony screen is setback 1.5m in lieu of 2.4m to the northern side lot boundary; and
 - The bulk of the upper floor is setback 3.39m in lieu of 3.8m to the northern side lot boundary.
- Open space – 58.5% open space is proposed in lieu of 60%.
- Fill and retaining – up to 0.7m of fill and retaining is proposed to the northern side lot boundary in lieu of the fill being a maximum of 0.5m in height or the retaining wall being setback 1m.

By way of justification in support of the development application the applicant has provided a design principle justification which is provided at attachment 2 to this report.

5.0 Consultation

The application was initially advertised by the City in late 2017. During this consultation period, four (4) objections were received. As a result, the applicants elected to amend the plans to address the submissions received and remove or reduce the proposed variations. The amended plans were subsequently re-advertised by the City in February 2018 with three (3) revised objections received. The relevant comments are as follows:

- *"The variation to the open space will result in a development which:

 - Is not appropriately scale and sympathetic to the streetscape and surrounding buildings;
 - will not provide a balanced setting and relationship to the proposed building given its height and bulk;
 - will not enable adequate recreational opportunities on site; and
 - will not allow for sufficient greenery to off-set the scale of the building to make it sympathetic to the neighbourhood."*
- *"The variations to lot boundary setbacks and open space have the potential to result in considerable building bulk on the southern elevation of the proposed dwelling which is positioned directly adjacent to the indoor and outdoor habitable spaces of the neighbouring dwelling."*
- *The reduced setback along the southern boundary of the subject site will also result in the considerable loss of direct sun to those adjacent spaces of the southern neighbouring property which contain the dwelling's primary living areas.*

- *Should the Applicant be willing to amend the plans, the following is requested to address the cumulative impacts of these features which currently detract from the existing residential amenity and character and to improve the amenity outcomes for neighbouring landowners:*
 - *Increase the setback of the southern elevation at the upper floor level to reduce the overall impact on direct sun to habitable areas of the southern neighbouring property;*
 - *Modification of the southern facade adjacent to the courtyard the southern neighbouring property to prevent the loss of direct sun into this space; and*
 - *Increase the open space to 60% of the site area to reduce the building bulk on the site.”*
- *“The reduced setbacks and site works will significantly impact on our backyard privacy, noise levels and visual aesthetic. The reduced setbacks are adjacent to bedrooms, entertaining areas and outdoor areas of the property.*
- *The open space variation will result in a much larger house with reduced greenery compared to surrounding house. This will have a negative impact on the streetscape and act as a heatsink.”*

The other objection received in late 2017 in relation to the previous plans were not revised by the submitters. The comments are as follows:

- *“The proposal is for significantly more bulk than any other house in the street.*
- *A tree which shades 30-40% of the block has been removed during the demolition of the existing dwelling with the ability to provide replacement vegetation being restricted to planter boxes. The provision of additional open space enables more greenery to soften the built form as viewed from neighbouring properties and the street.”*

In response to one of the submitter's requests to further amend the plans, the City conveyed this request to the applicants who advised that they had already made amendments to the plans to address submitters concerns and do not wish to make further amendments. Further to this, the applicant advised that the overshadowing is compliant to the southern neighbouring property and that the design modifications requested could not be accommodated without substantial alteration to the design of the dwelling.

As a result of the modifications to the plans, the concerns received in regard to variations which have subsequently been removed (front fencing, over-height dividing fencing and visual privacy) have not been included in the summary above as these aspects of the design now comply with the deemed-to-comply provisions of the R-Codes and the Council's Fill and Fencing Policy.

All the above comments are addressed in the discussion sections later in this report.

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.

6.2 Town Planning Scheme No. 2

6.2.1 Amenity

Under clause 5.5.1 Council may refuse to approve any development if:

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

In accordance with provisions (n) of the Planning and Development (Local Planning Schemes) Regulations 2015 clause 67, due regard is to be given to the likely effect of the proposal on the local amenity.

The amended plans have removed and reduced a number of the variations advertised to neighbouring landowners to address concerns received during consultation. The amount of open space has been increased, a number of lot boundary setback variations removed or reduced, and the dividing fencing and visual privacy made compliant. The building height, overshadowing and visual privacy are all compliant with the TPS2 and deemed-to-comply provisions of the R-Codes.

Although the proposed dwelling is relatively large, it is not out of context in the locality with other new builds being of comparable size and bulk. Therefore, it is considered that the proposed dwelling will be in keeping with the expected development context of the locality with space around the dwelling still available for outdoor active pursuits and the height and bulk of the dwelling being consistent with other new dwellings within the locality.

