



City of Nedlands


Planning and Development Reports

Committee Consideration – 13 May 2014
Council Resolution – 27 May 2014

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PD14.14	No. 48 (Lot 365) Weld Street Nedlands – Retrospective Outbuilding, Patio & Front Fence
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Committee	13 May 2014
Council	27 May 2014
Applicant/Landowner	Rohan O'Neill
Officer	Elle O'Connor – Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	M14/2795

1.0 Executive Summary

It was recently brought to the City's attention that retrospective works had commenced at No.48 Weld Street Nedlands. As a result of this, the owner submitted a retrospective planning application for an outbuilding, rear patio and a front fence in February 2014.

An objection has been received regarding amenity, overshadowing and overlooking from the retrospective outbuilding and patio.

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

The development satisfies all relevant deemed-to-comply requirements and design principles of the Residential Design Codes of Western Australia (R-Codes). As a result the application is recommended for approval.

1.1 Recommendation to Committee

Approves a retrospective application for an outbuilding, patio and front fence at No. 48 (Lot 365) Weld Street, Nedlands in accordance with the application and the plans received 14 February 2014, subject to the following conditions:

1. The development shall at all times comply with the approved plans.
2. The visual privacy screen to the patio (as marked in red on the approved plans) shall prevent overlooking in accordance with the

visual privacy requirements of the *Residential Design Codes 2013* (R-Codes). The structures shall be installed and remain in place permanently, unless otherwise approved by the City.

3. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
4. Front walls and fences in the primary street setback shall be:
 - a) A maximum height of 1.8m above natural ground level at the base of the wall;
 - b) Visually Permeable above 1.2m in accordance with the *Residential Design Codes 2013* and Council Policy; and
 - c) Truncated or reduced to no higher than 750mm within 1.5m of where walls and fences adjoin vehicle access points, including neighbouring properties.
5. Any additional development, which is not in accordance with the original application or conditions of approval as outlined above, will require further approval by Council.

Advice Notes specific to this approval:

- a. 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.

1.2 Strategic Community Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address		No. 48 (Lot 365) Weld Street, Nedlands
Lot area		787m ²
Zoning:	Metropolitan Region Scheme	Urban
	Town Planning Scheme No. 2	Residential (R15)

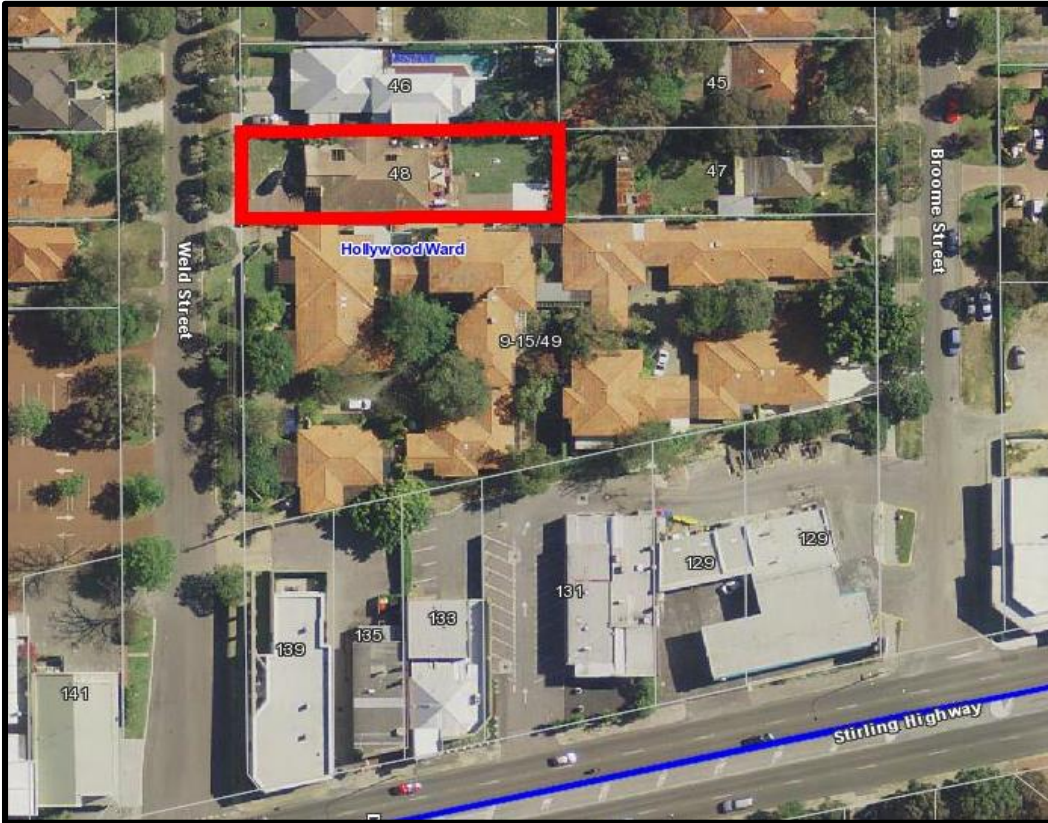


Figure 1: Locality Plan

2.1 Key Relevant Previous Council Decisions

N/A

2.2 Legislation / Policy

- Planning & Development Act 2005
- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes of WA 2013 (R-Codes)

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

Due to the works being retrospective, the City received one (1) objection which raised the following issues:

- The outbuilding is too close to the property boundary;
- The outbuilding will overshadow the southern lot;
- The outbuilding will create too much noise;

- The patio will result in visual privacy concerns; and
- The works are unsightly and will devalue their property.

4.0 Budget / Financial Implications

N/A

5.0 Risk management

N/A

6.0 Discussion

6.1 Introduction

The application has been assessed and complies with all requirements and design principles of the Residential Design Codes of Western Australia (R-Codes) and Town Planning Scheme 2 (TPS2).

Administration Comment:

All of the concerns raised in the objection received (visual privacy, overshadowing, noise and amenity) have been assessed in accordance with the R-Codes and discussed below.

Objection	Relevant Clause	Requirement (R-Codes)	Proposed
Overshadowing from the Shed	Clause 6.4.2 – Solar access for adjoining sites	25% of the southern lot	2% of the southern lot
The shed is too close to the boundary	Clause 6.4.4 - Outbuildings	1m setback from any boundary	1.2m setback from the southern boundary
Overlooking from the patio	6.4.1 – Visual privacy	Any overlooking shall be screened to a minimum of 1.6m	1.6m high permanent screen on the southern side of the patio (Condition 2)
Noise	Any noise generated from the shed is required to be in accordance with the <i>Environmental (Noise) Regulations (1997)</i>	N/A - Not a R-Code requirement	N/A - Not a R-Code requirement

6.2 Amenity

6.2.1 Preservation of Amenity

Scheme clause 5.5.1 (Preservation of Amenity) states:

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

Due to the small size of the outbuilding (5mx5m) and the compliant 1.2m setback from the southern boundary, it is not considered that the external appearance will adversely affect the amenity of the area.

6.3 Conclusion

It is considered that the retrospective outbuilding, patio and front fence satisfy both deemed-to-comply requirements and all of the listed design principles. The additions are not considered to unduly impact upon the access to direct sun, privacy or amenity of the adjoining properties and appurtenant open spaces.

As a result, the application is recommended for approval subject to conditions.

7.0 Attachments

1. Proposal Plans



WELD

Shed frame located at 48 ~~Broom~~ St- Viewed from living room Unit 7 52 Weld At Nedlands

Adjacent to MAIN living area- will cause excess noise and disturbance





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5 MAR 2014
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WED
Shed frame located at 48 ~~Broom~~ St- Viewed from living room Unit 7 52 Weld At Nedlands



This shows how adjacent the framework is located to LIVING area of Unit 7/ 52 Weld St



Timber Frame Outdoor area located at 48 Broome St- Viewed from Unit 7 of 52 Weld St Nedlands will give no privacy into Bedroom and outdoor living area of Unit 7 of 52 Weld ST- 48 able to view over the fence directly into Unit 7 of 52 Weld St as verandah is located so high above the ground



EDLANDS
5 MAR 2014
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VIEW of BACK YARD of 48 Broome St

This view shows CLEARLY that there is room on opposite side of the garden (Northern aspect where no other building is adjacent – this is where the previous owner located his garage/sheds for years




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5 MAR 2014
RECEIVED

Kay Whyte
(MRS LARLEY)

UNIT 7 OF 52 WEAVER ST
NEDLANDS

bioskwa@gmail.com 0412 394 866

PD15.14	No. 40 (Lot 312) Dalkeith Road Nedlands – Retrospective Amendments to Garage to Single House
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Committee	13 May 2014
Council	27 May 2014
Applicant	T & S Martin
Owner	T Martin
Officer	Thomas Geddes – Planning Officer
Director	Peter Mickleson – Director Planning & Development
Director Signature	
File Reference	M14/5676:DA14/38

1.0 Executive Summary

This application is for retrospective amendments to a garage approved in January 2012. The amendments comprise the extension of the boundary wall along the southern site boundary, the rebuilding of the original garage boundary wall, an additional door to the rear of the garage, the relocation of the main garage door and an additional retaining wall to the east of the garage.

The extension of the garage boundary wall did not have planning approval and the extension of this wall necessitated consultation with the adjoining neighbour as it does not meet the deemed-to-comply requirements of the R-Codes.

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

It is considered that the garage boundary wall extension does not satisfy the design principles of clause 5.1.3 P3.1 (Lot boundary setback) of the Residential Design Codes of Western Australia (R-Codes) and will not satisfy clause 5.6.3(b) of Town Planning Scheme No. 2 relating to garage boundary walls.

As a result, the extension to the garage boundary wall is recommended for refusal. The remaining amendments (relocation and addition of garage doors, rebuilding of existing boundary wall and the added retaining walls) are recommended for approval if the extension to the garage boundary wall is refused.

1.1 Recommendation to Committee

Council:

- 1. Refuses the part of the application for retrospective garage extension which relates to the extended boundary wall at No. 40 (Lot 312) Dalkeith Road, Nedlands in accordance with the application received on 30 January 2014 and the plans received on 3 April 2014, for the following reasons:**
 - a. This refusal relates to the extended portion of the garage boundary wall (as marked in red on the attached plans).**
 - b. The extended garage boundary wall does not meet the provisions of clause 5.6.3(b) of Town Planning Scheme No. 2 as it is considered to adversely affect the access to light to a room overlooking the boundary.**
 - c. The extended garage boundary wall does not meet the provisions of clause 5.1.3 (lot boundary setback) of the Residential Design Codes of Western Australia (design principles) as it will have an adverse effect upon the adjoining property in terms of:**
 - i. The building bulk;**
 - ii. The impact upon the amenity of the adjoining property;**
 - iii. Access to direct sunlight for the adjoining property; and**
 - iv. The contribution of this extended wall to the prevailing development context of the locality.**
 - d. The proposal will not be orderly and proper planning.**
- 2. Approves the parts of the application for retrospective garage extension which relate to the altered doors to the garage, the rebuilding of the existing garage boundary wall and retaining walls at No. 40 (Lot 312) Dalkeith Road, Nedlands in accordance with the application received on 30 January 2014 and the plans received on 3 April 2014, subject to the following conditions:**
 - a. The development shall at all times comply with the approved plans.**
 - b. This approval does not apply to the extended portion of the garage boundary wall (as marked in red on the attached plans).**
 - c. All footings and structures of the approved portions of retaining and boundary walls shall be constructed wholly inside the site boundaries of the Certificate of Title.**
 - d. The approved portion of garage boundary wall shall be finished to a professional standard, to the satisfaction of the City.**

- e. **All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.**

Advice Notes specific to this approval:

- a. **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.**
- b. **The applicant shall make application to the City for a Building Approval Certificate regarding the unauthorised works.**

- 3. **Instructs Administration to direct the owners to remove the unapproved extension to the garage boundary wall.**

1.2 Strategic Community Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address		No. 40 (Lot 312) Dalkeith Road, Nedlands
Lot area		1012m ²
Zoning:	Metropolitan Region Scheme	Urban
	Town Planning Scheme No. 2	Residential (R10)

The original planning approval (dated 16 January 2012) for the garage extension (attachment 1) involved the retention of an existing garage boundary wall against the southern site boundary, with the extension to the garage being set back in accordance with the deemed-to-comply requirements of the R-Codes (1.5m).

The original boundary wall was constructed prior to 1947 when additions to the existing garage were approved (dated 21 March 1947) by the Nedlands Road Board (attachment 2). The property file does not contain any information pertaining to the construction of this garage prior to 1947.

The approved building permit (attachment 3) for the garage extension labelled the extended garage boundary wall as existing and the original plans which came in with this application showed new footings being constructed for the existing wall.

The existing boundary wall collapsed during construction and was reconstructed by the applicant. The City received a complaint from the adjoining landowner due to the extended boundary wall limiting light access to a bedroom.

2.1 Key Relevant Previous Council Decisions

N/A

2.2 Legislation / Policy

- Planning & Development Act 2005
- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes of WA 2013 (R-Codes)
- Council Policy 6.4 – Neighbour Consultation (Neighbour Consultation policy)

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

Due to the proposed variation from deemed-to-comply R-Code setback requirements, advertising was undertaken by the City from 25 February 2014 to 4 March 2014.

The City received one (1) objection which related to the boundary wall.

The following issues were raised by submitter relating to the proposed boundary wall:

- 1) The extended wall will be roughly twice the height of the fence and block natural light access to rooms along this boundary.
- 2) The impact of the wall will limit the ability of the owners to maintain tenants at the property.

4.0 Budget / Financial Implications

N/A

5.0 Risk management

N/A

6.0 Discussion

6.1 Introduction

This application involves retrospective amendments to an extension to an existing garage approved in January 2013. Namely the extension of the boundary wall 2m along the southern site boundary in lieu of building in accordance with the planning approval for the structure.

The original planning approval included the existing boundary wall on site being retained and the remainder of the garage extension being built 1.5m from the southern boundary in accordance with the R-Codes deemed-to-comply requirements. During construction, the original boundary wall collapsed and was subsequently rebuilt and extended.

The remaining amendments (i.e. the realignment of the main garage door, addition of a door to the rear of the garage and additional retaining) comply with the deemed-to-comply requirements of the R-Codes. The rebuilt garage wall (excluding the new extended portion) is considered to be in accordance with the original garage boundary wall which had existed on site since before 1947.

6.2 Garage Boundary Wall Design Principle Assessment

The retrospective proposal involves an extension to a boundary wall which does not meet the deemed-to-comply requirements of the R-Codes as it is to be located in an R10 area. The R-Codes do not provide deemed-to-comply requirements for boundary walls in R10 areas, only those in R20 or higher.

As the proposed boundary wall does not meet the deemed-to-comply requirement, it is required to be assessed against the design principles for boundary walls:

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

- 1) *Makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;”*

Administration Comment:

- This design principle is not considered to be relevant as the extended boundary wall does not directly relate to outdoor living areas or the privacy of the subject site.

- 2) *“Does not compromise the design principles contained in clause 5.1.3 P3.1;”*

Note: These design principles in clause 5.1.3 P3.1 relate to the impact of building bulk on adjoining properties, the provision of adequate direct sun and ventilation to buildings and protection of privacy for adjoining properties.

Administration Comment:

Impact of building bulk:

- The extended boundary wall is located adjoining a bedroom and the bulk of this structure is considered to negatively affect the adjoining property.

Impact of the structure on access to light and ventilation:

- Access to sunlight for the adjoining property will be negatively affected by the extended garage boundary wall, especially in winter, due to the orientation of the sites.

Impact of the structure upon the privacy of adjoining residences:

- The extended boundary wall is not considered to have a significant impact upon the privacy of the adjoining dwelling, due to the lack of windows along its length and the non-habitable use of the structure.

The extended boundary wall is not considered to comply with the listed design principle due to the impact of building bulk and access to direct sunlight.

3) *“Does not have any adverse impact on the amenity of the adjoining property;”*

Administration Comment:

- It is considered that due to the height and bulk of the garage wall, the amenity of the adjoining property will be adversely impacted if this extension is to be approved. If the extended boundary wall adjoined non-habitable rooms or walls without major openings onto habitable rooms it would be considered to have a limited effect upon the amenity of the adjoining site.

4) *“Ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and”*

Administration Comment:

- As per point (2) above, the access to direct sunlight will be impacted by the extended garage wall, especially during winter when additional overshadow occurs. The adjoining property owners have raised concerns regarding the access to sunlight for their property.

5) *“Positively contributes to the prevailing development context and streetscape.”*

Administration Comment:

- It is not considered that the extended portion of the boundary wall positively contributes to the prevailing development context of the site.

6.3 Garage Boundary Wall - Town Planning Scheme No.2 Assessment

Under clause 5.6.3 of the City of Nedlands Town Planning Scheme, *“the Council may approve a garage to be erected on the side boundary of any lot, if”*:

- a) *“There is an existing garage on the adjoining lot within 1m of that boundary and adjacent to the proposed garage; or”*

Administration Comment:

- No garage exists on the adjoining property within 1m of the shared boundary with No. 40 Dalkeith Road.

- b) *“Any house on the adjoining lot is of substantial construction and located not more than 2.5m from that boundary, but constructed in such a manner that light and ventilation to the rooms overlooking that boundary are not adversely affected; and”*

Administration Comment:

- While the dwelling at No. 42 Dalkeith Road is considered to be of substantial construction, the extended portion of the garage boundary wall is considered to adversely affect the access to light to the bedroom adjoining the extended portion.

- c) *“No danger of spread of fire exists due to the proximity of overhanging eaves.”*

Administration Comment:

- The eaves of No. 42 Dalkeith Road are set back more than 500mm from the property boundary and the garage boundary wall is of a parapet wall construction. This separation meets the relevant Building Code of Australia requirements.

6.4 Conclusion

It is considered that the retrospective extension to the garage boundary wall does not satisfy all of the listed design principles relating to lot boundary setbacks. The remainder of the retrospective works, comprising additional retaining and altered doors to the garage are considered to meet the relevant deemed-to-comply requirements of the R-Codes.

Access to direct sunlight and ventilation for the bedroom on the adjoining property is directly impacted by the extended boundary wall.

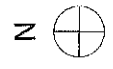
Due to the impact of the boundary wall upon the adjoining property, it is recommended that the retrospective extension to the boundary wall not be approved and that the wall be amended to be in accordance with the extent of the original wall and the original planning approval. The additional retaining and amendments to the

location of the doors are recommended for approval, subject to the conditions listed in section 1.1.

7.0 Attachments

1. Original development application plans (Dated 21 December 2011)
2. Garage extension approval (Dated 21 March 1947)
3. Building Permit site plan (Dated 8 October 2012)
4. As constructed plans (Dated 3 April 2014)
5. Photographs of structure

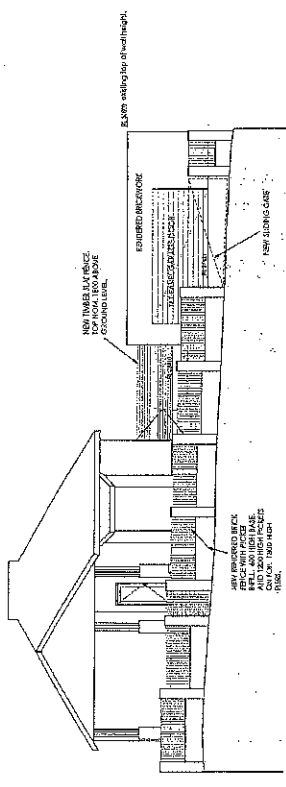
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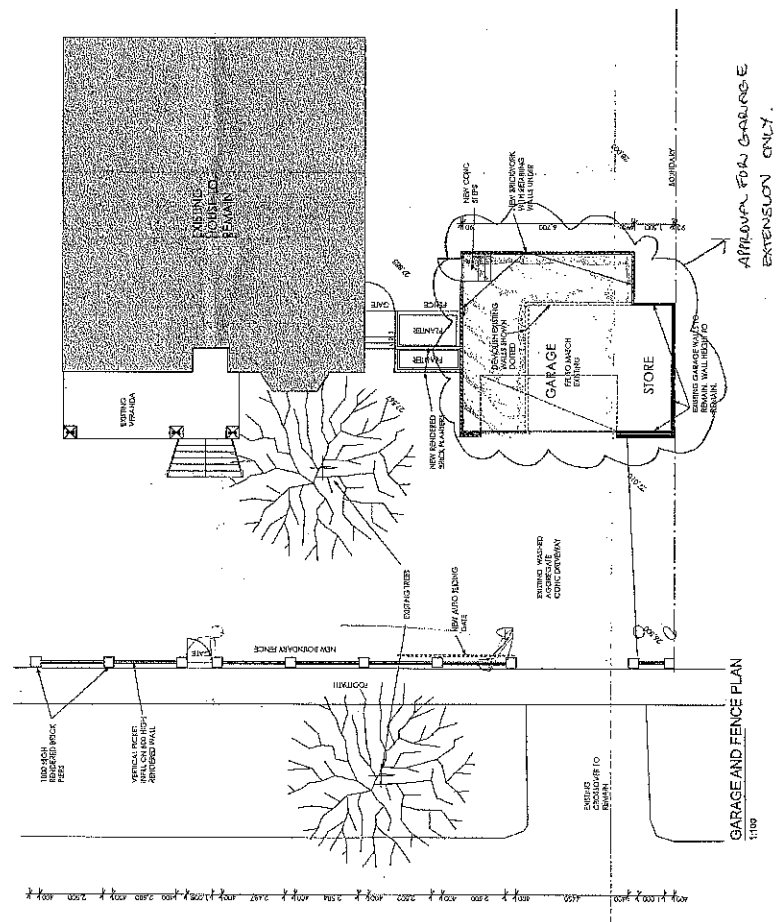
PROPOSED NEW FENCE AND MODIFICATIONS
 TO EXISTING GARAGE

40 DALKEITH RD, NEDLANDS

DA01 rev A
 19.12.11



CITY OF NEDLANDS
 DEVELOPMENT DEPARTMENT
 APPROVED
 SUBJECT TO THE SUBMISSION OF A VALID CONTRACT
 WITH THE SUBMITTANT'S SIGNATURE
 FOR THE WORK.
 PROJECT: DANIEL'S GARAGE
 ARCHITECTS: [Signature]
 NOTE: THIS APPROVAL DOES NOT
 CONSTITUTE A BUILDING LICENSE