6.3 Residential Design Codes (State Planning Policy 3.1)

6.3.1 Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings are setback in accordance with Table 2A and 2B of the R-Codes.	North – The upper floor wall length from the ensuite 2 to balcony screen is setback 1.5m in lieu of 2.4m to the northern side lot boundary.	No
	North – The bulk of the upper floor is setback 3.39m in lieu of 3.8m to the northern side lot boundary.	
	South – The upper floor wall length from the retreat to lift is setback 1.53m in lieu of 1.9m to the southern side lot boundary	
Design Principles		
Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:		
<i>“P3.1 – Buildings set back from lot boundaries so as to:</i>		
<ul style="list-style-type: none"><i>• reduce impacts of building bulk on adjoining properties;</i><i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i><i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.”</i>		
Administration Comments – Northern side Lot boundary setbacks		
The upper floor is located closer to the northern side of the lot to reduce the amount of overshadowing to the southern neighbouring lot, resulting in setback variations to the northern side lot boundary.		
One of the variations relates to a portion of wall which includes a balcony screen provided for visual privacy purposes. The balcony screen is cantilevered from the upper floor with no wall underneath or roof above and has a semi-permeable design (25% or less open to comply with visual privacy requirements). The additional length of wall can be attributed to the screen which increases the variation, even though the screen does not significantly contribute to building bulk as viewed from the neighbour’s dwelling.		
The bulk of the wall has been setback 3.4m in lieu of 3.8m. The indentation has been increased from the previous plans, substantially reducing the size of the upper floor bedrooms, to reduce the impact of building bulk on the northern neighbouring landowner.		
The northern upper floor does not contain many major openings ensuring privacy is maintained between the subject property and northern neighbouring property. The neighbouring residence to the north is single storey and will still have access to northern sunlight into the main outdoor living areas and habitable areas of the dwelling (which are located away from the subject property on the northern side of the property). The impact of building bulk from the proposed dwelling will not be visible from the main outdoor living areas or the majority of the major openings of the northern neighbour’s property and dwelling.		

Administration Comments – Southern side Lot boundary setback

The variation to the southern neighbouring property is 0.37m with the majority of the wall length setback 1.6m, with only a small protrusion from the lift reducing the provided setback down to a minimum of 1.53m. This effective variation of 0.3m will not be largely visible in relation to a compliant setback of 1.9m. The amount of overshadowing is compliant at 20.3% of the southern neighbour's property, with the outdoor living area and upper floor of the dwelling free from overshadowing and the lightwell in the middle of the dwelling able to receive at least 3 hours of winter sun between 10am and 3pm.

The majority of the dwelling is setback further from the southern lot boundary to reduce the impact of building bulk and overshadowing – ensuring the amenity of the neighbouring dwelling and property is maintained.

6.3.2 Open space

Deemed-to-Comply Requirement	Proposed	Complies?
40% site cover and 60% open space	41.5% site cover and 58.5% open space.	No
<p>Design Principles</p> <p>Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:</p> <p><i>“P4 Development incorporates suitable open space for its context to:</i></p> <ul style="list-style-type: none"> <i>• reflect the existing and/or desired streetscape character or as outlined under the local planning framework;</i> <i>• provide access to natural sunlight for the dwelling;</i> <i>• reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;</i> <i>• provide an attractive setting for the buildings, landscape, vegetation and streetscape;</i> <i>• provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and</i> <i>• provide space for external fixtures and essential facilities.”</i> 		
<p>Administration Comments</p> <p>The additional site cover has been substantially reduced from the proposal which was advertised to neighbouring landowners. The additional site cover now equates to approximately 15.18m² additional site cover, which can be accounted for in additional covered areas (patios, verandahs and porches) which do not contribute to building bulk due to their open nature.</p> <p>The open space on the property provides for a number of areas for outdoor active pursuits with a combination of planters, decking, hardscaping and swimming pool whilst also allowing space around and within the dwelling for essential services. The dwelling has a compliant rear setback and landscaped front yard which is consistent with the open space provided for other dwellings within the locality, ensuring that the development is consistent with the desired streetscape character and building bulk expected for the locality. The additional site cover will not be evident from neighbouring properties in comparison to the site cover of a compliant dwelling due to the open nature of the additional site cover proposed and compliant ground floor setbacks proposed.</p>		

6.3.3 Site works and Setback of Retaining Walls

Deemed-to-Comply Requirement	Proposed	Complies?
Fill and retaining is no more than 0.5m within 1m of the lot boundary or setback in accordance with Table 2A and 2B of the R-Codes.	Fill and retaining up to 0.7m is proposed to be located up to the northern side lot boundary in lieu of 0.5m.	No
Design Principles Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions: <i>“P7.1 – Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i> <i>P7.2 – Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.</i> <i>P8 – Retaining walls that results 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 for clause 5.3.7 (site works) and 5.4.1 (visual privacy).”</i>		
Administration Comments The additional fill and retaining is limited to towards the rear of the dwelling and is only adjacent to the northern side lot boundary at essentially the lowest part of the lot. The finished floor level of the dwelling is lower than the level at the front lot boundary and relative to the mid-point of the lot ensuring that the development maintains the appearance of natural ground level from the street and minimises the impact of modifications to the natural ground level on the neighbouring properties. The dividing fencing is proposed to be 1.8m in height above natural ground level at the lot boundary and therefore the appearance of the additional fill will be concealed by the fence. The area facilitated by the additional fill and retaining is a small uncovered decking area which is likely to be used infrequently as it is away from the main outdoor living area of the dwelling.		