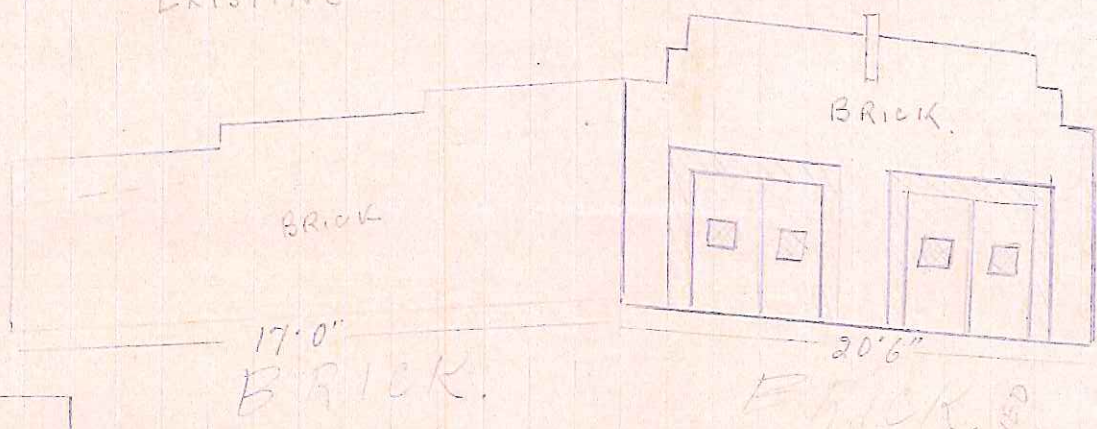


PLAN FOR EXTENSION OF

EXISTING GARAGE AT 40 DALKEITH RD

ALL NEW WORK TO MATCH EXISTING

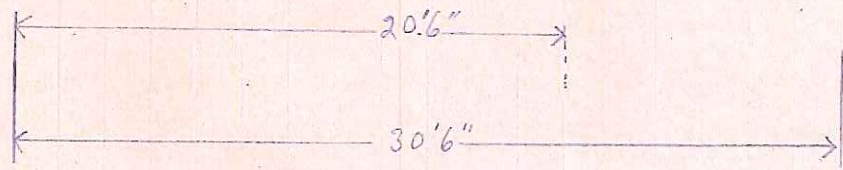
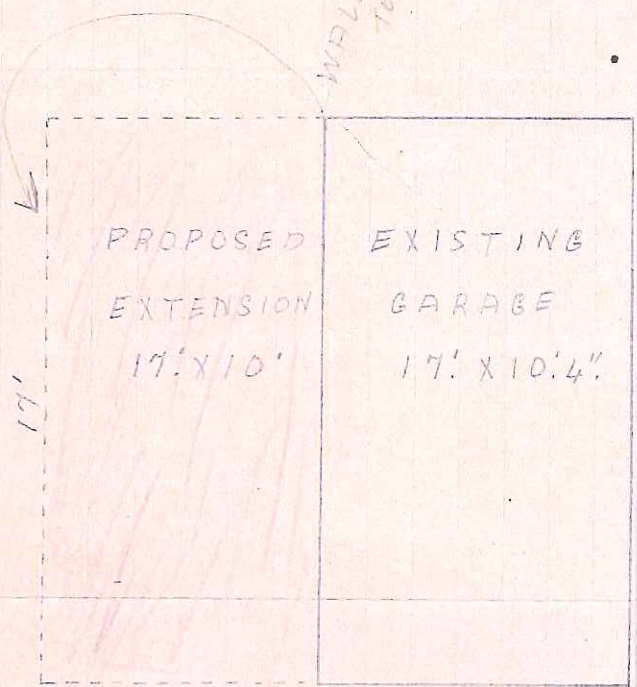
ALL NEW WORK TO MATCH EXISTING



REDLANDS ROAD BOARD.
 Permit No. 5274.
 APPROVED, subject to Building
 & Health By-laws for erection upon
 317 Dalkeith Rd.
 1/2/17.

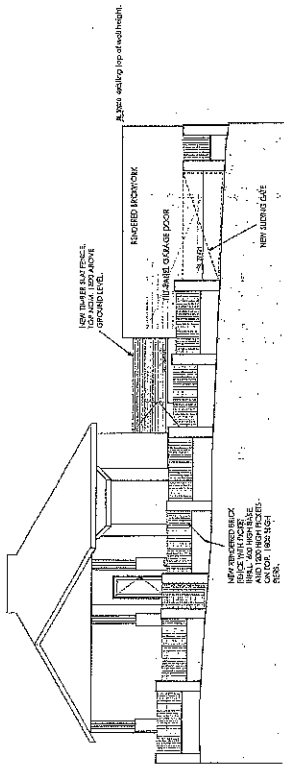
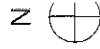
BRICK WALL TO BE REMOVED TO NEW POSITION

HOUSE
 40 DALKEITH
 RD.

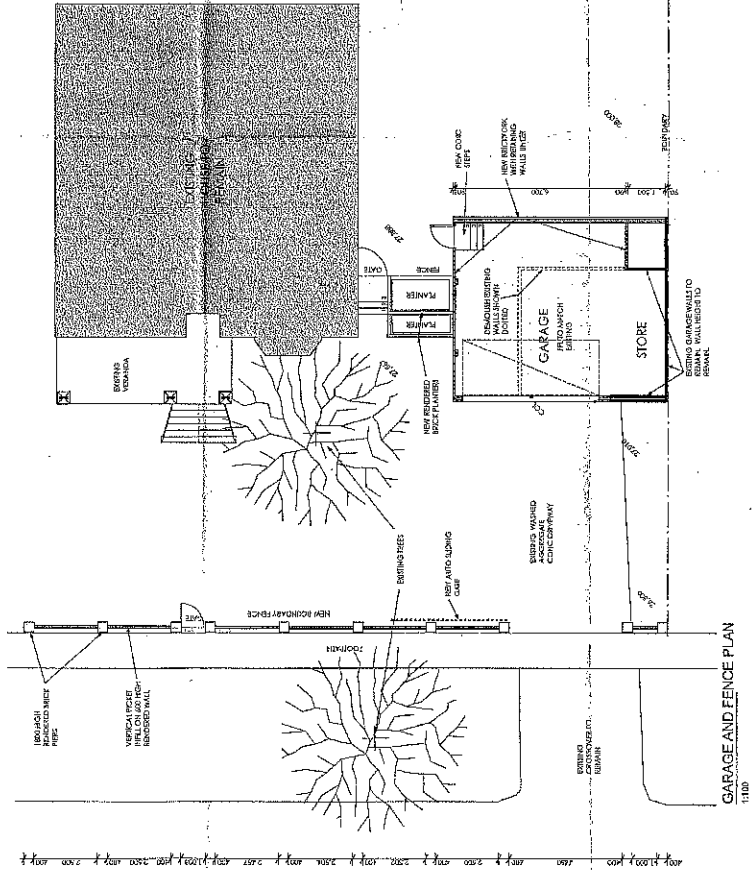


DALKEITH ROAD

CITY OF NEDLANDS
88 OCT 2012
DISSEMINATED



NEW FINISHED BRICK
FRONT AND SIDE
ELEVATIONS TO
COMPLY WITH
CANADIAN
RES.



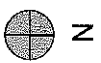
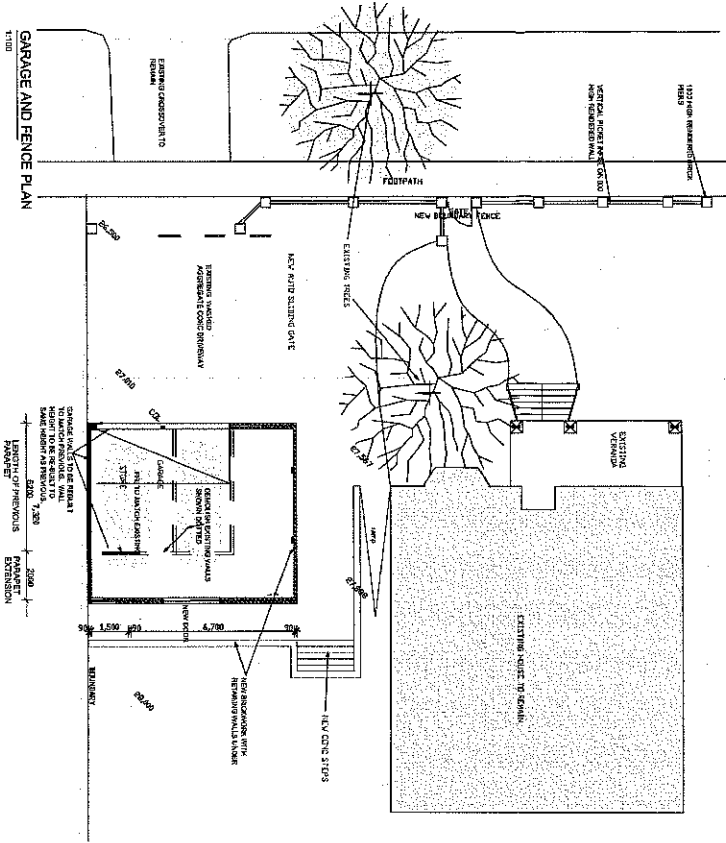
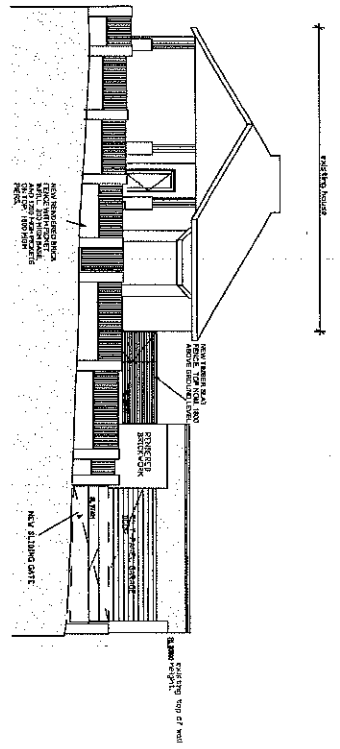
CITY OF NEDLANDS
APPROVED
The County Engineer
12/12/10
WHEREAN APPROVED AS SHOWN
ON THE PLANS.

PROPOSED NEW FENCE AND MODIFICATIONS
TO EXISTING GARAGE

40 DALKEITH RD, NEDLANDS

AMENDED
PLANS





CITY OF NEDLANDS
3 APR 2018
NSC0000462

PROPOSED NEW FENCE AND
MODIFICATIONS TO EXISTING GARAGE

40 DALKEITH RD, NEDLANDS DA01 rev F







24/03/2014 12:34



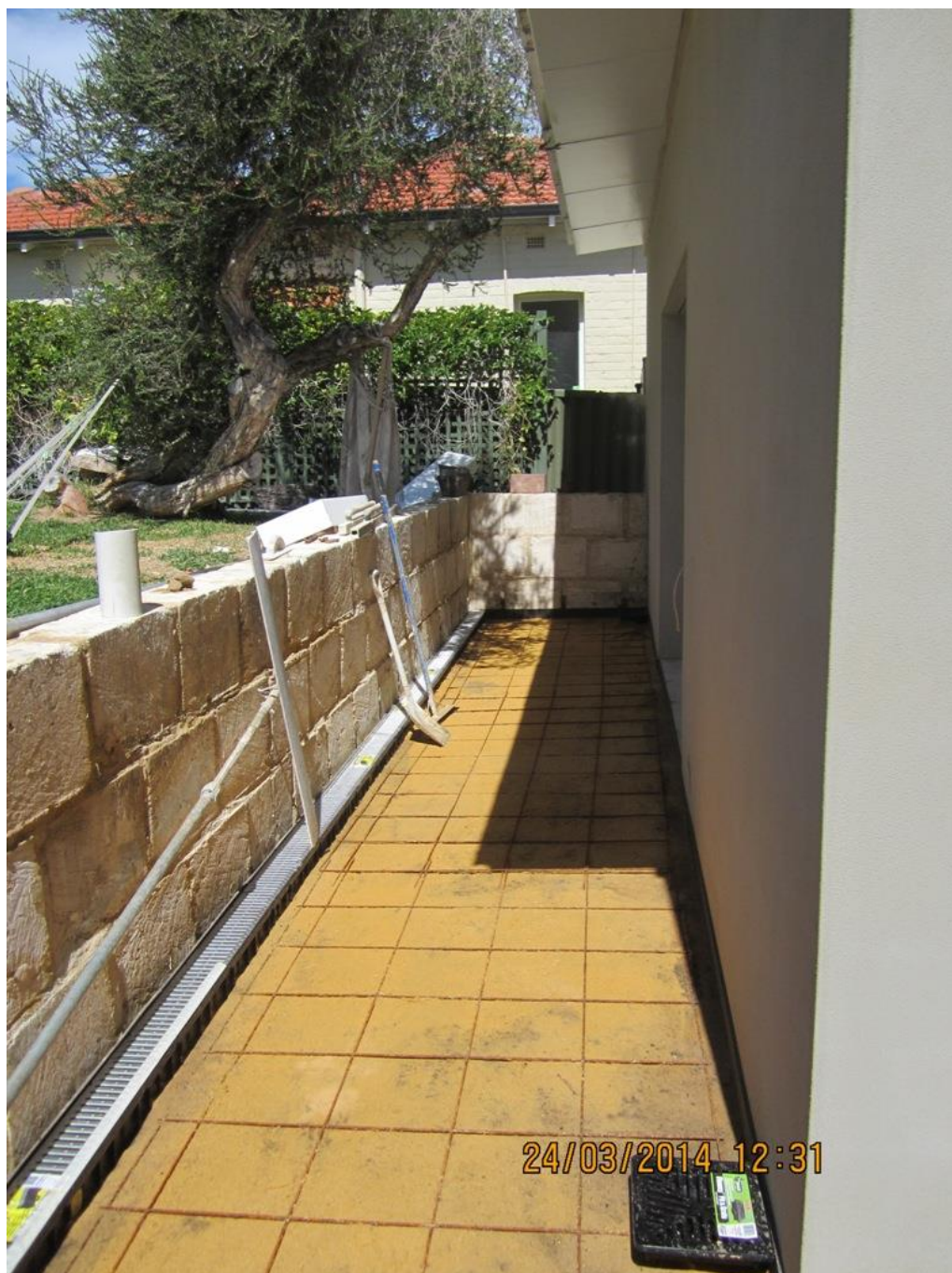


24/03/2014 12:33



24/03/2014 12:33









24/03/2014 12:30




24/03/2014 12:30



24/03/2014 12:29



PD16.14	No. 138 (Lot 9) Victoria Avenue, Dalkeith - Proposed Four-Storey Single House, Outbuilding & Front Fence
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Committee	13 May 2014
Council	27 May 2014
Applicant	Lyons Architects
Landowner	R De Campo
Officer	Matt Stuart – Senior Statutory Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	VI1/138-02 : DA12/411 : M13/6182
Previous Item	Nil.

1.0 Executive Summary

The purpose of this report is for Council to consider a planning application for a large dwelling, which has variations, to which officers do not have delegation to determine.

This proposal is for a large, four-storey building and associated minor structures, on Victoria Avenue overlooking the Swan River. There are many variations to the planning requirements, relating to the number of floors, visual privacy, wall setbacks, and front fences. In addition, objections specific to these variations have been received from the community.

The number of floors is a Scheme requirement that is open to interpretation, however it is mandatory. On balance, it is considered that the proposal does not comply.

The side wall setbacks on both sides are imposing upon the sensitive areas of the neighbouring properties, which does not comply.

As a result of the significant issues pertaining to the design, and the unreasonable prospect of imposing conditions to bring it into conformity, the application is recommended to the Council for refusal.

1.1 Recommendation to Committee

Council refuses an application for a Four-Storey Single House, Outbuilding & Front Fence at No. 138 (Lot 9) Victoria Avenue, Dalkeith, in accordance with the application dated 15 October 2012 and amended plans received on 13 December 2013 and 21 March 2014, for the following reasons:

1. The proposal does not comply with the two-storey height limit for residential use, in accordance with TPS2 cl. 5.11(i).
2. The proposal does not comply with visual privacy requirements to the northwest, in accordance with R-Codes cl. 5.4.1, C1.1-1.2 and P1.1-1.2.
3. The proposal does not comply with visual privacy requirements to the southeast, in accordance with R-Codes cl. 5.4.1, C1.1-1.2 and P1.1-1.2.
4. The proposal does not comply with wall setbacks requirements to the northwest, in accordance with R-Codes cl. 5.1.3 C3.1 and P3.1.
5. The proposal does not comply with wall setbacks requirements to the southeast, in accordance with R- Codes cl. 5.1.3 C3.1 and P3.1.
6. The proposal does not comply with the amenity considerations of TPS2 cl. 5.5.1.
7. The proposal does not represent orderly and proper planning, in accordance with TPS2 cl 6.5.1.

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address (Site)		No. 138 (Lot 9) Victoria Avenue, Dalkeith
Lot area		2,160m ²
Zoning / Reserve	MRS	Urban
	TPS2	Residential at R12.5

In 2012, a planning application for a Single House on the Site was lodged with the City and numerous plans have been submitted and assessed.

The Site has frontages to Victoria Avenue to the east and the Swan River to the west, and located adjacent to Single Houses to the north and south, as seen in the location plan below.



Figure 1 - Location Plan

Photographs depict an existing Single House on the Site; and the relationship between the Site and the surrounding built and natural environments (**Attachment 2**).

2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (**TPS2** or **Scheme**)
- Residential Design Codes of WA 2013 (**R-Codes**)
- Council Policy – Fill & Fencing
- Council Policy – Neighbour Consultation

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes No
 Required by City of Nedlands policy (Neighbour Consultation): Yes No

3.2 How and when was the community consulted?

Two-storey notification sign and Community consultation period:	21 March – 04 April 2014 (three objections)
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3.3 Consultation summary

Summary of comments received
<p>Issue: Two-Storey Rule</p> <ul style="list-style-type: none"> • The City has previously ruled that a neighbouring property must comply with the two-storey rule. The method used was reliant of design and intent, rather than labels, and the City should be consistent. • The design of the archive store suggests its function is not for storage, in terms of: <ul style="list-style-type: none"> ○ The sheer size of the room and windows; ○ The western sun in summer damaging documents; ○ Location; and ○ The adjoining garden terrace unable to be maintained from the solid windows, which needs a 1.0m balustrade under the BCA and therefore likely to be used as a terrace, which would be in breach of the visual privacy standards. • The volume of documents in the 63m² space is beyond normal domestic use, and a Home Occupation / Business is limited to 50m². • The City should clearly see the intended purpose through masking of names, which makes a sheer mockery of the rule. • The application not capable of approval, and the Council should not even entertain an application that does not comply. • Request that the Council not create a situation of more unlawful development in the street, and its consequential drain on resources. • The weight of the compactus would be 2-3 tonnes each, total 30 tonnes. Would require special engineering analysis and structural support, which may heavily restrict the use of the room below
<p>Issue: Wall Setbacks</p> <ul style="list-style-type: none"> • Are substantially greater than neighbouring properties, and the deemed-to-comply standards. • The FFL's are higher than adjoining neighbours, therefore the impact of variations are greater. • The magnitude of variations will affect neighbour's amenity because of bulk and overlooking. • Doesn't comply with the Design Principle, regarding bulk and scale impacts. • Doesn't comply with the Design Principle, regarding overshadowing impacts. • Under the Design Principle, visual privacy does not comply either. • The R-Codes have been carefully created to protect neighbours and the streetscape / riverscape. • Not capable of approval, and the Council should not even entertain an application that does not comply.
<p>Issue: Visual Privacy</p> <ul style="list-style-type: none"> • All windows, including some non-Major Openings, with cones of vision into neighbouring property to be obscured and/or redesigned to be hi-lites.

Issue: Amenity

- Complete disregard for amenity.
- Overall volume and bulk as it presents to the streetscape and riverscape is appalling, and worse than No. 136.
- Council should only approve design complying to the deemed-to-comply standard.

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

4.0 Budget / Financial Implications

The application is for works to be constructed on a private lot, and therefore has no budget or financial implications for the City.

5.0 Risk Management

Not applicable.

6.0 Discussion

6.1 Planning Assessment

The proposal involves the demolition of the existing development, and the construction of a four-storey house, outbuilding and front fence on the Site, as depicted in the submitted plans (**Attachment 1**).

Please note that a full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

Variations include the following:

- Number of storeys;
- Visually privacy of the side neighbours;
- Wall setbacks to the side and rear boundaries (see below table); and
- Visual permeability and height of the front fence.

Floor	Direction	Wall	Required Setback	Proposed Setback	Comment
Under-Croft	(N)	Whole building (at Tool room)	3.5m	2.65m	Abuts unenclosed Outdoor Living Areas & Major Openings
	(S)	Whole building (at Stairs)		2.8m	Abuts several Major Openings & balconies
Ground	(S)	Whole building (at Kitchen)	4.7m	3.4m	Abuts several Major Openings & balconies
	(N)	Whole building (at Living)			Abuts Major Openings Outdoor Living Areas on Lower Ground floor & Not Major Openings on Ground floor

Upper	(N)	Unenclosed Outdoor Living Area	4.0m	2.5m	Diagonal from unscreened balcony
	(N)	Whole building (at Hall)	6.4m	3.4m	Abuts Non Major Openings on upper floors & a Major Opening only on the Lower Ground floor
	(S)	Whole building (at Ensuite)	6.5m		Only being oblique from several Major Openings on all floors.

6.1.1 Number of Floors - Clause 5.11(i)

TPS2 clause 5.11(i) limits the maximum number of floors to two, unless they are only for certain uses, as below (emphasis added):

'No site shall be developed or building constructed:

- i) to contain more than two storeys directly above each other in the case of residential use or three storeys in the case of other uses, excluding areas for plant and equipment, storage, toilets and the parking of wheeled vehicles;'***

The proposed development includes two main floors on the upper levels, with two other levels below. The lowest level is storage ('Kayak Store' and 'Gardener's Store') and therefore compliant; however the Undercroft floor includes a large room labelled as an 'Archives Store'. This large room was originally labelled as a 'Workshop', then an 'Undercroft', then a 'Display Parking Garage'.

The Council is entitled to look behind the label of a room to see whether that room may be used for a prohibited purpose, as was established in relevant SAT cases, including *Pearce and City of Wanneroo* [2010] WASAT 77 (**Pearce**) and *Su and City of Canning* [2011] WASAT 34. In *Pearce*, the Tribunal initially found that (para 35, emphasis added):

'Having regard to the evidence as to what activity is, in reality, proposed by a development application, it is for the planning authority to characterise the proposed land use and then determine the application on its planning merits.'

In reaching its conclusion that ultimate use of the rooms would be different to the labels on the rooms, the Tribunal considered the design and functionality of rooms.

In assessing this planning application, the form of the room is observed to be atypical for residential document storage due to:

- A large floor-space of 63m²,
- A large balcony (Garden Bed) floor-space of 30m²; and
- Decorative arched windows of a grand scale.

The function of the room is observed to feature:

- Document compactus units with a considerable gross weight of approximately 30 tonnes (~three tonnes x 10 units);
- Adjoining rooms ('Powder Room', 'Tool Store' and 'Plant Room') supporting and capable of supporting the main room with more habitable functions (e.g. toilets and kitchen via a reconfiguration); and
- Wide and uninterrupted views of the Swan River.

In addition, the volume of documents in the 63m² space is beyond normal domestic use, and a Home Occupation / Business is limited to 50m² as defined by TPS2, which is without a variation clause.

Objections from the community have also been received about the number of floors and their use.

The use of rooms on the lower floors is open to interpretation, however it is mandatory and if the use does not comply, the Council does not have discretion to approve the application. A judgment must be made as to the likelihood of the rooms being used, other than for the use indicated on the plans, both for the present and in the future. Even accepting the applicant's explanation of the present intentions for the use of a room, planning decisions in relation to proposed development should consider the long-term implication of an approval. Subjective intension may change, as may the ownership of a house over time.

The Council has recently successfully prosecuted in a similar situation, where rooms were labelled for one use and constructed for another. There is an obligation to ensure the Council and its ratepayers are not put in the position of lengthy and costly legal proceedings which could be foreseen, especially when the intent of the Scheme is to restrict the height of dwellings based on the number of storeys. The former Town Planning Appeal Tribunal has also recognised that while a condition limiting the use to which a room may be imposed, in practical terms the enforcement of the condition can be problematic in the long-term.

In this case, taking into account the changes that have been made to the labelling of the rooms since the application was lodged, observations on the design layout and functionality of the rooms including the large expanse of open space and grand arched-windows, on balance it is considered that proposal will not comply with cl 5.11(i). As there is no discretion to approve a variation to this clause, the application is recommended for refusal.

6.1.2 Visually Privacy Variations (Northwest)

Visual privacy variations have been identified to the northerly neighbour as follows:

- Overlooking from ground and upper floor balconies onto rear-left corner of the neighbour's property; and
- Overlooking from a bedroom window onto the side of the neighbour's property.

An assessment of the proposal against the relevant Design Principles (5.4.1 P1.1-1.2) is as follows:

- The rear-left corner of the neighbour's property only features a planter bed and boat ramp;

- The side of the neighbour's property in the middle of the building does not feature any sensitive areas of potential activity;
- Visual privacy screens restricting the cones of vision, in addition to the variations identified above; and
- Objections from the neighbour being supported.

In this instance, it is considered that the proposal has some variations that comply with the Design Principles, however others that do not, and therefore is not supported by the City.

6.1.3 Visually Privacy Variations (Southeast)

Visual privacy variations have been identified to the southerly neighbour as follows:

- Overlooking from ground and upper floor balconies onto rear-right corner of the neighbour's property;
- Overlooking from ground floor scullery onto the side of the neighbour's property; and
- The side of the neighbour's property at the front of the building does not feature any sensitive areas of potential activity.

An assessment of the proposal against the relevant Design Principles (5.4.1 P1.1-1.2) is as follows:

- The rear-left corner of the neighbour's property only features a garden bed and boat ramp;
- The side of the neighbour's property features several balconies and Major Openings;
- The applicant's argument is that a scullery is not an assessable Habitable Room window (Major Opening), however the definition in the R-Codes includes a Kitchen;
- Visual privacy screens restricting the cones of vision, in addition to the variations identified above; and
- Objections from the neighbour being supported.

In this instance, it is considered that the proposal has some variations that comply with the Design Principles, however others that do not, and therefore is not supported by the City.

6.1.4 Wall Setback Variations (Southeast)

On the southern side, there are several wall setback variations on various floors. An assessment of the proposal against the relevant Design Principles (5.1.3 P3.1) is as follows:

- Whilst the overshadowing provision has been satisfied ($\leq 25\%$), the proposed structure does not provide adequate sun to the neighbouring property, which

has extensive windows, terraces and balconies on its northern side (**Attachment 2**);

- Similarly, the effect of building bulk will be acute;
- A visual privacy variation from a scullery has been identified, which overlooks several Major Openings, however this could be conditioned to comply;
- Objections from the neighbour being supported;
- Adequate sun will be available to the Site, due to extensive terraces and balconies to the west;
- The finished floor levels are higher than adjoining neighbours, therefore the impact of variations are greater; and
- The proposed structure provides adequate ventilation to the Site and neighbouring property.

In this instance, it is considered that the proposal does not comply with the Design Principles, and therefore is not supported by the City.

6.1.5 Wall Setback Variations (Northwest)

On the northern side, there are several wall setback variations on various floors. An assessment of the proposal against the relevant Design Principles (5.1.3 P3.1) is as follows:

- As the walls with variations are adjacent to terraces, balconies and Major Openings, the effect of building bulk will be acute;
- The finished floor levels are higher than adjoining neighbours, therefore the impact of variations are greater;
- Objections from the neighbour being supported;
- A visual privacy variation from a bedroom window has been identified, however it is a narrow view of blank walls and a pathway;
- Adequate sun will be available to the Site and neighbouring property, due to extensive terraces and balconies to the west; and
- The proposed structure provides adequate ventilation to the Site and neighbouring property.

In this instance, it is considered that the proposal does not comply with the Design Principles, and therefore is not supported by the City.

6.1.6 Rear Setback Variations (Southwest) – Swan River Trust

The Swan River Trust has a wall setback policy (10.0m to the boundary abutting the Swan River), which exceeds the City's requirements. The Trust has advised that the proposal has minor incursions, and that they are acceptable.

In addition, the Trust requires a condition that the width of the gate onto the river reserve be reduced to no greater than 1.6m, in order to restrict the type of vessels that could traverse the reserve, and therefore the damage that could be done to the environment.

In addition, standard conditions are recommended by the Trust, pertaining to notification of works, construction waste, sewerage, stormwater, and open-style fencing. The position of the Trust is supported by the City, and suitable conditions and advice notes are recommended should this application be approved.

6.1.7 Front Fence Variations (Northeast)

The proposed front fence is over-height and not visually permeable, in accordance with the R-Codes.

An assessment of the proposal against the relevant Design Principles (6.2.2 P2) is as follows:

- This type of built form is typical in Victoria Avenue, and therefore the proposal will not adversely impact upon the character of the streetscape;
- Given an extremely large front setback of the dwelling to the street (71.0m), visually permeable front fences will not enhance surveillance of the street; and
- No objections from neighbour consultation.

In this instance, it is considered that the proposal complies with the Design Principles, and therefore is supported by the City.

6.1.8 Preservation of Amenity

TPS2 clause 5.5.1 (Preservation of Amenity) states (emphasis added):

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

In response, the external appearance of the development is unacceptable (as discussed elsewhere); whereas traffic congestion and noise will be at an acceptable level in line with typical residential development. Accordingly, it is considered that the proposed development will adversely affect the amenity of the surrounding area, and accordingly the proposed development is not supported by the City.

6.1.9 Orderly & Proper Planning

TPS2 clause 6.5.1 (Determination by Council) states (emphasis added):

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

In response, the development does not comply with Scheme provisions, with some discretionary variations which are not supported (see **Discussion** section). Accordingly, it is considered that the proposed development does not represent orderly and proper planning in accordance with clause 6.5.1, and is not supported.

6.1.10 Consideration of Applications

TPS2 clause 6.4.1 (Consideration of Applications) states (emphasis added):

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

In response, the proposed development of a Single House in a residential zone, which is a 'P' permitted use, is abundantly typical and is therefore supported.

It is considered that the proposed development and its effect on the area is appropriate. Accordingly, the proposed development is supported.

6.3 Conclusion

This proposal is for a large, four-storey dwelling and associated minor structures, on Victoria Avenue overlooking the Swan River. There are many variations to the planning requirements, relating to the number of floors, visual privacy, wall setbacks, and front fences. In addition, objections specific to these variations have been received from the community.

The use of rooms on the lower floors is open to interpretation, however it is mandatory and if the use does not comply, the Council does not have discretion to approve the application. A judgment must be made as to the likelihood of the rooms being used, other than for the use indicated on the plans, both for the present and in the future.

The Council has recently successfully prosecuted in a similar situation where rooms were labelled for one use and constructed for another. There is an obligation to ensure the Council and its ratepayers are not put in the position of lengthy and costly legal proceedings which could be foreseen, especially when the intent of the Scheme is to restrict the height of dwellings based on the number of storeys.

In this case, taking into account the changes that have been made to the labelling of the rooms since the application was lodged, observations on the design layout and functionality of the rooms including the large expanse of open space and grand arched-windows, on balance it is considered that proposal will not comply with the Scheme. As there is no discretion to approve a variation to this clause, the application is recommended for refusal.

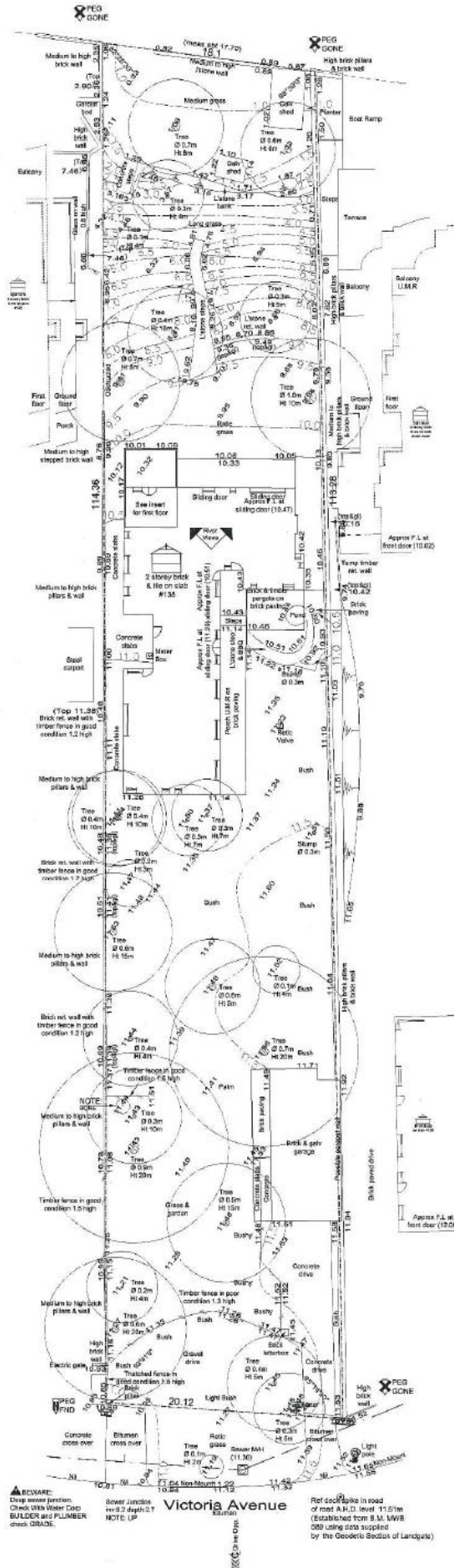
The side wall setbacks on both sides are imposing upon the sensitive areas of neighbouring properties, and consequently the application is recommended for refusal.

As a result of the significant issues pertaining to the design, and the unreasonable prospect of imposing conditions to bring it into conformity, the application is recommended to the Council for refusal.

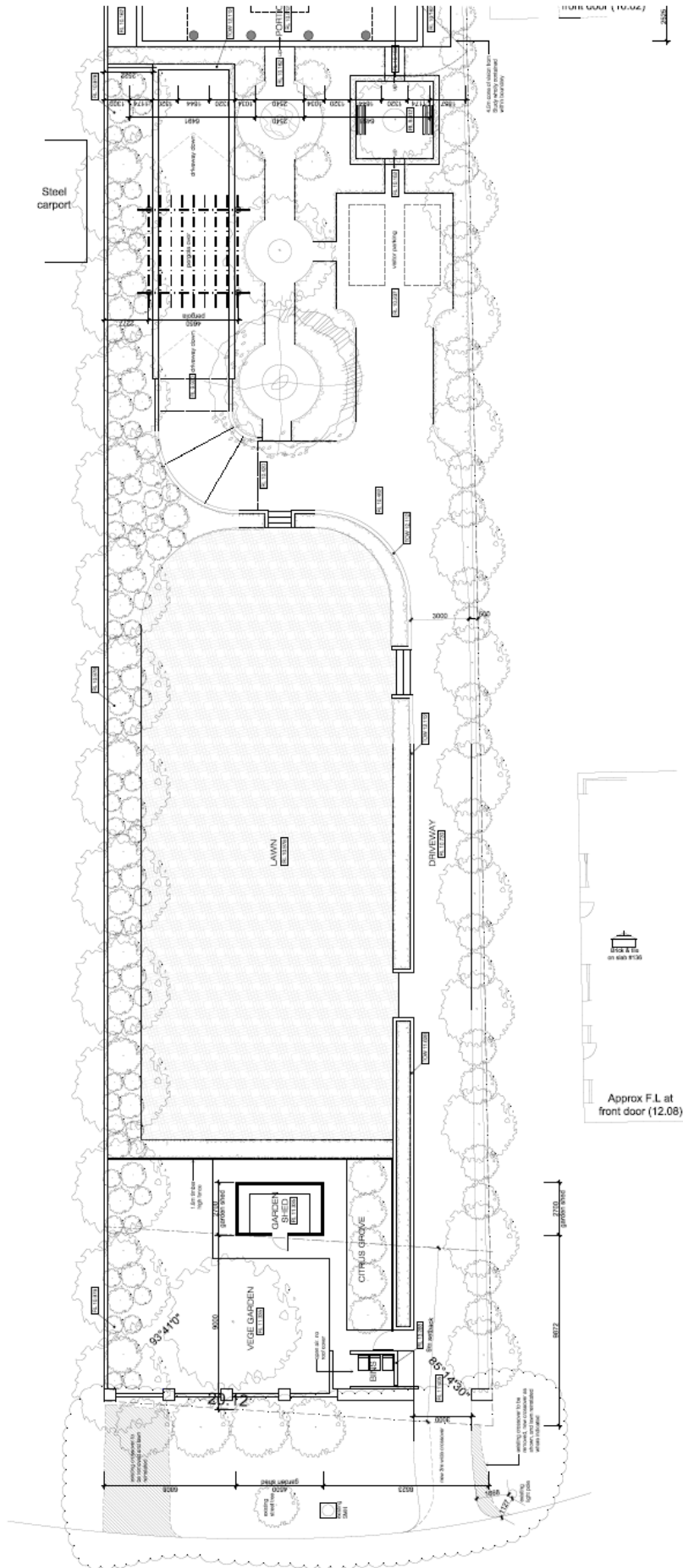
7.0 Attachments

1. Plans (survey, site, floors, elevations & overshadow)
2. Photographs of the Site & surrounds

No. 138 Victoria Av, Dalkeith



No. 138 Victoria Av, Dalkeith



GROUND FLOOR / SITE PLAN 1/200 1/200

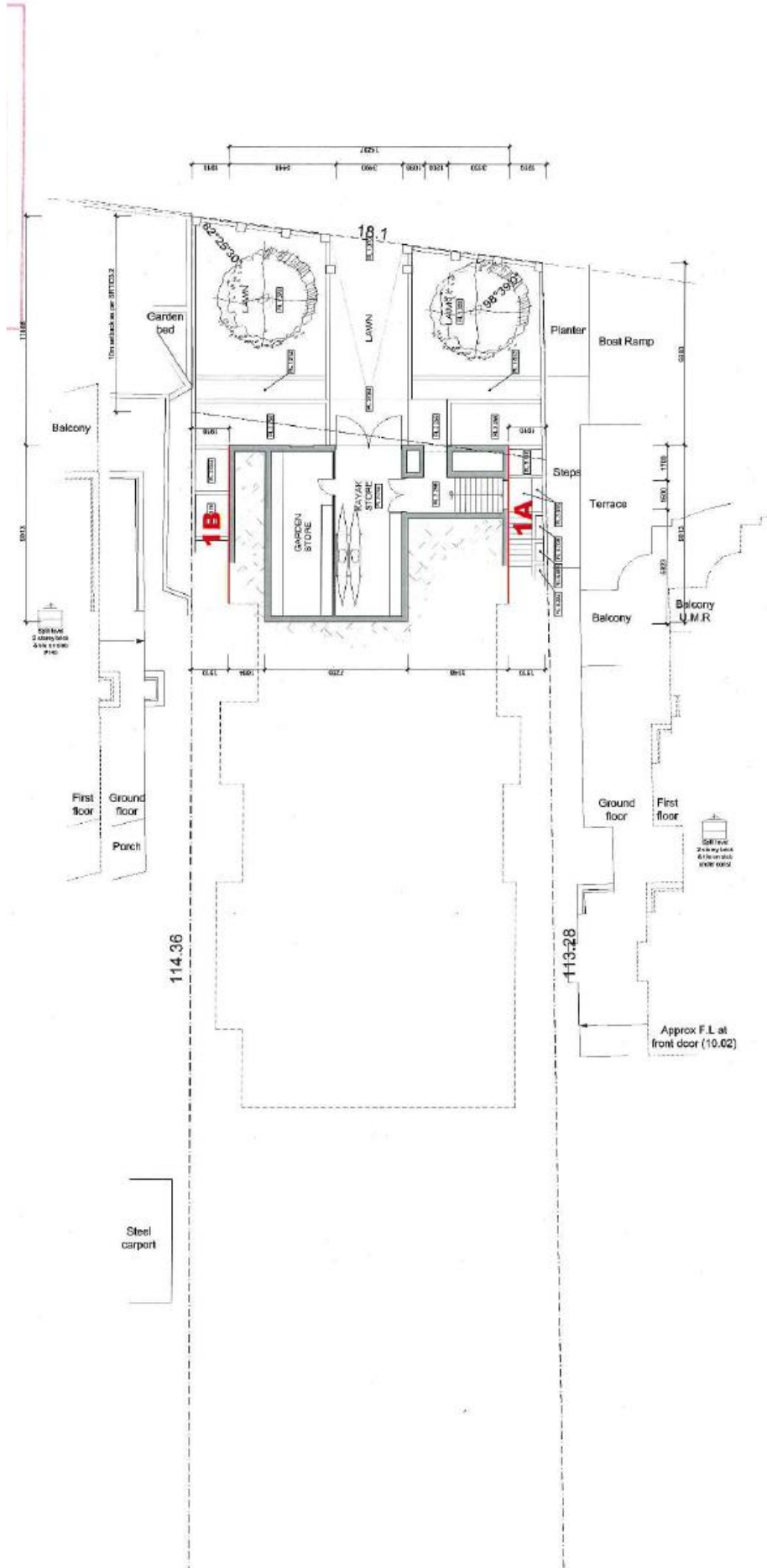
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DE CAMPO RESIDENCE



No. 138 Victoria Av, Dalkeith



138 VICTORIA AVENUE, DALKEITH
DE CAMPO RESIDENCE

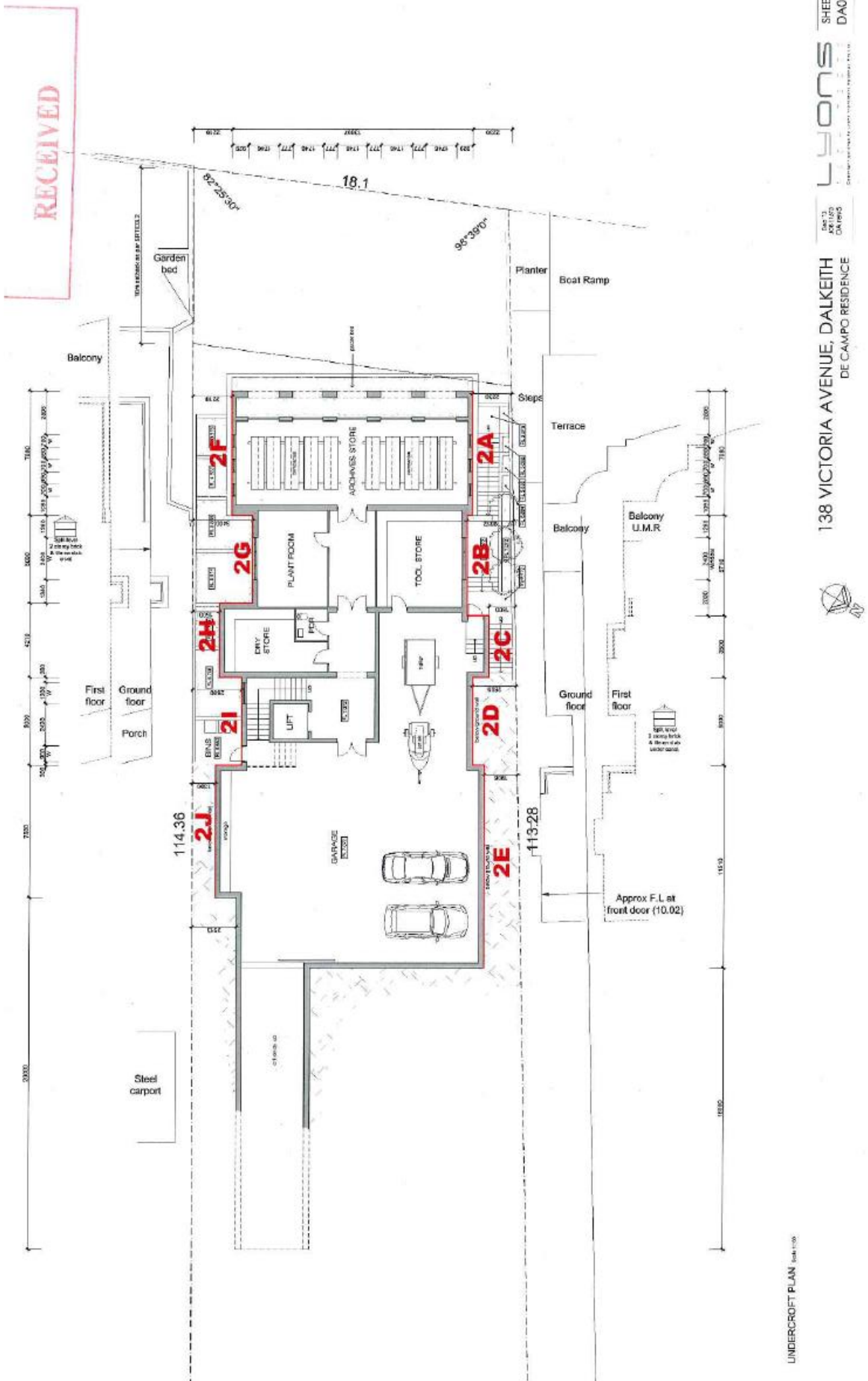
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GARDEN STORE/KAYAK STORE PLAN 6/24/20