7.0 Budget / Financial Implications

N/A

8.0 Risk Management

N/A

9.0 Conclusion

The proposal is largely consistent with the surrounding dwellings in terms of bulk and scale. Further to this, the development maintains a balance of cut and fill across the site and additional site cover proposed being minimal and in the form of additional open-sided covered area, ensuring that the development will not adversely affect the amenity of the surrounding residents nor the streetscape amenity. Accordingly, it is recommended that the application be approved by Council.





In light of the changes made from the initial design and the design that was advertised to neighbouring landowners, it is contended that the overall impact of the development and the extent of variations to the 'deemed to comply requirements' have been reduced and therefore reducing any impact on the adjoining properties. Notwithstanding this, the application does seek the City's consideration under the 'design principles criteria' of the R-Codes for some design elements.

In determining the suitability of the proposed open space variation in the context of the relevant 'design principles criteria' contained at Element 5.1.4 of the R-Codes, the following justifications are provided for the City's consideration:

- The proposed variation to the open space requirements for the new dwelling (i.e. 1.5% or 15.18m²) is considered minor and will not have a detrimental impact on the local streetscape or any adjoining properties in terms of its bulk and scale.
- The proposed dwelling has been designed to effectively use all space for the benefit of the future occupants of the dwelling.
- The proposed outdoor living area provided for the new dwelling is sufficient in area and is accessed by the internal living area (i.e. living room). Furthermore, the outdoor living area has been located to capture the winter sun (i.e. orientated north and is sufficient for the needs of its future occupants).
- The proposed new dwelling on the subject property meets the 'deemed to comply requirements' for Solar access for adjoining sites of the R-Codes and will not detrimentally impact access to light and ventilation for the existing dwellings on any adjoining properties.
- The proposed variation to the open space requirements for the new dwelling will not have a detrimental impact on the local streetscape or any adjoining properties in terms of its bulk and scale as the dwelling is consistent in terms of bulk and scale with other similar residential developments approved by the City in the immediate locality.
- The open space provided for the new dwelling is considered functional, adaptable and will provide an attractive outdoor living area for its future occupants.
- The subject property is located approximately 270m from David Cruikshank Reserve (public open space), which is capable of supplementing the day-to-day recreational needs of the future occupants of the proposed new dwelling.
- Abutting the subject property is a substantial verge area with a width of approximately 6.5 metres along the land's Adelma Road frontage. It is significant to note that the verge area contributes a further 130m² of open space to the proposed dwelling.
- The front setback and verge area for the new dwelling will be adequately landscaped to ensure that it continue to make a positive contribution to the local streetscape.

In determining the suitability of the abovementioned variations in the context of the relevant 'design principles criteria' contained in Element 5.3.7 of the R-Codes, the following justifications are provided for the City's consideration:

- The proposed variation to the permitted retaining wall/fill heights of a maximum 200mm additional retaining wall height is considered minor and will not have an adverse impact on the adjoining properties in terms of bulk and scale.
- The subject property is characterised by a 2.5 metre fall from its front boundary (i.e. Adelma Road frontage) to the rear of the property. Given this variation in the natural ground level down the entire site, the proposed new dwelling has been designed to fall from Adelma Road with the retaining wall along the northern boundary sloping down the site to minimize the extent of fill and retaining along the property boundaries.
- That portion of the new retaining wall and fill to be built up to the northern side boundary in excess of 500mm below NGL is unlikely to have any detrimental impacts on the local streetscape in terms of their design, bulk and scale and are consistent with retaining walls associated with other similar residential developments approved by the City in the immediate locality.
- A solid dividing fence 1.8m in height will be constructed in front of the new retaining wall along the side boundaries to screen the retaining wall from the neighbour's property.
- The location of the retaining wall and fill for the new dwelling assists with providing an effective use of all available space and the creation of adequate internal and external living areas.
- That portion of the new dwelling proposing retaining wall and fill to be built up to the northern side boundary abuts the side setback and extensive rear yard area of the existing single detached dwelling on adjoining the northern neighbouring property, which comprises of an outbuilding and vegetation along the common boundary. As such, it is contended that the proposed retaining/fill to be built up to the northern side boundary will not have a detrimental impact on any outdoor living areas or any major openings to habitable rooms for the existing dwelling on adjoining northern property.

Having regard for the above it is contended that the open space and site works provided for the proposed new dwelling satisfies the 'design principles criteria' of the R-Codes and may therefore be approved by the City.