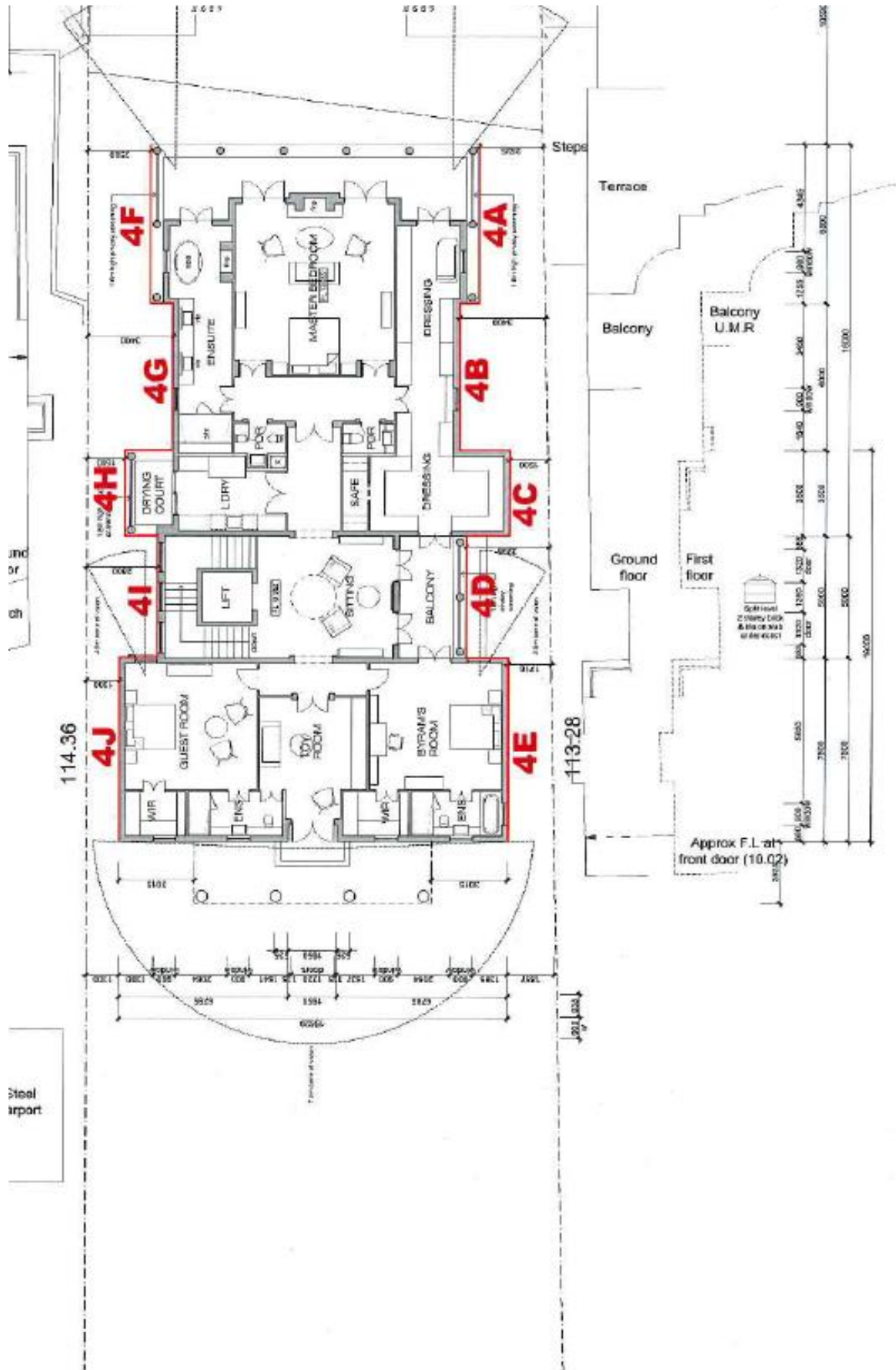
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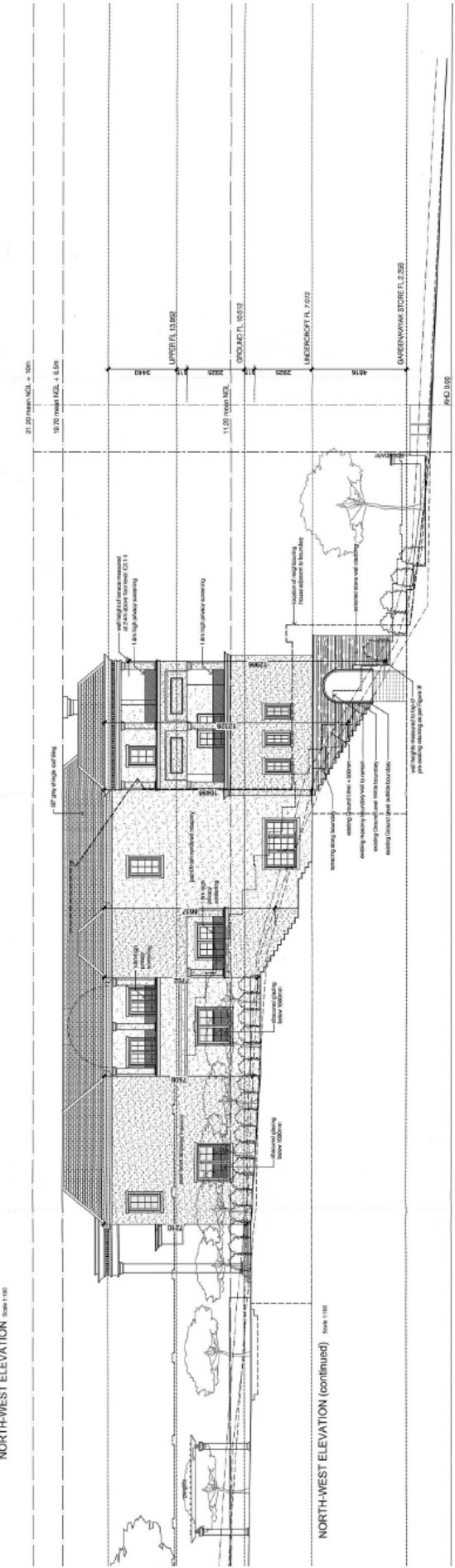
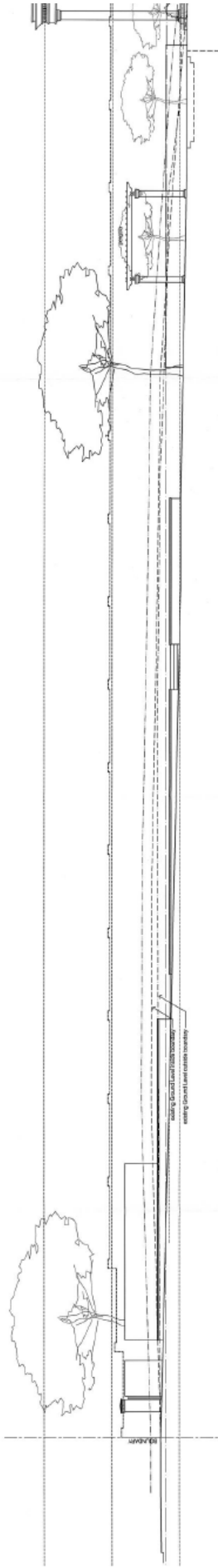
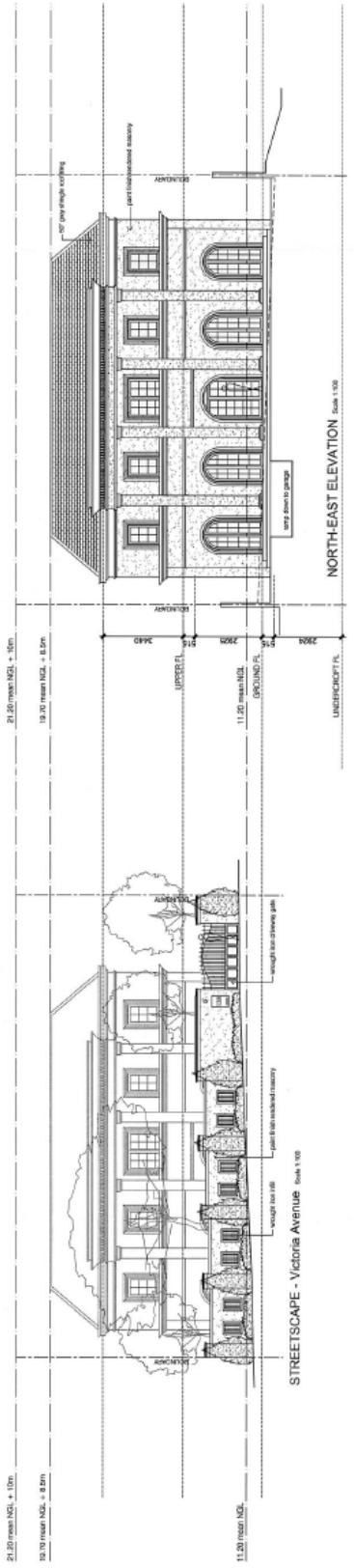
PD16.14 - Attachment 1 - Plans

No. 138 Victoria Av, Dalkeith



No. 138 Victoria Av, Dalkeith

CITY OF NEELAND
13 DEC 2010
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No. 138 Victoria Av, Dalkeith



Neighbour (South) – Eastern Elevation



Site – Eastern Elevation

No. 138 Victoria Av, Dalkeith



Neighbour (North) – Eastern Elevation



Neighbours (East) – Western Elevation

No. 138 Victoria Av, Dalkeith



Neighbour (North) – Western Elevation

No. 138 Victoria Av, Dalkeith



Site – Western Elevation

No. 138 Victoria Av, Dalkeith



Neighbour (South) – Western Elevation

PD17.14	Lease of Building at 25 Strickland St, Mt Claremont – Annie’s Playschool
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Committee	13 May 2014
Council	27 May 2014
Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rebecca Boley – Property Management Officer
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	SharePoint - Contracts and Property eDMS
Previous Item	Item D26.11, 22 March 2011 Item D86.10, 23 November 2010 Item D30.06, 25 April 2006 Item D90.05, 13 December 2005 Notice of Motion - Item 15.5, 14 December 2004

1.0 Executive Summary

The current lessee / operator of Annie’s playschool located at the former infant health clinic at 25 Strickland St, Mt Claremont (being a City freehold property) has approached the City proposing to assign her lease interest to a third party and at the same time to increase the term of lease. This report is brought to Council seeking its endorsement of the agreement facilitating the assignment of lease interest.

1.1 Recommendation to Committee

Council

1. Approves the City executing the Surrender of Lease; and
2. Approves the City entering into an agreement to Lease on the terms contained in the Deed of Lease.

1.2 Strategic Community Plan

KFA: Governance and Civic Leadership

This item now presented for Council consideration relates to the aforementioned Key Focus Area in the City’s Strategic Community Plan in so far as the matter requires high quality decision making by Council as to appropriate terms of a user agreement with a third party in exclusive use of City freehold property. The report further considers aspects of the agreement to ensure appropriate and strategic management of City property including associated financial considerations.

2.0 Background

The property at 25 Strickland St, Mt Claremont is owned by the City of Nedlands in freehold. The property is 1012m² in size and contains a former infant health clinic of approximate size 60m². The site also contains a playground which is accessible to the general public. The City currently leases the building only to Anne Louise O'Hara (Louise O'Hara).

Louise O'Hara has leased the premises since February 2005. Her lease commenced upon her successful application to the City to transform the former infant health clinic into an occasional childcare centre, now known as Annie's Playschool. Currently Annie's playschool is approved for a maximum of 13 children at any one session and operating hours of Tuesday – Friday 9am – 12noon.

The current lease agreement commenced on 1 January 2011 for a term of 2 years with a further term of 2 years. The lease expires on 31 December 2014. The rate of rent in each year of the 4 year Lease has been \$10,000 per annum + GST.

In early 2013 Louise approached the City requesting an extension to her lease term in order to provide her clients with certainty as to future services. Later in 2013 Louise contacted the City with proposal to assign her lease interest in the property to a third party, not the present proposed assignee. This matter was considered by the City's Executive and associated decision to further negotiations supported by a report to Council detailing the proposal. Later in 2013 this party's interest in an assignment of lease ceased. Subsequently Louise approached the City with proposal to extend the term of her current lease and potentially assign interest to a third party, being the current – Cherie Lewis.

Negotiations have continued with both Louise as current lessee and Cherie as proposed future lessee.

A market valuation has been completed, following the receipt of quotes from 3 professionals and ultimately engaging Burgess Rawson to provide the relevant advice on market rental for the premises. Burgess Rawson's report is contained in **Attachment 1**. The proposed market rental is \$11,000. Burgess Rawson highlight limitations of the site leading to lower market rental than some other childcare centres, specifically that the playground is for public use and not exclusive use of lessee; premises are dated although tidy (eg. There is no air conditioning which limits periods of comfortable use by occupants); the size of the premises limits commercial profitability/ viability of the business.

The Administration has also commenced advertising of the proposed lease arrangement now discussed. At the time of reporting the period for submissions to be received by the City had not closed, so Council will be provided with an update on this in a subsequent memorandum before its meeting.

2.1 Key Relevant Previous Council Decisions

- Item D26.11, 22 March 2011: Council resolved to approve a Deed of Variation of Lease in relation to a Development Approval (increasing operating hours and maximum number of children at the centre at any one time)
- Item D86.10, 23 November 2010: Council resolved a two year lease to Ann Louise O'Hara with the option of a further two year term subject to the City's sole discretion;
- Item D30.06, 25 April 2006: Council resolved a nine month lease to Ann Louise O'Hara;
- Item D90.05, 13 December 2005: Council resolved to publicly advertise their intention to lease the property to Ann Louise O'Hara in order to adhere to Section 3.58 of the Local Government Act 1995; and
- Notice of Motion Item 15.5, 14 December 2004: Council resolved that Ann Louise O'Hara enter into an exclusive use lease of the building from February 2005

2.2 Legislation / Policy

S 3.58 of the Local Government Act 1995 applies to this matter in that it details the requirements of a local government authority when agreeing a lease of its property. Specifically S 3.58(3) requires that before a lease is agreed by Council it must first make public advertisement of the Lease, including specific details such as: name of the parties; amount of agreed rental; market value of lease rental (as determined by a valuation carried out not more than 6 months before the proposed disposition). This section further requires that advertisement invite submissions to be made over a period of not less than 2 weeks from the date of publication of advertisement. And any submissions received are to be considered and the decision and reasons minuted if considered by Council or a Committee.

3.0 Consultation Process

3.1 What consultation process was undertaken?

There has been numerous communication (via both email and telephone) with both the current lessee and proposed future lessee regarding process and terms of the arrangement.

There has also been consultation with licensed valuers to understand the report provided as well as the rental market for this type of premises.

There has also been consultation with McLeods Barristers & Solicitors on necessary process as well as drafting of the Deed of Lease and Surrender of Lease.

At the time of reporting there was also being undertaken a process of public advertisement in a local newspaper of proposed Lease inviting public submission, of

which any submission received in the correct form will be summarised for Council consideration prior to its meeting.

A CEO Update was also provided to Councillors and the Executive noting the commencement of the public advertising of the proposed Lease prior to Council receiving this report.

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

4.0 Budget / Financial Implications

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

The City stands to reap a reviewed market rental for this freehold property in its current form, as provided in a report by Burgess Rawson. A term of the lease agreement includes annual CPI reviews which will ensure market forces are accounted for to a higher degree in determining the market rental of the property. There will also be a market review at the end of the initial term which will ensure any necessary corrections associated with the market are made at this time.

The terms of the lease provide for the future lessee to be responsible for all legal fees incurred in drafting the lease agreement and the licensed valuer's costs in providing advice on the market rental. If this Lease is not endorsed by Council the City will be required to bear these costs. However these reports and documents are could be used in another future lease of this property past expiry of the current lease, at the end of the year.

5.0 Risk management

Any risks associated with this proposal are incorporated in to the terms of the Surrender of Lease and Deed of Lease. In particular please note provisions relating to indemnity, insurance, maintenance and repair, development approval and rent review.

Administration has ensured the requisite process has been followed in agreeing a lease of local government property in order to comply with legislative requirements.

6.0 Discussion

Please note that although the proposed arrangement is referred to as an assignment of lease the supporting documentation is a Surrender of Lease (**in Attachment 2**) and Deed of Lease (**in Attachment 3**). On discussion with McLeods it was noted that a Surrender of Lease and a Deed of Lease would be a more efficient mechanism to record the terms of the future lease with a new lessee. The alternative documentation would have been a Deed of Variation to extend the term as requested by the current lessee and an Assignment of Lease to the new lessee.

The terms of the attached Deeds reflects the current lessees long association with the premises, granting her an extension to lease term to provide her clients with surety as well as to approve the assignment of her lease interest to a third party whom Louise has identified as being appropriate for the service that is Annie's Playschool. Both Louise and Cherie have noted that they intend to work collaboratively to ensure smooth transition for their clients.

6.1 Introduction

For the reasons noted in the discussion Administration now presents the Surrender of Lease and Deed of Lease for premises at 25 Strickland St, Mt Claremont for Council's consideration and resolution.

6.2 Consultation

The proposed future lessee agrees with the proposed rental as provided by Burgess Rawson's advice. The current lessee has been forwarded the Surrender of Lease. The proposed future lessee has been forwarded the draft Deed of Lease.

Any submissions received by the City in the correct form resulting from the public advertisement of the proposed lease previously mentioned will be provided in summary to Council ahead of its meeting to consider this item.

6.3 Conclusion

The proposed assignment of the current lessee's lease interest to a third party with an extended term enables the City to ensure appropriate management of its assets, with terms of lease which ensure appropriate risk management. The noted process for achieving this ensures the City acts in accordance with legislative requirements.

7.0 Attachments

1. Report on Valuation of Market Rental by Burgess Rawson
2. Surrender of Lease
3. Deed of Lease

City Of Nedlands

- 4 APR 2014

Received
Records Services

VALUATION REPORT

Part of 25 (Lot 254), Strickland Street
Mount Claremont, Western Australia



Prepared For:



City of Nedlands

19 March 2014



Liability limited by
a scheme approved
under Professional
Standards
Legislation

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Appendices

1	Certificate of Title
2	Asbestos Register
3	Letter of Instruction

Executive Summary

Instructing Party	City of Nedlands						
Property Address	Part of 25 (Lot 254), Strickland Street, Mount Claremont, Western Australia						
Certificate of Title	Volume 593 Folio 87; Lot 254; Plan 3321						
Registered Owner	'City of Nedlands'						
Encumbrances	The encumbrances are provided within the body of the report. None of these are considered to affect the firm's valuation amount.						
Approximate Building Area	60 square metres						
Land Area	1,012 square metres (parent site)						
Zoning	'R10 (additional use Day Care Centre)' – City of Nedlands, under Town Planning Scheme No. 3, gazetted 20 May 2005.						
Description of Property 'As Is'	Older style circa 1960's constructed salmon brick and tile building which was formerly operated as an infant health centre and currently has Local Government approval to operate as an occasional childcare facility with a maximum of 13 children at any one time. The building is located at the rear of the parent site, owned by the City of Nedlands and there is a public playground and small parklands provided to the approximate front two thirds of the site (not part of subject premises and lease). The property is located on the northern boundary of a small to medium sized set of older style, yet of reasonable condition, strip shops and upper level apartments. The property is located within the well regarded suburb of Mount Claremont. There is nil parking provided onsite, however, public parking is provided to the front of the site and also to the front of the strip shops.						
Leasing Comments	The subject premises are currently subject to a 1 year + 2 year, with the original term commencing 1 January 2011 and the two year option being extended 1 January 2013. We have been advised that the Lessee will assign their interest to a new Lessee, with the proposed commencement date of 1 July 2014 and a new Lease will be executed on a five year term plus an option of two years. The current Lease limits operation to 9.00am to midday on Tuesday, Wednesday, Thursday and Friday for a maximum of 13 children aged between three and four years old. We have been advised that the new Lease will allow operation to five days per week for extended hours over the current three hour limit. We point out that the lease relates to the building only and the Lessee does not have exclusive use of the playground equipment which is for public use.						
Interest Valued	An estate in fee simple subject to the encumbrances noted within section 2.3						
Analysis	<table border="1"> <tr> <td>Estimated Market Net Income (per annum)</td> <td>\$11,000</td> </tr> <tr> <td>Estimated Market Net Income (per licensed child)</td> <td>\$846</td> </tr> <tr> <td>Estimated Market Net Income (per square metre)</td> <td>\$183</td> </tr> </table>	Estimated Market Net Income (per annum)	\$11,000	Estimated Market Net Income (per licensed child)	\$846	Estimated Market Net Income (per square metre)	\$183
Estimated Market Net Income (per annum)	\$11,000						
Estimated Market Net Income (per licensed child)	\$846						
Estimated Market Net Income (per square metre)	\$183						
Critical Assumptions, Conditions and Limitations	<ol style="list-style-type: none"> We have determined the market rental value of the subject premises utilising the Direct Comparison method. Given that the subject property has a licence for 13 children, we have had primary reliance on rental evidence of childcare facilities which have a similar licence per number of children in place and have completed our rental analysis on the basis of a rate per square metre of the building area and a rate per number of licensed children. 						

Executive Summary

Valuation Certificate

Date of Valuation	19 March 2014
Date of Inspection	19 March 2014
Date of Report Issue	1 April 2014

"This valuation is current at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period of time (including as a result of general market movements or factors specific to the particular property). Liability for losses arising from such subsequent changes in value is excluded as is liability where the valuation is relied upon after the date of the valuation".

Rental Market Value	ELEVEN THOUSAND DOLLARS PER ANNUM SUBJECT TO: UNENCUMBERED FREEHOLD TITLE, EXISTING LEASE AGREEMENT, THE ASSUMPTIONS AS CONTAINED WITHIN THE BODY OF THE REPORT AND EXCLUSIVE OF GST.	(\$11,000 PA)
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Signatories	Tim Hammond Associate of Australian Property Institute Certified Practising Valuer Licensed Valuer No. 44608 in WA	Steve Kish Burgess Rawson (WA) Pty Ltd
Disclaimers	<p>No Liability To Other Parties We state that this valuation report is addressed to the instructing parties for rental valuation purposes and is only for their use, and for no other purpose, and we disclaim responsibility and liability to any other party who might use or rely on the whole or any part of this report. Any such use by other parties is expressly forbidden. Neither the whole nor part of this report shall be printed or published in any circular, document or publication without first obtaining our approval of the form and context in which it is to appear.</p> <p>Market Movement Clause This valuation is current as at the date of valuation only. The value assessed herein may change significantly unexpectedly over a relatively short period (including as a result of general market movements or factors specific to the particular property). We do not accept liability for losses arising from such subsequent changes in value.</p> <p>Without limiting the generality of the above comment, we do not assume any responsibility or accept any liability where this valuation is relied upon after the expiration of 3 months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.</p> <p>Burgess Rawson (WA) Pty Ltd cannot extend liability, reissue or confirm the initial valuation after a period of three months from the date of valuation, without undertaking a reinspection of the property and further investigation and analysis.</p> <p>Lenders Endorsement (not applicable to Banks) This valuation is prepared on the assumption that the Lender as referred to in the valuation report (and no other) may rely on the valuation for mortgage finance purposes and the lender has complied with its own lending guidelines as well as prudent finance industry lending practices, and has considered all prudent aspects of credit risk for any potential borrower, including the borrower's ability to service and repay any mortgage loan. Further, the valuation is prepared on the assumption that the lender is providing mortgage financing at a conservative and prudent loan to value ratio. This clause (Prudent Lenders Clause) only applies if the lender is not a lender regulated by the Banking Act of 1959.</p> <p>This valuation is not to be relied upon for second mortgage purposes without the permission of Burgess Rawson (WA) Pty Ltd.</p> <p>All data provided in this summary is wholly reliant on and must be read in conjunction with the information provided in the attached report. It is a synopsis only designed to provide a brief overview and must not be acted on in isolation.</p> <p>This valuation summary forms a part of and should not be used or read independently from the completed report. Particular attention is drawn to qualifications and disclaimers included in this report.</p>	

1. Introduction

1.1 Under Instructions From

Client: City of Nedlands
Address: 71 Stirling Highway, Nedlands WA 6009
Attention: Ms Rebecca Boley – Property Management Officer
Fax / Email: 08 9273 3670 / rboleyn@nedlands.wa.gov.au
Purpose: To assess the market value of the subject property for rental valuation purposes
Interest Valued: An estate in fee simple subject to the encumbrances noted within section 2.3
Pecuniary Interest: To the best of our knowledge, we do not believe that Burgess Rawson (WA) Pty Ltd and the individual Valuers involved in the preparation of this valuation have pecuniary interests in the subject property that would conflict with the valuation of the property.

1.2 Basis of Valuation

Burgess Rawson confirms the basis of valuation adopted is in accordance with Australian Property Institute guidelines, and we have inspected the property and considered all relevant information available.

1.3 Market Valuation

Market Value as defined by the International Valuation Standards Committee and as adopted by the Australian Property Institute, is as follows:

'Market Value is the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.'

Market Rental Value as defined by the International Valuation Standards Committee, and as adopted by the Australian Property Institute, is as follows:-

'The estimated amount for which an asset should rent, as at the relevant date, between a willing Lessor and a willing Lessee in an arms length transaction, where in the parties have acted knowledgeably, prudently and without compulsion, and having regard to the usual terms and conditions for leases of similar assets'

It should also be noted this assessment of value is based on the facts and evidence as they existed as at the date of valuation and no warranty can be given to the maintenance of this value into the future.

1.4 Definitions

'As If Complete' valuation means a valuation that assumes the proposed development to be in a completed state as at the date of valuation and reflects current market conditions at the date of valuation.

'As Is' valuation means a valuation that provides the current market value of the property as it currently exists rather than the value of the proposed development.

'Proposed Development' means any planned development or redevelopment of a property, including building improvements or modifications, which are proposed, approved or under construction on the property (but does not include a planned development or redevelopment of a single dwelling residential property for residential use) where the value of the proposed or planned development is estimated to be \$50,000 or more when complete.

2. Legal Details (Parent Site)

2.1 Title Details

The land is described as being an estate in fee simple, and being Lot 254 on Plan 3321, and being the whole of the land described by Certificate of Title Volume 593 Folio 87.

2.2 Registered Proprietor

A search of the title by Burgess Rawson (WA) Pty Ltd indicates 'City of Nedlands' is the registered proprietor of an estate in fee simple, registered 30 October 1944.

2.3 Easements and Encumbrances

Nil.

We have conducted a title search. We have assumed that there are no further easements or encumbrances not disclosed by this brief title search which may affect market value. However, in the event that a comprehensive title search is undertaken which reveals further easements or encumbrances, we should be consulted to reassess any affect on the value stated herein.

3. Planning

Burgess Rawson are verbally advised the land is zoned 'R10 (additional use Day Care Centre)' by the City of Nedlands, under Town Planning Scheme No. 3, gazetted 20 May 2005.

We have been advised by the City of Nedlands that the subject premises have a current local Government approval to operate as an occasional childcare premises with a maximum of 13 children.

Under the Metropolitan Region Scheme the land is zoned 'urban'.

Discussions with the Local Authority indicate there are no current resumption or acquisition requirements for the site.

Our valuation is on the assumption there are no requirements, and if this proves to be otherwise, our valuation assumes the owners will be fully compensated by the relevant Authority.

4. Situation and Services

4.1 Situation, Access and Surrounding Development

- The subject property is located within the well regarded suburb of Mount Claremont which is situated approximately 9 kilometres west of the Perth Central Business District. More specifically the subject premises occupy the rear portion of a lot which is situated on the western side of Strickland Street, two lots north of Asquith Street and we note the subject lot also has rear access from Olearia Lane. The parent lot is owned by the City of Nedlands and the front section has been improved with small parklands and playground equipment and is available for public use.
- Mount Claremont is an older well established and well regarded residential suburb developed in the early twentieth century and the surrounding development comprises a mixture of older style character homes and some newer more modern high quality residences.
- Mount Claremont is generally regarded as a high social economic demographic locality and had a median house price of \$1,305,000 as at 30 September 2013.
- The 'Mount Claremont Village' which comprises an 'L' shaped strip shops with some upper level apartments is located on the southern boundary of the subject property and includes patisserie, hair salon, pharmacy, cafe, newsagents and post office.
- Strickland Street connects to Alfred Road in a southerly direction and Rochdale Road in a northerly direction. These are fairly major roads for the locality and in turn connect to major roads including West Coast Highway, Stubbs Terrace and Underwood Avenue, providing direct access to the major road network in the western suburbs and northern coastal corridor.

4.2 Services

All normal services are available.

4.3 Location Map

SUBJECT



Aerial Photograph



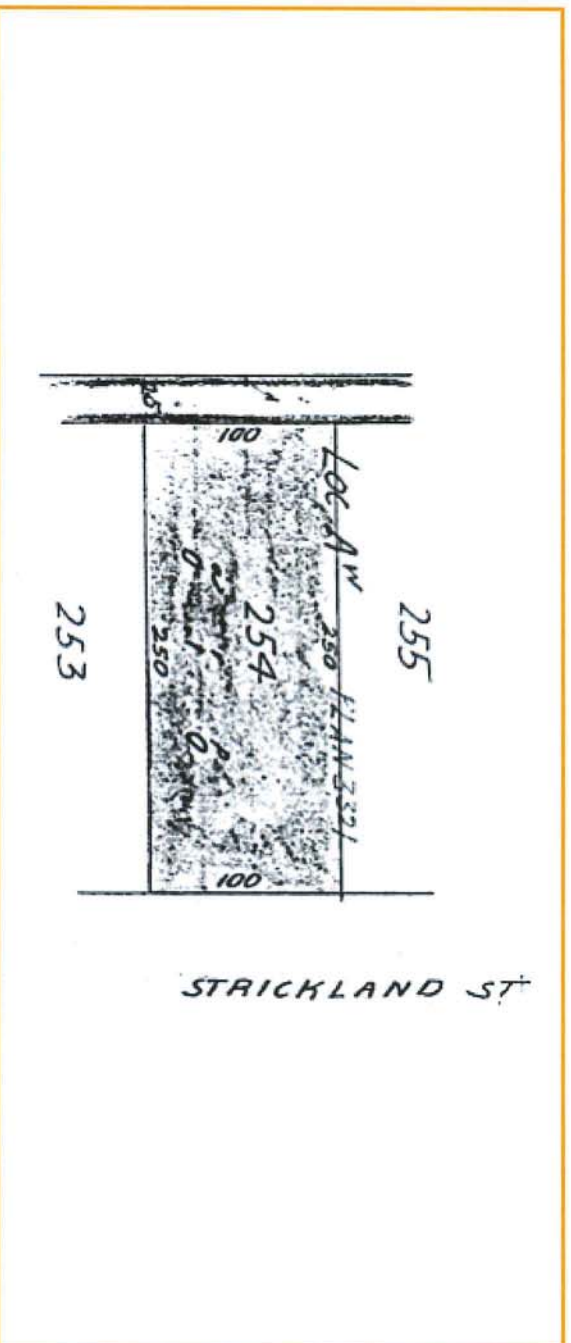
5. Site Details (Parent Site)

5.1 Dimensions

- | | |
|----------|-----------------------|
| Frontage | • 20.12 metres |
| Depth | • 50.29 metres |
| Area | • 1,012 square metres |

5.2 Topography

- Regular shape
- Slight crossfall north to south over the rear portion of the site
- Site situated level with the road grade



5.3 Environmental

As a result of the proclamation of the Contaminated Sites Act 2003 effective 1 December 2006, a Public Register is now kept in Western Australia with all sites known or suspected of contamination including asbestos classified under the Act as one of the following categories:- Report not substantiated; Possibly contaminated – investigation required; Not contaminated – unrestricted use; Contaminated – restricted use; Contaminated – remediation required; Remediated for restricted use; Decontaminated. As part of our procedures for assessing the value of the property, a search of the Register (Contaminated Sites Database) by computer web-page has been undertaken which disclosed the land is not classified. If the record in the Public Register proves inaccurate, we do not accept any responsibility or liability whatsoever for this inaccuracy. As a result of our inspection and our search of the Public Register, no obvious environmental issues were identified.

We have been advised by the City of Nedlands that the subject premises is listed on the City of Nedlands Asbestos Register (refer appended) with asbestos present in the ceiling panels, switchboard box and eave panels. We have been advised that the asbestos in the eaves and ceiling panels have been removed, yet remain within the switchboard box. The City of Nedlands has advised that arrangements are currently being undertaken to remove the remaining asbestos from the switchboard box.

However, no soil tests or environmental studies or reports have been released to the Valuer. Accordingly, this valuation is made on the assumption there are no environmental problems including flooding in any way affecting the property, including but not limited to surface or below ground conditions, toxins or hazardous wastes or building materials.

Our visual inspections of the subject property and immediately surrounding properties revealed no obvious signs of site contamination. We have made no allowance in our valuation for site remediation works that may be required if the site is confirmed to be contamination. However, it is important to point out that our visual inspection is an inconclusive indicator of the actual condition of the site.

Site Details Cont'd

Site Summary & Title Details

A current survey has not been provided. This valuation is made on the basis that there are no encroachments by or upon the property and this should be confirmed by obtaining a current survey report and / or advice from a registered surveyor. If any encroachments are noted by the survey report, we should be consulted to reassess any affect on the value stated herein.

Heritage & Native Title

Enquiries to the Heritage Council of WA, National Trust and the Local Authority indicate the subject property is not listed or considered to have any historical significance.

For the purpose of this valuation, we have assumed the property is not subject to any Native title claims. A search of claims lodged under the Native Title legislation has not been undertaken.

We have assumed that the property being freehold is not subject to any Native Title Claims. A search of claims lodged with the Native Title Legislation has not been undertaken.

6. Improvements

6.1 Description of Improvements

Older style circa 1960's constructed salmon brick and tile building which was formerly operated as an infant health centre and currently has local Government approval to operate as an occasional childcare facility with a maximum of 13 children at any one time.

6.2 Photos



Internal



Amenities



Rear Entrance

Improvements Cont'd

6.3 Construction and Finishes

Construction details are as follows:-

External		Internal	
Foundations	- Limestone and concrete	Internal walls	- Painted brick
External Walls	- Brick	Ceilings	- Plasterboard
Roof	- Tile	Floor Coverings	- Laminated, timber and tiles
Floor Type	- Timber	Window Coverings	- Curtains
Windows	- Timber	Lighting	- Fluorescent tube
Lighting	- Provided	Other Internal Improvements	- Small kitchenette and amenities
Features	-		
External Improvements	- Concrete disabled access ramp to entrance		

6.4 Accommodation

The improvements comprise an older style circa 1960's constructed salmon brick and tile stand-alone building. Internally, the building provides an open area which is semi divided into two sections, small kitchenette and two sets of amenities. Internally, the building presents to a dated, yet functional standard for its current use.

As previously mentioned, the building is located at the rear of a lot which is owned by the City of Nedlands with the front section being improved with some grassed area and playground equipment and this area is for public use. The Lease provides for exclusive use of the building only and not the playground equipment. There is nil car parking provided onsite, however, street parking is provided to the front of the site and to the front of the adjoining retail shops.

6.5 Approximate Areas of Accommodation

Subject Building 60 square metres

Structural Condition

We have not sighted or requested a Structural Report on the property nor have we inspected unexposed or inaccessible portions of the improvements, therefore we are unable to comment on the presence of any defect, rot, subsidence, infestation or building defects. We have however viewed the general state of repair of the property and advise that during our inspection we did not notice obvious areas requiring major repair or maintenance. This valuation assumes that:-

A detailed report of the structure and service installations of the buildings would not reveal any defects requiring significant expenditure.

The building complies with all relevant statutory requirements in respect to matters such as health, building, and fire safety regulations and has been built in accordance with the provisions of the Building Code of Australia and the local authorities provisions.

All improvements and buildings existing on the land have all necessary development approvals from the relevant local, state and national governing bodies.

We state that this is a valuation report, and not a Structural Survey.

Plant & Equipment

For the purpose of this valuation, we have included those items that form part of the building service installations and would normally pass with the sale of the property, and excluded furniture and other movable items which were installed or are used wholly or primarily in connection with an occupier's business.

7. Tenancy and Financial Details

7.1 Leases

The lease details are as follows:

Lessee:	Ann Louise O'Hara
Lessor:	City of Nedlands
Lease Area:	60 square metres (approximately)
Use:	Occasional childcare centre for 3-4 year olds
Date Executed / Stamped:	29 March 2011
Term and Further Term:	1 + 2 years
Commencement Date:	1 January 2011
Commencing Rental:	\$10,000 pa
Current Rental:	\$10,000 pa
Rent Reviews:	N/A
Retail Tenancy Act:	Does not apply
Outgoings:	Recovered from Lessee
Basis:	Net
GST:	Recovered
Special Conditions & Other:	<ol style="list-style-type: none"> 1. The use of the subject premises is limited to an early childhood centre 2. The hours and days of operation of the childcare centre are limited to Tuesday, 9.00am to midday; Wednesday 9.00am to midday; Thursday 9.00am to midday; Friday 9.00am to midday. 3. The day care centre must only operate with a maximum of 13 children at any given time and must age between 3 and 4 years old

8. Market Commentary

8.1 Local Market

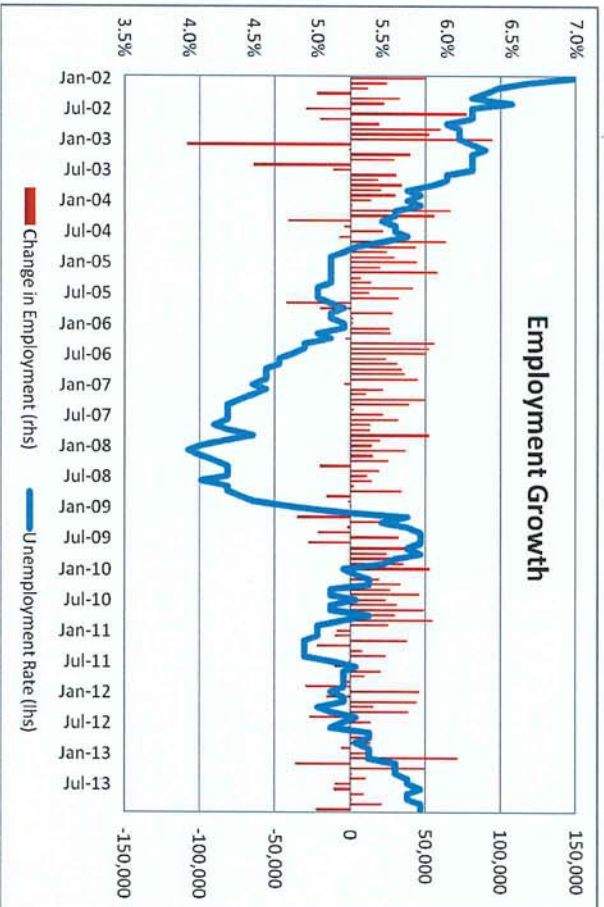
Consideration has been given to:-

- a) Property transactions in the area and enquiries directed to active real estate agents.
- b) Current demand for similar properties compared to properties for sale.
- c) General economic conditions, including current interest rates effecting market trends.

Market Commentary Cont'd

8.2 Market Overview

General Market Activity – December Quarter 2013



Employment Information relating to the end of December 2013 quarter:

The unemployment rate remained steady at 5.8% as of December 2013. This is the same level of unemployment since the height of the GFC

People employed decrease in December 2013 by 22,600 to 11,629,500. Full-time employment decreased (31,600) and part-time employment increased (9,000)

Participation rate fell to 64.6%

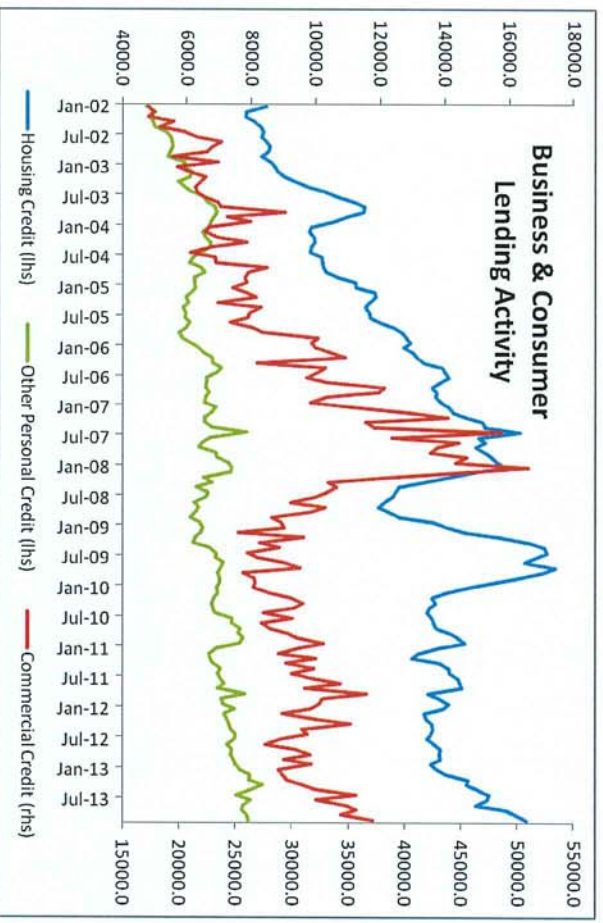
Aggregate monthly hours worked increased by 0.6 million hours to 1,634.0 million hours

Financial lending activity information relating up to the month of November 2013:

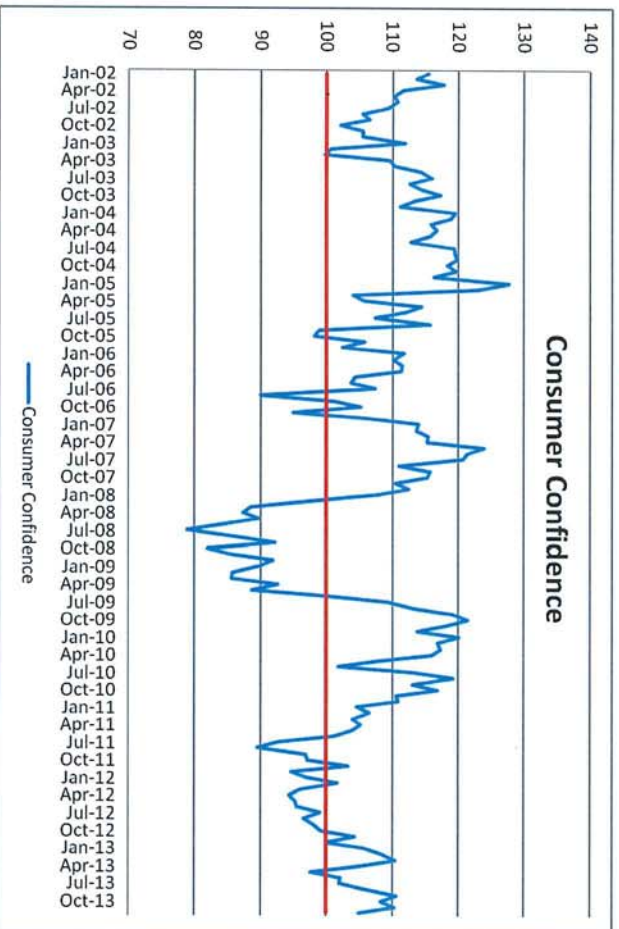
Owner occupied housing commitments and alterations increased 1.9% over November 2013 however is up 20.09% since the beginning of the year reflecting the increase in residential real estate demand.

Total personal financial commitments increased 0.6%. Revolving credit commitments decreased 0.1% and fixed lending commitments increased 1.2%

Total commercial financial commitments increased 8.3% in November 2013, with an increase in fixed lending commitments of 9.4% and an increase in revolving credit commitments of 4.8%. Since the beginning of the year total financial commitments rose 28.9% however activity has been volatile.



Market Commentary Cont'd



Consumer confidence information relating to the quarter of December 2013



Australian consumer confidence decreased to 105 points from September 2013 to December 2013, being a decrease of 5.6 points.



Overall indication reflects positive sentiment especially given renewed focus on improved real estate growth/high price values



The Reserve Bank of Australia has decreased interest rates over the past 18 months. Interest rates have decreased to 2.5% fuelling further asset gains.

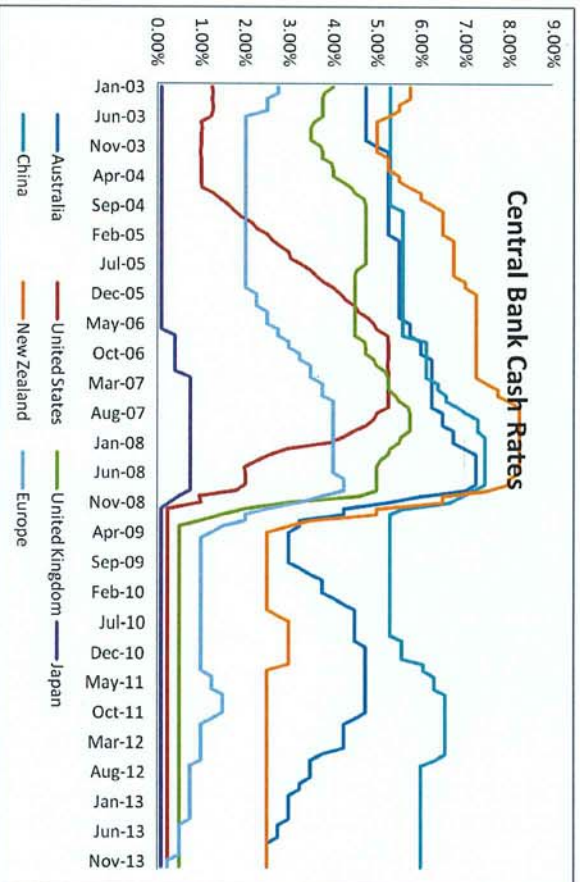
International cash rate information relating to the quarter of December 2013



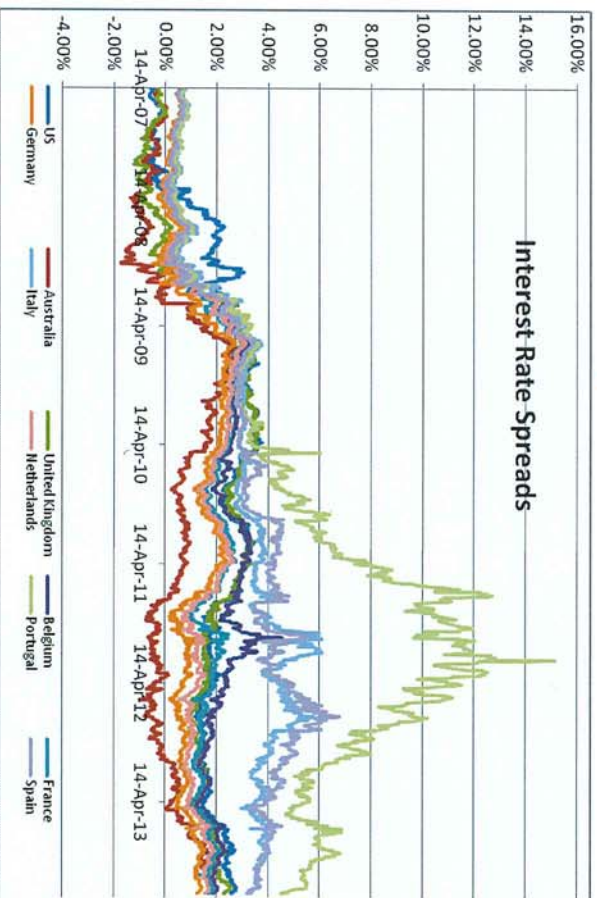
The Reserve Bank of Australia remained steady at 2.5%. Markets originally were pricing in a further 0.25% decrease as of November 2013 given the persistently high \$AUD and lethargic retail economic performance however the \$AUD has started to fall and consumer confidence is high leading to rates being held steady.



Globally sentiment is improving with strong economic countries such as US and Germany showing signs of improved economic data. Secondary countries throughout Europe are showing signs of stabilising their government though political instability is still occurring.



Market Commentary Cont'd



10 Year Treasury Yields up to the end of December 2013:



The most interesting movements in the quarter come from the main 'risk-free' bond markets such as the US, Australia, Germany etc slowly merging and rising to reflect effectively similar returns for Government 10 Year Debt. The inevitable tapering of the US' bond purchasing program has seen a slow exit out of the 'risk-free' bond market into riskier bonds/ shares



Spain, Portugal and Italy providing riskier yet more stable governments have seen their bond yields lower to more 'normalised levels' as more investors seek higher yielding/ higher risk returns. We consider this trend will continue.



Australia's 10 Year Yield versus the current RBA cash rate has continued to return positive real returns ever since the December 2012 interest rate cut and subsequent further cuts. We were considered one of the 'safest' returning yields in the world however are now back amongst the pack.

9. Valuation Methodology

9.1 Direct Comparison Method

Direct comparison of similar properties leased

Burgess Rawson have considered rental evidence of childcare centres throughout the Perth metropolitan area taking into account the number of licensed children permitted, location size and condition of improvements. When analysing the rental evidence we have determined a rate per number of licensed children.

Sales we have considered the most relevant are summarised in the following table.

Property	Tenant	No. of Licensed Children	Rent (\$/child)		Date Rents Set	Term	Rent Reviews
			S/child	\$/pa net			
Lot 7, 734 Karmynup Road, Balcatta	Stirling Child Care Centre	70	\$1,333	\$93,311	Jan 10	15 + 2 x 5 Yrs	CPI/Market 2017
Comments	A circa 1997 constructed, 376 square metre concrete tilt panel and iron roof childcare centre with a yard of 927 square metres totalling 1,303 square metres, situated within the Stirling Lakes Medical Centre. Currently leased for \$93,311 pa net as at 31 December 2009. Rent review was due 12 May 2010. Initial term of 10 years, which has been extended to 15 years plus two 5 year options, commencing in May 2006. Reviews are annually to CPI and to market in 2017 and commencement of the second option period. Dated rental evidence and has not been reviewed to market since commencement in 2006 (pre GFC). Rental reflects \$248 per square metre of building area.						
357 Benara Road, Noranda	Benara Road Early Learning Centre	39	\$1,100	\$42,900	Jan 12	15 Yrs	Not Disclosed
Comments	A 39 licensed children, purpose built child care centre situated on a 1,527 square metre lot. As at approximately January 2012 rental was \$42,900 per annum equating to \$1,100 per licensed child. Business sold for \$315,000 settling on 16 January 2012 with stated net profit of \$100,000. Our enquiries to the agent have indicated it was a forced sale due to illness with TLC required. Originally listed on 1 August 2011 with turnover of \$8,500 per week and a lease term of 15 years						
28-30 Garfield Drive, Australind	Garfields Child Care Centre	48	\$1,006	\$48,300	Mar 12	17 Yrs	Not Disclosed
Comments	A 48 licensed children, purpose built child care centre run under management. As at approximately March 2012 rental was \$48,300 per annum equating to \$1,000 per licensed child. Business sold for \$530,000 settling on 16 March 2012 with stated net profit of \$150,000. Our enquiries to the agent have indicated rent was low with room to expand. Originally listed on 25 August 2011 with turnover of \$10,440 per week and a lease term of 17 years.						
53 Wilcock Avenue, Balcatta	Gurnini Bears Child Care Centre	44	\$1,098	\$48,300	Apr 12	17 Yrs	Not Disclosed
Comments	A 44 licensed children, early purpose built child care centre situated on a 1,014 square metre lot. As at approximately April 2012 rental was \$48,300 per annum equating to \$1,098 per licensed child. Business sold for \$670,000 due to settle on 12 July 2012 with stated net profit of \$248,000. Originally listed on 10 October 2009 with turnover of \$12,500 per week and a lease term of 17 years.						
2 Esperance Avenue, Dawesville	Great Beginnings	97	\$1,303	\$126,401	Jun 13	10 Yrs + 5 Yrs	Not Disclosed
Comments	A 97 licensed children, early purpose built child care centre situated on a 2,714 square metre lot. As at approximately June 2013 rental was \$126,401.33 per annum equating to \$1,098 per licensed child. Improvements comprises 635.2 square metres of building area, 102.8 square metre verandah and 10 square metre entry with 28 car bays on site. Property fronts onto Old Coast Road in a high exposure location.						
1 Norring Road, Cooloongup	N/A	40	\$1,086	\$43,440	Apr 13	5 + 5 + 5 + 5 Yrs	CPI/Market at option
Comments	A circa 1985 constructed, brick and tile roof child care centre with 40 licensed children, situated on a 1,057 square metre corner lot opposite parkland. For sale in April 2012 asking \$535,000 with current rental of \$43,000 pa (\$1,075 per licensed child). Term is 5 + 5 + 5 + 5 years with Rent reviews to CPI and Market every 5 years. Outgoings payable by tenant.						
33 - 37 Foxton Boulevard, Wycombe	GoodStart Early Learning	64	\$1,629	\$104,247	Jul 13	10 + 5 + 5 Yrs	CPI/Market every 3 years
Comments	A purpose-built childcare centre constructed in 2002 and provides eight activity rooms, ablutions, kitchen, office, reception and various internal and external storage areas and externally provides two gated outdoor playground areas and a bitumen paved car parking area. Site area 1,731 square metres and building area is 441 square metres reflecting a rate per square metre of building area of \$237.						
92 Farrington Road, Leeming	Farrington Child Care Centre	52	\$1,752	\$91,058	Jul 12	Not Disclosed	Not Disclosed
Comments	A circa 1980's constructed, converted residence to child care centre for 52 licensed children, fronting a local through road. Passing rent at date of sale of business was reportedly \$91,058 per annum net.						
Challenge Stadium Stephensons Avenue, Mt Claremont	Challenge Childrens Centre	60	\$1,135	\$68,102	Oct 12	10 Yrs	Not Disclosed
Comments	A childcare operation for 60 licensed children within Challenge Stadium. Passing rent at date of sale of business was reportedly \$69,102 per annum net. We understand the lease has a remaining 10 year term including all options.						
6 Dugdale Road, Warwick	The Grove Child Care Centre	48	\$1,198	\$57,500	Dec 12	4 + 4 Yrs	Not Disclosed
Comments	An older style converted residence which was previously utilised as a kindergarten licensed for 48 children. Lease commenced on 1 September 2011 for a 4 year term with a 4 year option. Accordingly, the remaining lease term at the date of sale of the business was approximately 6 years and 9 months. The passing rent was reportedly \$57,500 per annum net.						

Valuation Methodology Cont'd

The childcare rental evidence summarised above is reflecting a range from \$1,006 per child per annum up to \$1,333 per child per annum. It is important to note these are commercial facilities which are operated for profit and these properties have exclusive use of the entire lot including the playground equipment.

We also note that the properties contained within the rental evidence do not have restriction on hours of operation and age of children that can be accommodated. The subject premises has a restriction on its hours and can only cater for children aged 3-4 years. This limits capacity of the Lessee to generate revenue which is regarded as a detriment and a discount in the rental will be reflected.

We also note that the properties within the rental evidence primarily comprise purpose built childcare centres constructed in the 1980's through to the 2000's and all of these properties are regarded as providing superior improvements.

Therefore, the subject property will reflect below the rental evidence range given:

- Dated improvements (albeit functional)
- Nil exclusive use of the playground equipment
- Current licence for 13 children as an occasional childcare centre
- Restriction to 3-4 year olds only

Therefore, we have adopted a rate of \$175 per square metre and a rate of \$900 per number of licensed children.

Our calculations are as follows.

Building Area	60 sqm @	\$175	psm	<u>\$10,500</u>
Licensed No. Children	13 @	\$900	each	<u>\$11,700</u>

Adopted Market Rental Per Annum \$11,000

9.2 Valuation Summary

Direct Comparison \$11,000

Adopted for Valuation Purposes \$11,000

10. Assumptions, Conditions & Limitations

General Limitations

Information provided by the managing agents, the client and consultants with respect to tenancy details, outgoing, building areas and any offer to lease, development costs, subdivision works, planning and lot yield is assumed to be to be true and correct, should this vary, we reserve the right to amend our valuation accordingly.

Plans, costings, specification and areas that have been provided by the client or consultants would appear to be supported by quantity surveyors journals. However, should these costings, plans, specifications and areas vary significantly from the final Building Licence, Development Approvals and completed project, we reserve the right to reassess our valuation figure.

Any areas mentioned in this report are approximate only and should not be relied upon for any other purpose other than this valuation. If utilised for any other purpose than this valuation, the areas should be verified by a licensed surveyor.

Our valuation is on the assumption that if there is a requirement to resume or acquire the land buy a relevant authority, the owners will be fully compensated.

Valuation Methodology

The valuation methodology used by Burgess Rawson is the best estimate of value Burgess Rawson can produce, but is an estimate and not a prediction or guarantee of value. This methodology uses market derived assumptions obtained from analysed transactions. A cross-section of transactions is detailed in this report. We do not represent ourselves as experts for data, such as economic, demographic or construction costs, which has been obtained from external sources.

Insurance

Our estimate of insurance replacement is an indication only and should a precise estimate be required, we would strongly recommend this to be provided by a suitably qualified Quantity Surveyor, Builder or Architect. In respect to replacement / reinstatement cost assessments, we advise that we are not Quantity Surveyors, and confirm that our estimates are broadly based upon published authorities guides and our own general information. The insurance estimate has not been prepared by a Quantity Surveyor and has been based on figures obtained from a leading authority in the construction industry. The insurance estimate excludes GST. In addition, we note as follows:-

We have not sighted a copy of the insurance policy or any special conditions and have assumed no special conditions apply.

The insurance estimate excludes items which are deemed to be lessees fixtures, fittings, plants and equipment.

The insurance estimate does not take into account removal of asbestos or other toxic materials or difficulty in constructing the property

The insurance estimate assumes the size, form and position of building can be rebuilt on the land under current building and planning regulations, and in current equivalent materials.

The insurance estimate is an indication of estimated construction cost for guidance only. As building costs vary with location, construction method, standards of finish and materials the owner should obtain an accurate estimate of the rebuild cost for this particular property from a suitably qualified person.

Directors Clause

Under required circumstances, this report may have been co-signed by a Director of Burgess Rawson. Where this is the case, the Director may not have inspected the property, the Director certifies that he has discussed the valuation methodology with the Valuer, and checked the valuation calculations.

Payment

Liability to the parties in the report is subject to settlement of account for service rendered.

GST

In analysing the sales and / or leasing evidence we have provided, it is noted we have attempted to ascertain if the sale price / rental is inclusive or exclusive of Goods and Services Tax (GST). With regard to sales evidence, it is emphasised the Land Titles Office in Western Australia does not differentiate between or record, if the sale price is inclusive or exclusive of GST. Where we have not been able to verify if GST is included in the sale price or rental, we have assumed the Land Titles Office record of sales price or the rental is inclusive of GST. Should this not be the case for any particular sale or letting used as evidence, we reserve the right to reconsider our valuation.

It is accepted not all properties are directly comparable, however, a range of evidence has been provided to suggest the best evidence for our purposes.

There are several exclusions affecting the payment of GST on a sales transaction after 1st July 2000 e.g., property sold as going concern and existing residential real estate. As we have not been informed of any particular arrangements whereby sales transactions of the property will not attract GST, we have assumed the Market Value stated in the Certificate of Valuation is exclusive of GST. For newly created residential real estate, we have assumed the market value to be inclusive of GST. Should it eventuate the assumptions we have made regarding GST are not correct, we reserve the right to reassess any effect on the value stated in this report.

11. Enclosures

Certificate of Title

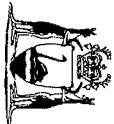
Asbestos Register

Letter of Instruction

Annexure 1

Certificate of Title

WESTERN



AUSTRALIA

REGISTER NUMBER 254/P3321	
DUPLICATE EDITION N/A	DATE DUPLICATE ISSUED N/A

RECORD OF CERTIFICATE OF TITLE
UNDER THE TRANSFER OF LAND ACT 1893

VOLUME **593** FOLIO **87**

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

REGISTRAR OF TITLES



LOT 254 ON PLAN 3321

LAND DESCRIPTION:

CITY OF NEDLANDS OF 71 STIRLING HIGHWAY NEDLANDS
(T 17335/1944) REGISTERED 30 OCTOBER 1944

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required.
* Any entries preceded by an asterisk may not appear on the current edition of the duplicate certificate of title.
Lot as described in the land description may be a lot or location.

-----END OF CERTIFICATE OF TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND: 593-87 (254/P3321).
PREVIOUS TITLE: 543-13.
PROPERTY STREET ADDRESS: 25 STRUCKLAND ST, MOUNT CLAREMONT.
LOCAL GOVERNMENT AREA: CITY OF NEDLANDS.

1930 3/14
12/16/30

1256/120 2044 Vol. 543, Fol. 13
TILMARR 1974

1248/144
1/13/44



WESTERN AUSTRALIA.

REGISTER BOOK.

Vol. 593 Fol. 87.

CT 0593 0087 F



Certificate of Title

under "The Transfer of Land Act, 1893."

Warramulke

(Sec. 5, 59 Vict., 14)

Harry Warrwood of Geraldton District

is now the sole proprietor of part being July 1920

of an estate in fee simple in possession subject to the easements and encumbrances notified hereunder in A.V. that piece of land delineated and coloured green on the map hereon,

containing 0.116 acres or thereabouts, being part of Perthshire Location No. and being lot 254 on Plan 3321.

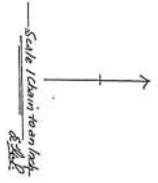
56 Vic. No. 14 Sec. 75. A special duplicate certificate of title in this case issues to the proprietor in Application 250/1920 as the original issues always to have been lost.

Harry Warrwood
3rd June 1920.

36 Vic. No. 171. Application 1256/1920 (in the 2nd October 1920) for a Warramulke licensed steel works, and on the 23rd October 1920 bills of lamination of the estate were granted to the 100th Division now marked "Eccles" and "Agency Company Limited of 155th St. George's Terrace Perth."

W. Strickland 3 July 1920.

James Fox 5089/1910 James Fox & Thomas Gaudle Messrs of 215 Railway Parade Melbourne Victoria
Registered 8th July 1920 at 3 on



20.12 x 50.29
= 1012.28

Superseded Copy for Sketch Only

Dated the twentieth day of June, One thousand nine hundred and twenty

W. Strickland
Registrar of Titles.

For encumbrances and other matters affecting the land see back.

Superseded - Copy for Sketch Only



EASEMENTS AND ENCUMBRANCES REFERRED TO.

[Faint, illegible text and diagrams, likely a site plan or survey sketch, with some handwritten notes.]

Registered Vol. Fol.

LANDGATE COPY OF ORIGINAL NOT TO SCALE Thu Mar 20 10:59:55 2014 JOB 44224195

Annexure 2

Asbestos Register

dingiebird
environmental

ABN 24 078 424 999

Level 3 Church House 29 Queen St Fremantle WA 6160
T 08 9435 6622
E enviro@dingiebird.com.au
W www.dingiebird.com.au

Asbestos Register

Infant Health Centre

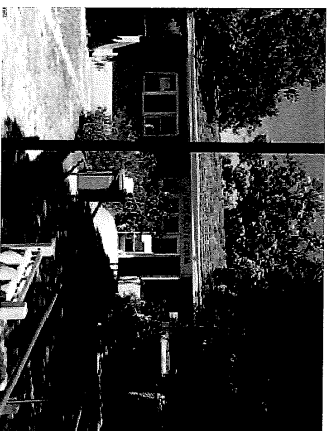
25 Strickland Street Mount Claremont, WA

Asset ID: WEB/17

This document has been prepared for:

City of Nedlands

24/05/2013

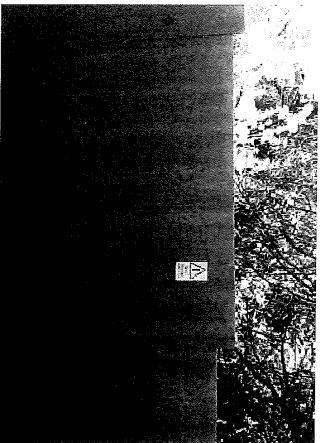


Client: City of Nedlands

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



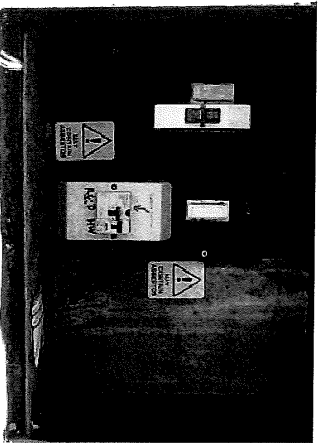
Location	North fence line
Material	PACM
Bonded / Friable	Bonded
Description	Ceiling panels
Approx Area (m2)	80
Condition Status	Fair
Potential for Disturbance	Low
Risk Matrix #	8
Control Measures	Inspect periodically
Lab Results	Seal holes
Comments	Various breaks

Client: City of Nedlands

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



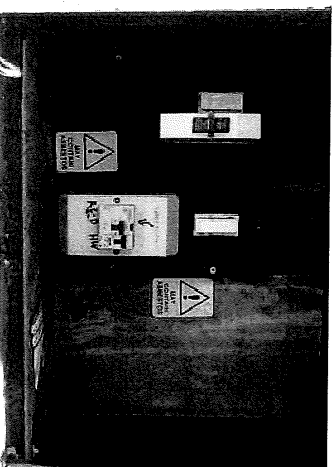
Location	North side of building
Material	PACM
Bonded / Friable	Bonded
Description	Switchboard backing material left side
Approx Area (m2)	1
Condition Status	Fair
Potential for Disturbance	Medium
Risk Matrix #	5
Control Measures	Do not drill, inspect periodically and replace when electrical work is next performed
Lab Results	
Comments	

Client: City of Nedlands

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



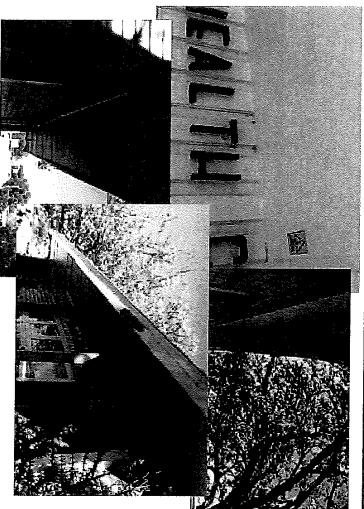
Location	North side of building
Material	PACM
Bonded / Friable	Bonded
Description	Unsealed broken sheet right side
Approx Area (m2)	1
Condition Status	Poor
Potential for Disturbance	High
Risk Matrix #	1
Control Measures	Remove
Lab Results	
Comments	

Client: City of Nedlands

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



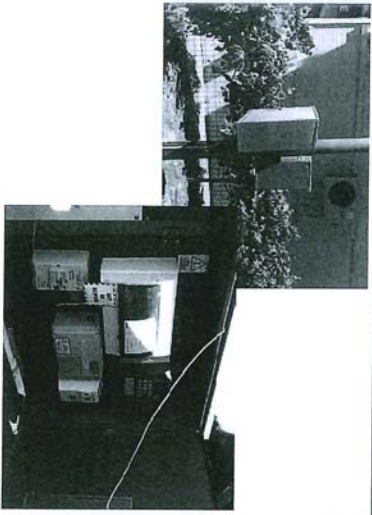
Location	All eaves
Material	PACM
Bonded / Friable	Bonded
Description	Eave panels
Approx Area (m2)	45
Condition Status	Good
Potential for Disturbance	Low
Risk Matrix #	9
Control Measures	Inspect periodically
Lab Results	
Comments	

Client: City of Nedlands

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



Location	South east external
Material	PACM
Bonded / Friable	Bonded
Description	Switchboard backing material left side
Approx Area (m2)	1
Condition Status	Fair
Potential for Disturbance	Medium
Risk Matrix #	5
Control Measures	Do not drill, inspect periodically and replace when electrical work is next performed
Lab Results	
Comments	

Client: Dep of Health

Site Name: Infant Health Centre

Site Location: 25 Strickland Street Mount Claremont

Inspector: AS + TD



Location	Panel above entrance
Material	PACM
Bonded / Friable	Bonded
Description	Cement sheeling
Approx Area (m2)	5
Condition Status	Good
Potential for Disturbance	Low
Risk Matrix #	9
Control Measures	Inspect periodically
Lab Results	
Comments	

End of Record - 6 Entries

PACM = Possible Asbestos Containing Material

ACM = Asbestos Containing Material

NACM = Non Asbestos Containing Material

Annexure 3

Letter of Instruction

19 March 2014

Client Details

Client:	City of Nedlands
Address:	PO Box 9, Nedlands WA 6909
Attention:	Ms Rebecca Boley
Phone:	08 9273 3582
Fax:	
Email:	rboley@nedlands.wa.gov.au
ABN:	

Burgess Rawson (WA) Pty Ltd
 Level 7, 221 St Georges Terrace
 PERTH WA 6000

Dear Sir

**LETTER OF INSTRUCTION
 RENTAL VALUATION – PRE-SCHOOL, 25 STRICKLAND STREET, MT CLAREMONT**

I, Ms Rebecca Boley of the City of Nedlands hereby instruct Tim Hammond of Burgess Rawson (WA) Pty Ltd to undertake a valuation of the above mentioned property as discussed.

We acknowledge that the valuation report(s) will be made available upon settlement of our account and no extension of liability will be extended to a third party until payment has been received. We acknowledge no extension of liability will be given for any report older than 8 months.

To comply with the Privacy Act 1988 the instructing party acknowledges that the Valuation Department of Burgess Rawson uses information collected to complete tasks including consultation, property valuation, leasing, determination, arbitration and for mortgage purposes. (Should any of the information supplied be of a sensitive nature please advise, otherwise this information could be used as allowed under the Privacy Act 1988.)

If you are aware of any issues on the property with regards to asbestos sheeting, underground tanks or possible contamination, could you please tick the appropriate box below.

- Asbestos Yes No Not Sure - information affected
- Underground Tanks Yes No Not Sure
- Possible Contamination Yes No Not Sure

Could you please complete the following areas below:

Entity to Invoice: City of Nedlands

Attention: Rebecca Boley

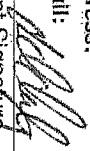
Address: 71 Stirling Highway, Nedlands 6009
rboley@nedlands.wa.gov.au

Email: as above

Instructing Party: as above

Address: as above

Email: as above

Client Signature 
 Liability limited by a scheme approved under Professional Standards Legislation

TERMS OF APPOINTMENT

Thank you for asking us to perform valuation work for you. We value our clients and strive to ensure a mutually beneficial relationship, therefore we want to ensure certainty of the arrangements between us. We accept your instructions on the following terms which apply to this and any future valuation work we may perform for you.

OUR TERMS

Non – Account Customers

Payment is to be made before the valuation report can be released. No other arrangements made verbally are acceptable.

Should Non-Account Customers require other arrangements, then a request must be made by the client in writing prior to the commencement of any valuation work being performed by the Valuer. This request will then either be accepted or rejected in writing by Burgess Rawson (WA) Pty Ltd.

Account Customers – Due Date

The Due Date is the date your account must be paid by and this is normally within a term of fourteen (14) days from the date which appears on the invoice.

Interest Charge

An Interest charge of 10% (ten percent) per annum calculated daily will be applied to all overdue accounts if payment has not been received by the Due date, and will continue to be charged up to the date the debt is finalised.

Debt Collection Costs

Additional administration, accounting, and legal costs incurred in the process of recovery of an outstanding debt will be payable in full by the client.

Changes to Professional Fees Originally Quoted

Additional unforeseen costs (eg: additional Title search fees and associated costs not included in the original quotation) incurred in the process of valuation will be charged to the client at their actual cost. The Valuer will endeavour to make the client aware of these changes.

Cancellation Fees

Charges for any works already completed prior to the receipt of written confirmation of a cancellation will be payable in full by the client.

Goods and Services Tax (GST)

A Goods and Services Tax (GST) of 10% will apply to all valuation services performed on or after the 1st July 2000 and invoices provided after this date will be as prescribed by the Commissioner of Taxation's requirements. You will be supplied with an Australian Taxation Office compliant "Tax Invoice".


Agreeing Client Signature

Deed of Surrender of Lease of Portion of Lot 254 (No. 25) Strickland Street, Mount Claremont

City of Nedlands

Ann Louise O'Hara



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway
CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: TF:NEDL 18095

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Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia
(Lessor)

Ann Louise O'Hara Australia

of 8 Camilia Avenue, Mt Claremont, Western Australia
(Lessee)

Background

- A By the lease described in **Item 1** of the Schedule (**Lease**) the Lessor leased the Premises described in **Item 2** of the Schedule (**Premises**) to the Lessee for the term specified in the Lease.
- B The Lessee has requested the surrender of the Lease, and the Lessor has agreed to accept the Lessee's surrender of the Lease, subject to the provisions of this Deed.
- C The parties enter into this deed to set out the terms and conditions of this Surrender of Lease.

Agreed terms

1. Surrender of Lease

As from the date shown in **Item 3** of the Schedule (**Surrender Date**), the Lessee surrenders the Lease and all rights, powers and privileges contained in the Lease.

2. Acceptance of Surrender

The Lessor accepts the Lessee's surrender of the Lease made pursuant to **clause 1** of this Deed.

3. Release of Lessee

The Lessor releases the Lessee from the Lessee's Covenants under the Lease in respect of the Premises arising after the Surrender Date.

4. Release of Lessor

The Lessee releases the Lessor from the Lessor's Covenants under the Lease in respect of the Premises arising after the Surrender Date.

5. Continued Liability

The release referred to in **clause 3** shall not include a release by the Lessor of the Lessee's liability for any breaches of the Lease that may have occurred or may occur prior to the Surrender Date.

6. Costs

The Lessee shall meet the costs of and incidental to the preparation of this Surrender of Lease.

7. Interpretation

- (1) In this deed, unless the context otherwise requires:
 - (a) a word or phrase has the same meaning as in the Lease;
 - (b) the singular includes the plural and vice versa;
 - (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
 - (d) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (e) a reference to any party to this deed or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns; and
 - (f) a reference to any thing (including any right) includes a part of that thing.
- (2) If there is any inconsistency between the Lease and this deed, this deed prevails.

Schedule

Item 1 Lease

A lease dated 1 January 2011 between the City of Nedlands as Lessor and Ann Louise O'Hara as Lessee.

A deed of Variation of Lease dated 29 March 2011 between the City of Nedlands as Lessor and Ann Louise O'Hara as Lessee.

Copies annexed hereto as **Annexure 1**.

Item 2 Premises

The Premises as described in the Lease.

Item 3 Surrender Date

30 June 2014.

Signing page

EXECUTED by the parties as a Deed

2014

THE COMMON SEAL of the **City of Nedlands** was hereunto affixed by authority of a resolution of the Council in the presence of:

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer

Executed by Ann Louise O'Hara in the presence of

Signature of Ann Louise O'Hara

Witness Sign

Name of Witness

Address

18095-14.04.09-TF-Surrender of Lease

Annexure 1 - Lease

Draft
8 April 2014

Lease of Portion of Lot 254 (No. 25) Strickland Street, Mount Claremont

City of Nedlands

Cherie Lewis



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway | CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: TF:NEDL-34755

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DRAFT

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Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009
(Lessor)

Cherie Lewis

of 1 Mann Street, Cottesloe, Western Australia, 6011
(Lessee)

Background

- A The Lessor is the registered proprietor of the Land.
- B The Lessor has agreed to grant a lease of the Premises on the terms and conditions of this Lease.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Lease, unless otherwise required by the context or subject matter -

Alterations means any of the acts referred to in **clauses 9(1)(b); 9(1)(c) and 9(1)(d); and 9(1)(e);**

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Authorised Person means:

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (a);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Contaminated Sites Act means the *Contaminated Sites Act 2003*;

CPI means the Consumer Price Index (All Groups) Perth number published from time to time by the Australian Bureau of Statistics;

DEC means the Department of Environment and Conservation of Western Australia;

Environmental Contamination has the same meaning as the word “contaminated” in the Contaminated Sites Act;

EPA means the Environment Protection Agency of Western Australia;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

Further Term means the further term specified in **Item 3** of the Schedule;

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor’s general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

Land means the land described at **Item 1** of the Schedule;

Lease means this deed as supplemented, amended or varied from time to time;

Lessee’s Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Premises by the authority of a person specified in paragraph (a).

Lessee’s Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor’s Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 6** of the Schedule;

Premises means the premises described in **Item 1** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Rent Review Date means a date identified in **Item 9** of the Schedule;

Schedule means the Schedule to this Lease;

Term means the term of years specified in **Item 2** of the Schedule and any Further Term; and

Termination means expiry by effluxion of time or sooner determination of the Term or any period of holding over; and

1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words importing -
 - (i) the singular includes the plural and vice versa; and

- (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to -
 - (i) both express and implied provisions; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include -
 - (i) covenants not to permit that act or thing to be done or omitted to be done by the Lessee's Agents; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;

- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them and must be observed and performed by them jointly and each of them severally, and may be enforced against any one or more of them.

1.3 Headings

Except in the Schedule, headings do not affect the interpretation of this Lease.

2. Grant of lease

The Lessor leases to the Lessee the Premises for the Term subject to -

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

3. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the registered proprietor of the Premises, and subject to the performance and observance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

4. Rent and other payments

The Lessee covenants with the Lessor:

4.1 Rent

To pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions.

4.2 Rent Review

- (1) The Rent will be reviewed by CPI on and from each Rent Review Date to determine the Rent to be paid by the Lessee until the next Rent Review Date.
- (2) The CPI rent review will increase the amount of Rent payable during the immediately preceding period by the percentage of any increase in CPI having regard to the quarterly CPI published immediately prior to the later of the Commencement Date or the last Rent Review Date as the case may be and the quarterly CPI published immediately prior to the relevant Rent Review Date. If there is a decrease in CPI having regard to the relevant CPI publications the Rent payable from the relevant Rent Review Date will be the same as the Rent payable during the immediately preceding period.
- (3) The Rent will be reviewed by a market valuation at the end of the initial term of the Lease, being 5 years from the commencement date and will replace the CPI method of rent review for that Rent Review Date. The market reviewed rate of rent will be produced by a certified valuation professional. The selection of a certified valuation professional to undertake the market review is to be agreed by the parties.

- (4) Notwithstanding the provisions of this clause, the Rent payable from any Rent Review Date will not be less than the Rent payable in the period immediately preceding such Rent Review Date.
- (5) The Lessor may institute a rent review notwithstanding the Rent Review Date has passed and the Lessor did not institute a rent review on or prior to that Rent Review Date, and in which case the Rent agreed or determined shall date back to and be payable from the Rent Review Date for which such review is made.

4.3 Outgoings

- (1) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges, assessed or incurred in respect of the Premises -
 - (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
 - (b) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
 - (c) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring or telephone connection;
 - (d) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (e) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.
- (2) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 4(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

4.4 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

4.5 Costs

- (1) To pay to the Lessor on demand:
 - (a) all duty, fines and penalties payable under the *Duties Act 2008* and other statutory duties or taxes payable on or in connection with this Lease;
 - (b) all reasonable valuation fees incurred in determining the market rent for the Premises at the commencement of this Lease and at any time during the Term or any Further Term whether obtained by agreement or because the parties cannot agree on the market rent; and
 - (c) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to -
 - (a) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;

- (b) any breach of covenant by the Lessee or the Lessee's Agents;
- (c) the preparation and service of a notice under Section 81 of the *Property Law Act 1969* requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
- (d) any work done at the Lessee's request; and
- (e) any action or proceedings arising out of or incidental to any matters referred to in this **clause 4.5** or any matter arising out of this Lease.

4.6 Payment of Money

Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in this Lease or as otherwise directed by the Lessor by Notice from time to time.

4.7 Accrual of amounts payable

Amounts Payable accrue on a daily basis.

5. Insurance

5.1 Insurance to be effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 7** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

5.2 Building Insurance to be effected and paid by Lessee

The Lessee will effect and maintain insurance of the building on the Premises, with an insurance company acceptable to the Lessor, and to a value agreed by the parties.

5.3 Details and receipts

In respect of the insurances required by **clause 5.1** and **clause 5.2** the Lessee must -

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately-
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

5.4 Not to invalidate

The Lessee must not do or omit to do any act or thing or bring or keep anything on the Premises which might -

- (a) render any insurance effected under **clause 5.1** and **clause 5.2** on the Premises, or any adjoining premises, void or voidable;
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

5.5 Report

Each Party must report to the other promptly in writing, and in addition verbally in an emergency -

- (a) any damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person in or on the Premises.

5.6 Settlement of claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any policy of insurance required by **clauses 5.1** and **5.2**.

5.7 Lessor as attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clauses 5.1** and **5.2**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clauses 5.1** and **5.2**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

6. Indemnity

6.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

6.2 Indemnity

- (1) The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, in respect of:
 - (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and

- (c) the death of, or injury suffered by, any person,
caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
- (d) the use or occupation of the Premises by the Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Premises;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (g) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (i) an act or omission of the Lessee.

6.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 6.2** will be reduced by the extent of such payment.
- (b) continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

6.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

6.5 Release

- (1) The Lessee:
 - (a) agrees to occupy and use the Premises at the risk of the Lessee; and
 - (b) releases to the full extent permitted by law, the Lessor from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by;
 - (ii) loss of or damage to the Premises or personal property of the Lessee; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

- (2) The release by the Lessee continues after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

7. Limit of Lessor's liability

7.1 No liability for loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises however occurring.

7.2 Limit on liability for breach of Lessor's covenants

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Premises under the Order.
- (2) The Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

8. Maintenance, repair and cleaning

8.1 Maintenance

- (1) The Lessee will maintain at its own expense the Premises including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks, leach drains, paths, paving, park or garden furniture, retaining walls, fences and reticulation in good, safe order repair and condition.
- (2) The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.
- (3) The Lessee must take such reasonable action as is necessary to:
 - (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,

the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

8.2 Repair Damage

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's fixtures and fittings which are or which become damaged.

8.3 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.

- (2) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

8.4 Cleaning

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

8.5 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens lawns, shrubs, hedges and trees.
- (2) If there is any remnant natural bushland in the surrounds the Lessee must not remove or do anything to damage such bushland without written consent from the Lessor and the Lessee must maintain any such bushland, at its cost, in accordance with a maintenance programme agreed with the Lessor's Parks Manager.
- (3) Subject to paragraph (2), any pruning of trees must be undertaken by a qualified tree surgeon.
- (4) Subject to paragraph (2), if any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (5) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (6) Subject to paragraph (2), the Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

8.6 Pest control

- (1) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.
- (2)
 - (a) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
 - (b) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within two weeks of the inspection;
 - (c) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
 - (d) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

8.7 Structural state of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

9. Alterations

9.1 Restriction

- (1) The Lessee must not without prior written consent –
 - (a) (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
- (b) install any new signage;
- (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
- (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
- (e) subject to the performance of the Lessee's obligations in **clause 8**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

9.2 Consent

- (1) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 9.1** the Lessor may:
 - (a) consent subject to conditions; and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
 - (b) if the Lessor consents to any matter referred to in **clause 9.1**:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolitions.

9.3 Cost of Works

All works undertaken under this **clause 9** will be carried out at the Lessee's expense.

9.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must at the option of the Lessor either -

- (a) carry out those other works at the Lessee's expense; or

- (b) permit the Lessor to carry out those other works at the Lessee's expense, in accordance with the Lessor's requirements.

10. Use

10.1 Restrictions on use

The Lessee must not and must not suffer or permit a person to:

- (a)
 - (i) use the Premises or any part of it for any purpose other than the Permitted Purpose; or
 - (ii) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (c) do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties;
- (d) store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions -
 - (i) any such storage must comply with all relevant statutory provisions;
 - (ii) all applications for the approval or renewal of any licence necessary for such storage must be first referred to the Lessor;
 - (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
 - (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises;
- (e) do any act or thing which might result in excessive stress or harm to any part of the Premises; or
- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

10.2 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any statute for its use of the Premises.

10.3 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

10.4 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this clause.

11. Lessor's right of entry

11.1 Entry on Reasonable Notice

The Lessee must permit entry by the Lessor or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice -

- (a) (i) at all reasonable times;
- (ii) with or without workmen and others; and
- (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
 - (i) to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;
 - (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
 - (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this **clause 11(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

11.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 11(b)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

12. Statutory obligations and notices

12.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises, including without limitation all relevant laws relating to occupational health and safety and the health and safety of all persons entering upon the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for Permitted Purpose;

- (c) comply with all relevant state and commonwealth law and all relevant codes, including without limitation the Building Code of Australia, and all relevant standards published by Standards Australia;
- (d) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and
- (e) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

12.2 Safety & Testing Obligations

- (2) The Lessee acknowledges and agrees that it is fully responsible at its cost for ensuring that the Premises, and any fixtures or fittings within the Premises, are regularly tested, maintained and inspected to ensure that the Premises and such fixtures and fittings comply with all statutory requirements and are safe for use.
- (3) To comply with its obligation pursuant to **clause 12(2)** above, the Lessee acknowledges that it will be required to, amongst other things:
 - (a) comply with the requirements of the *Occupational Safety and Health Act 1984*, including without limitation the requirement for all portable plug-in electrical equipment and residual current devices to be safe and appropriately inspected, tested and maintained by a competent person;
 - (b) comply with all relevant requirements of the Fire & Emergency Services Authority of Western Australia (FESA), including without limitation the requirement to ensure that all fire protection and fire fighting equipment located, or installed at the Premises, is tested regularly for compliance with Australian Standards and FESA's requirements; and
 - (c) ensure that the emergency/exit lighting systems in the Premises are adequately maintained in accordance with the requirements of the Building Code of Australia and Australian Standards

12.3 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against -

- (a) failing to perform, discharge or execute any of the items referred to in **clauses 12.1** and **12.2**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clauses 12.1** and **12.2**.

13. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;
- (b) any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment; and

- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

14. Default

14.1 Events of Default

- (1) Subject to **clause 14(2)**, a default occurs if:
 - (a) any Amounts Payable remain unpaid for one month after becoming due and written notice has been given to the Lessee to pay such Amounts Payable;
 - (b) the Lessee in breach of any of the Lessee's Covenants other than the covenant to pay the Amounts Payable for 14 days after written notice has been given to the Lessee to rectify the breach;
 - (c) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
 - (d) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Lessee interest in the Premises under this Lease;
 - (e) a mortgagee takes possession of the Lessee's interest in the Premises under this Sublease;
 - (f) the Premises are vacated;
 - (g) the registration of the Lessee is cancelled or dissolved under the *Corporations Act*; or
 - (h) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.
- (2) For the purposes of **clause 14(1)** the Lessor agrees that the Lessee will not be in default under the Lease if, at any time, an administrator, as defined by the *Corporations Act 2001*, is appointed in respect of the Lessee except where the administration comes to an end by reason of the Lessee's creditors resolving that the Lessee should be wound up.

14.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 14.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 17**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

14.3 Lessor may remedy breach

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

14.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers conferred on the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

14.5 Essential Terms

Each of the Lessee's Covenants in **clauses 4** (Rent and Other Payments), **5** (Insurance), **6** (Indemnity), **8** (Maintenance, Repair and Cleaning); **10** (Use), **21** (Assignment, Subletting and Charging) and **33** (Goods and Services Tax) an essential term of this Lease but this clause **14.5** does not mean or imply that there are no other essential terms in this Lease.

14.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor -

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;
- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee covenants with the Lessor that if the Term is determined -
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by effluxion of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the covenant set out in this **clause 14(2)(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 14(2)(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by effluxion of time; and

- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

15. Damage or destruction

15.1 Damage or destruction

If the Premises or any part of the Premises are totally or partially destroyed so as to require major rebuilding the Lessee -

- (a) may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessor; or
- (b) must within 2 years from the date of destruction or damage rebuild the Premises to its original state and condition to the satisfaction of the Lessor and in accordance with the requirements of all relevant authorities.

15.2 Insurance proceeds

- (1) If the Lessee terminates the Term in accordance with **clause 15.1** all insurance proceeds in respect of the Premises will be paid to and retained by the Lessor; or
- (2) If the Lessee rebuilds the Premises, all insurance proceeds will be applied to the rebuilding with any shortfall paid by the Lessee.

16. Option to renew

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term and -

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in -
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor shall grant to the Lessee a lease for the Further Term at the Rent and on the same terms and conditions as this Lease other than this **clause 16** in respect of any Further Term previously taken or the subject of the present exercise.

17. Holding over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

18. Restore premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease fair wear and tear excepted.

19. Yield up the premises

19.1 Peacefully surrender

On Termination the Lessee must -

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease;
- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

19.2 Clause 19.1 to survive termination

The Lessee's obligation under **clause 19.1** will survive termination.

20. Removal of property from Premises

20.1 Remove property prior to termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises and promptly make good, to the satisfaction of the Lessor, any damage caused by the removal.

20.2 Lessor can remove property on re-entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing that property.

21. Assignment, sub-letting and charging

21.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law.

21.2 Lessor's Consent to assignment and sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sub-letting, give their consent and any assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or sub-letting of the leasehold estate created by this Lease if -

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the Permitted Purpose;

- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by -
 - (i) the proposed assignee of a deed of assignment; or
 - (ii) the proposed sublessee of a deed of sublease,to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.

21.3 Consents of Assignee Supplementary

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning lessee from the Lessee's Covenants.

21.4 Property Law Act 1969

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

21.5 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let the leasehold estate created by this Lease the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to -

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee or sublessee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment or sub-letting,
- whether or not the assignment or sub-letting proceeds.

21.6 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

22. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

23. Governing law

This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.

24. Statutory powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

25. Notice

25.1 Form of delivery

A Notice to a Party must be in writing and may be given or made -

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by Notice to the other.

25.2 Service of notice

A Notice to a Party is deemed to be given or made -

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 25(b)**, at the time of leaving the Notice, provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 25(b)**, on the second business day following the date of posting of the Notice.

25.3 Signing of notice

A Notice to a Party may be signed -

- (a) if given by an individual, by the person giving the Notice;
- (b) if given by a corporation, by a director, secretary or manager of that corporation;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

26. Severance

If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.

27. Disputes

27.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

27.2 Payment of amounts payable to date of award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid.

28. Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

29. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

30. Further assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

31. Payment of money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

32. Waiver

32.1 No general waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

32.2 Partial exercise of right power or privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

33. Goods and services tax

33.1 Definitions

The following definitions apply for the purpose of this clause -

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;
- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

33.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 33(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

33.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 33(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

- (1) No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

- (2) Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

- (3) Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

- (4) Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

34. *Commercial Tenancy Act*

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

35. Caveat

35.1 No absolute caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

35.2 CEO & Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally -

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of 6 months after Termination,

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate -

- (d) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

35.3 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 35**.

35.4 Indemnity

The Lessee indemnifies the Lessor against -

- (g) any loss arising directly from any act done under **clause 35**; and
- (h) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 35**.

36. Alcohol

36.1 Consumption of alcohol

The Lessee covenants and agrees:

- (a) not to use or allow the Premises to be used for the consumption or sale of alcohol without first obtaining the written consent of the Lessor, and the Lessor shall determine any such application in its absolute discretion; and
- (b) that it shall not make an application for a licence or permit under the Liquor Control Act 1988 for the Premises, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

36.2 Liquor licence

The Lessee covenants and agrees that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must:

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 9** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following -
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

37. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 10** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

Schedule

Item 1 Land and Premises

Land

Lot 254 on Plan 3321 being the whole of the land comprised in Volume 593 Folio 87.

Premises

That part of the Land hachured on the plan annexed hereto as **Annexure 1**, including all buildings, structures, alterations, additions and improvements on that part of the Land, or erected on that part of the Land during the Term.

Item 2 Term

5 years commencing on 1 July 2014 and expiring on 30 June 2019.

Item 3 Further Term

2 years commencing on 1 July 2019 and expiring on 30 June 2021.

Item 4 Commencement Date

1 July 2014.

Item 5 Rent

\$11,000.00 (Eleven Thousand dollars) plus GST per annum, payable in equal monthly instalments with the first instalment due on the Commencement Date.

Item 6 Permitted purpose

Occasional child care centre for 3-4 year olds, unless otherwise approved by the Lessor in writing.

Item 7 Public liability insurance

Ten million dollars (\$10,000,000.00).

Item 8 Bank Guarantee

An amount equivalent to three months' Rent.

Item 9 Rent Review Dates

On the first anniversary of the Commencement Date and annually on that date for the duration of the Term, Further Terms and any period of holding over a CPI Review will be

undertaken. On the 5th anniversary of the Commencement Date the rent will be reviewed by a market valuation in accordance with **Clause 4.2**.

Item 10 Additional terms and covenants

1. This lease is subject to and conditional upon Ann Louise O'Hara executing a surrender of lease of the Premises, on or before the Commencement Date.
2. The Lessee acknowledges and agrees that the current development approval for the Premises is annexed hereto as **Annexure 2 (Current Development Approval)**. The Lessee must strictly comply with the conditions of the Current Development Approval and any subsequent or varied development approval issued for the Premises.
3. The Lessee acknowledges and agrees that if she wishes to vary any condition of the Current Development Approval (including without limitation the operating hours of the Premises) or seek a new development approval then the Lessee must:
 - (i) seek the Lessor's prior written consent (in its capacity as landlord) to such variation or new development approval; and
 - (ii) provided the Lessor's consent is obtained pursuant to paragraph (i) above, obtain all necessary consents and approvals for such variations or new approval including without limitation seeking the consent and approval of the responsible planning authority.
4. The Lessee must within the last three months of the Term or earlier determination of this Lease:
 - (i) paint with at least 2 coats of paint those parts of the Premises usually painted internally and externally. All painting carried out on the Premises must be carried out by a registered painting contractor; and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
 - (i) do so in a proper manner using good quality materials;
 - (ii) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
 - (iii) comply will all reasonable directions given or requests made by the Lessor; and
 - (iv) be finished in a proper and workmanlike manner.
 - (ii) paper those parts of the Premises usually papered internally and externally. All papering carried out on the Premises must be carried out by an appropriate contractor; and the contractor or other person engaged by the Lessee to re-paper the Premises must:
 - (i) do so in a proper manner using good quality materials;
 - (ii) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
 - (iii) comply will all reasonable directions given or requests made by the Lessor; and
 - (iv) be finished in a proper and workmanlike manner.

Signing page

EXECUTED

2014

THE COMMON SEAL of the **City of Nedlands**
was hereunto affixed by authority of a resolution
of the Council in the presence of:

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer

Executed by Cherie Lewis in the presence of

Signature of Cherie Lewis

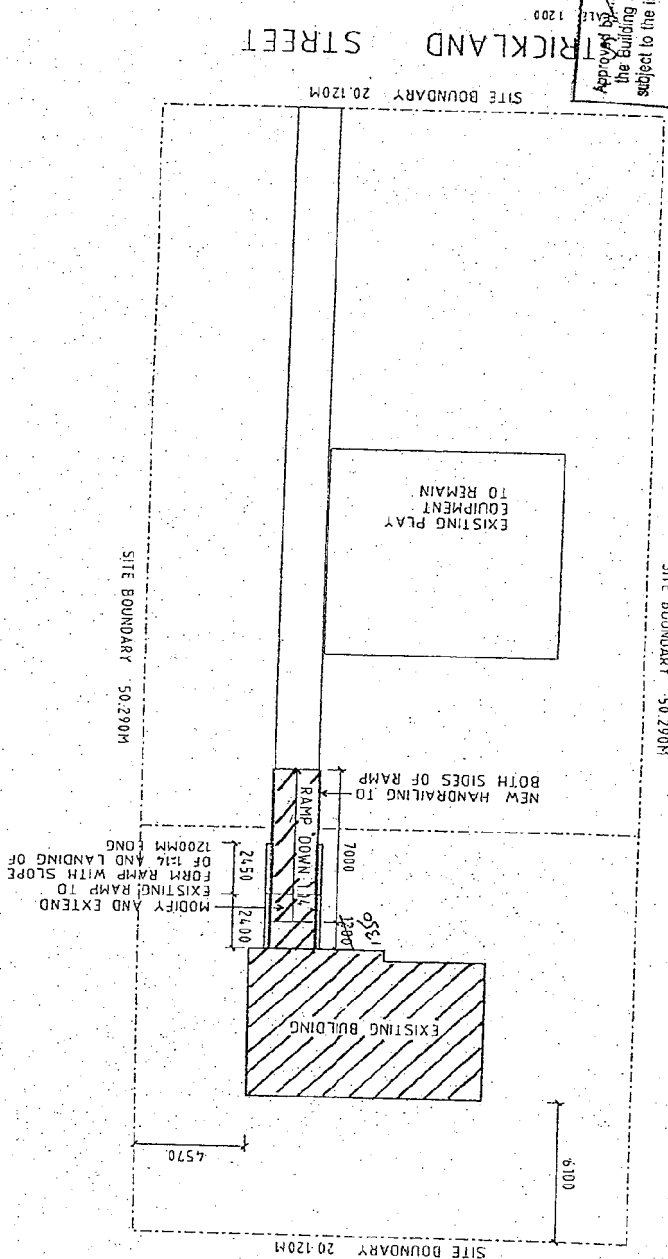
Witness Sign

Name of Witness

Address

Annexure 1 – Premises

CITY OF NEWCASTLE
10 7 2005
RECEIVED



Approved by _____ for the Building Surveyor, City of Newcastle subject to the issue of Building Licence No. 05 054
In accordance with the Local Government (Miscellaneous Provisions) Act 1980

Handwritten signature

DOCUMENTATION PREPARED BY
KOUNIS PROPERTY DEVELOPMENTS
27 BANKSIA STREET, JOONDARNA
VIC 3089
Phone: 8444 7911
Fax: 8776 8581
Mobile: 041 923 1881

PROPOSED UPGRADING OF EXISTING INFANT HEALTH CENTRE
254, STRICKLAND STREET MT CLAREMONT

SCALE	1:200	JOB NO	0501
DATE	07/02/05	DWR NO	A01
DRAWN	relly		

All drawings and documents are made to comply with the Building Act 1993 and the Building Regulations 1993. It is the responsibility of the client to ensure that all necessary permits are obtained. The client is responsible for the accuracy of the information provided. The client is responsible for the accuracy of the information provided.

use of client's preference is used.

Measure to be verified on site before commencing on work. Any change in dimensions to be reported to the architect immediately.

Annexure 2 – Current Development Approval

FORM 2

NOTICE OF PLANNING APPROVAL
SCHEDULE 4
CITY OF NEDLANDS
TOWN PLANNING SCHEME NO. 2

Name and Address of Applicant: **Ms L O'Hara**
8 Camelia Ave
MOUNT CLAREMONT WA 6010

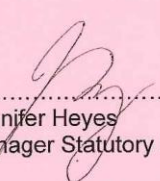
Name and Address of Owner (if not Applicant): **CITY OF NEDLANDS**
C/- L O'Hara-Annie's Playschool
8 Camelia Ave
MOUNT CLAREMONT WA 6010

Description of Land: **No.25 (Lot 254) Strickland Street MT CLAREMONT**
Proposed Development: **Occasional Child Care Centre (Annie's Playschool)**

Planning approval, in accordance with an application dated 11 November 2010 and the plans attached hereto, is granted subject to the following conditions:


- (1) A maximum of 13 children per session;
- (2) Operating Hours are limited to:
Tuesday - 9:00 am to 12:00 pm
Wednesday - 9:00 am to 12:00 pm
Thursday - 9:00 am to 12:00 pm
Friday - 9:00 am to 12:00 pm
- (3) any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.

If the development the subject of this approval is not substantially commenced within a period of **24 months** from the date of this letter, the approval shall lapse and be of no further effect. Where an approval has so lapsed, no development shall be carried out without the further approval of the Council having first been sought and obtained.


.....
Jennifer Heyes
Manager Statutory Planning

Date: 3 February 2011

PD18.14	Mayo Community Garden
----------------	------------------------------

Committee	13 May 2014
Council	27 May 2014
Applicant	City of Nedlands
Officer	Phoebe Huigens, Policy & Projects Officer
Director	Peter Mickleson, Director Planning & Development
Director Signature	
File Reference	Policy and Projects
Previous Item	NIL

1.0 Executive Summary

The site located at 91 Wood Street, Swanbourne has been leased to the Mayo Community Garden Group Inc. The Group, once the garden is established, will rely on membership fees and plot rentals to fund their ongoing activities. The group has requested some financial contribution from Council for the basic infrastructure to establish the garden. There are funds available in a reserve account resulting from the insurance claim following the fire at Mayo Cottage which may be suitable for allocation to this project.

1.1 Recommendation to Committee

Council:

1. **Provides a financial contribution to the Mayo Community Garden of \$33,793.00 for:**
 1. **Sleeper beds**
 2. **Raised garden beds**
 3. **Stone**
 4. **Mulch**
 5. **Reticulation**
 6. **Shade sail**
 7. **Meeting expenses.**
2. **Funds the contribution from the Development-Swanbourne-Reserve account.**

1.2 Strategic Plan

Community Development

During the community consultation process for the City's Strategic Community Plan, a Community Garden was raised as a community desire on multiple occasions.

Community Gardens are places where people come together to grow food and community.

2.0 Background

The Mayo House cottage located in the Allen Park Heritage Precinct was used as a residential caretakers house until the cottage was destroyed in a fire on 19 July 2009. At the time, Council was presented with two options:

1. Reinststate the dwelling and recover the costs of up to \$181,659.24; or
2. Accept an indemnity cash offer of \$70,847.10 plus the demolition costs.

Council decided that it would cost more than \$181,659.24 to rebuild the building, and therefore accepted the cash offer. The money was set aside in a reserve account for projects in the Swanbourne Precinct Masterplan.

While the Swanbourne Precinct Masterplan was never finalised, a Community Garden was included in the plans for the precinct. On 10 December 2013, Council gave in principle support for the establishment of a Community Garden at the Mayo House site.

On 25 February 2014, Council resolved to lease the site to Mayo Community Garden Group Inc.

2.1 Key Relevant Previous Council Decisions:

On 10 December 2013, Council gave in-principle support for the establishment of a Community Garden at 91 Wood Street, Swanbourne.

On 25 February 2014, Council approved lease of 91 Wood Street Swanbourne to Mayo Community Garden Group Inc. for the purposes of establishing a Community Garden.

2.2 Legislation / Policy

Community Garden Policy.

3.0 Consultation Process

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

4.0 Budget/Financial Implications

Within current approved budget:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Requires further budget consideration:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

This report requests that Council fund some of the initial infrastructure required to establish the Mayo Community Garden. These funds have not been allocated in 2013/14 budget. Administration suggests that the funds are taken from the insurance claim made by the City in 2009 when the Mayo Cottage fire destroyed the cottage.

These funds were put in a reserve account for “projects in the Swanbourne Precinct Masterplan”.

The Mayo Community Group will be approaching funding bodies during 2014/2015 for grants to fund further work at the garden.

5.0 Risk Management

The Mayo Community Garden Group are incorporated, hold a lease for the land and hold their own public liability insurance. Risk to the City is minimised through these measures.

There is also a risk that the City of Nedlands may be considered to be not supportive of the Community Garden initiative if some initial funding of this sort is not provided.

6.0 Discussion

The Community Garden will be relying on membership fees and rental of private plots to generate income for their ongoing activities following the commissioning of the Garden. Therefore the establishment of these plots and basic supporting infrastructure is considered quite urgent.

A basic plan for the Community Garden is attached.

The Mayo Community Garden Group requests funding for the following key infrastructure items from Council:

1. 60 jarrah sleepers, at a cost of \$3118.50 plus hire of a bobcat for one day \$265.00;
2. 4 Raised garden beds for the accessible garden area, to encourage aged and less able gardeners to visit the garden, including fill, at a cost of \$2,401;
3. Limestone and cement for terracing, \$3,730;
4. Mulch, \$3,700;
5. Reticulation from Allen Park needs to be extended through the Allen Park Heritage Precinct to reach the Mayo Community Garden. The City would project manage this work and would cost \$6000. Reticulation of the garden would then cost an additional \$4078; and
6. Shade structure to shade the accessible garden area, including development application and building permit, at a cost of \$10,000.

Total request for infrastructure items: \$33,293.00

Quotes have been sourced for all work and copies are available upon request.

The group also requests a modest budget of \$500 for meeting expenses and advertising to establish the group.

Total request: \$33,793.00

The Mayo Community Garden is being run by a core group of eight dedicated Mount Claremont and Swanbourne residents. Investment in this Garden for the amount requested will result in a valuable community resource within the Coastal Ward. A significant amount of volunteer time has and will be invested in the project by members of this Group.

Community Gardens are places where people come together to grow food and community. The benefits of community gardens include reducing food-miles, increased social interaction and participation, gardening opportunities for those with unsuitable gardens at home, and they provide places for community events and celebrations. The Mayo Community Garden Group has already indicated that they intend making the garden available to the general public for events and open days.

The Mayo Community Group will be approaching funding bodies during 2014/2015 for grants to fund further work at the garden.

6.1 Conclusion

The Mayo Community Garden Group requires some basic infrastructure to establish the garden. Council is asked to contribute \$33,293.00 for various items.

7.0 Attachments

1. Mayo Community Garden plan

MAYO COMMUNITY GARDEN MAP

DEC 2013

SCALE = 1:100

+14m



additional 14m

FENCE LINE

tin structure wood pile

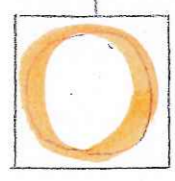
retaining wall (40cm)

20cm terrace

retaining wall (20cm)

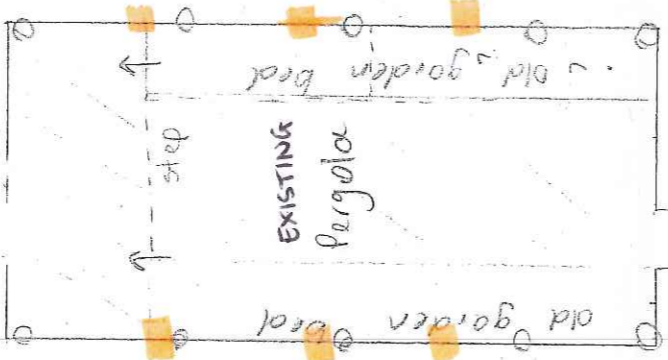
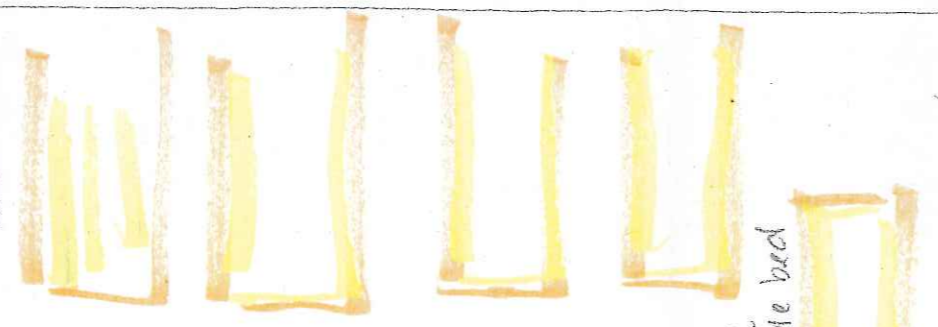
retaining wall (40cm) step up

EXISTING WATER TANK



retaining wall

PRIVATE PLOTS TERRACING



EXISTING Pergola

old garden bed

step

old garden bed

raised concrete bed

OLD STEPS 20cm

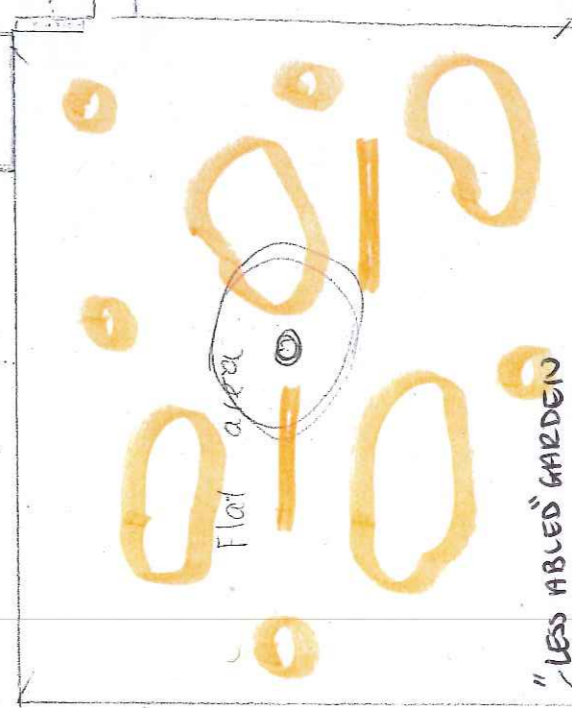
existing concrete slabs beneath

STEPS

1.2m

retaining wall

40cm



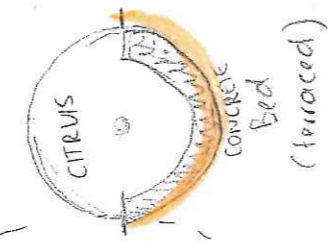
Flat area

"LESS ABLED" GARDEN

MAYO HOUSE VERANDA

CONCRETE PATHWAY

13.1m



CITRUS

CONCRETE Bed (terraced)

EXISTING SHED 2

shaded area "COMMUNAL GARDEN" TERRACING

MULBERRY TREE

Shaded area



BORE

EXISTING SHED 1 (FRIENDS OF ALLEN PARK)

3.2m

4.9m

1.9m

DRIVEWAY 6m wide

WOOD STREET

20m wide

shaded (dappled light)

36m deep + 14m beyond fence.

Note: this section is very shaded in the morning