



City of Nedlands

# Planning and Development Reports

**Committee Consideration – 13 October 2015**  
**Council Resolution – 27 October 2015**

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**Council: 27 October 2015**

<b>PD42.15</b>	<b>(Lot 579) No. 17 Viking Road, Dalkeith – Three Storey Single House</b>
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<b>Committee</b>	13 October 2015
<b>Council</b>	27 October 2015
<b>Applicant</b>	Milankov Designs and Project Management Pty Ltd
<b>Owner</b>	H Indra
<b>Officer</b>	Kate Bainbridge – Senior Statutory Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development Services
<b>Director Signature</b>	
<b>File Reference</b>	DA14/514
<b>Previous Item</b>	PD35.15 – 8 <sup>th</sup> September 2015 Withdrawn by applicant

## 1.0 Executive Summary

The proposal is for a three storey single house, cabana and pool which is compliant with the deemed-to-comply provisions of the Residential Design Codes (R-Codes) with the exception of the proposed rear setback and upper floor setback to the eastern side boundary. The application was advertised for comment due to proposed building setback variations. During advertising one objection and non-objection were received.

Where an objection has been received, administration does not have the delegation from Council to determine the application and therefore the application is referred to Council for determination.

The rear setback and upper floor eastern side boundary setback although non-compliant with the deemed-to-comply provisions is considered to comply with the design principles of the R-Codes. The cabana is centrally located to the lot and only impacts the rear neighbouring property which also has a cabana within the rear setback area. The upper floor setback variation to the eastern side boundary is considered to be minor in nature with the dwelling's design addressing building bulk, privacy and access to sunlight and ventilation and the neighbour's dwelling having mature vegetation to screen the proposed dwelling and a large setback to the shared lot boundary. As a result, the application is recommended for approval.

## **2.0 Recommendation to Committee**

**Council approves the application for a Three Storey Single House at (Lot 579) No. 17 Viking Road, Dalkeith, in accordance with the application received on 16 October 2014 and amended plans received on 31 August 2015, subject to the following conditions:**

- 1. The development shall at all times comply with the approved plans.**
- 2. Amended plans shall be submitted and approved by the City prior to the lodgement of a building permit demonstrating all fencing within the front setback is no higher than 1.2m above natural ground level. This includes the fencing along the eastern and western side boundaries within the front setback.**
- 3. The use of the basement level shall be restricted to uses of plant and equipment, storage, toilets and/or the parking of wheeled vehicles. Prior to occupation of the dwelling / development, the owner shall execute and provide to the City a notification pursuant to s. 70A of the *Transfer of Land Act 1893* to be registered on the title to the land as notification to prospective purchasers that the use of the basement level is subject to the restriction set out above.**
- 4. Front walls and fences in the primary street setback area shall be:**
  - a) A maximum height of 1.2m above natural ground level at the base of the wall; and**
  - b) All structures are truncated or reduced to no higher than 750mm within 1.5m of where walls and fences adjoin vehicle access points, including neighbouring properties.**
- 5. The following windows of the ground floor shall be constructed with obscure material and not able to be opened or if an awning window, not able to be opened more than 0.3m:**
  - a) The study window of the western façade;**
  - b) The study window of the northern façade;**
  - c) The wet kitchen of the eastern façade;**
  - d) The guest window of the eastern façade;**
  - e) The guest window of the southern façade; and**
  - f) The living room window of the eastern façade.**
- 6. All existing and proposed fencing, visual privacy screens and obscure glass panels to Major Openings and Active Habitable Spaces shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2013 (R-Codes)*. The screens shall ensure spacing does not permit overlooking and all structure(s) shall be installed upon practicable completion of the house and remain in place permanently, unless otherwise approved by the City.**

7. All footings and structures to retaining walls, fences and parapet walls shall be constructed wholly inside the site boundaries of the Certificate of Title.
8. All street trees in the verge shown for retention are to be retained and shall not be damaged and shall not be removed without prior written approval from the Manager Parks Services.
9. All crossovers to the street shall be constructed to the Council's Crossover Specifications and the applicant / landowner to obtain levels for crossovers from the Council's Infrastructure Services under supervision onsite, prior to commencement of works.
10. The existing crossover shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
11. 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 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development.

**Advice notes specific to this approval:**

1. A grated channel strip-drain shall be constructed across the driveway, aligned with and wholly contained within the property boundary, and the discharge from this drain to be run to a soak-well situated within the property.
2. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
3. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot. Soak-wells shall not be situated closer than 1.8m to any boundary of a lot, building, septic tank or other soak-well.
4. All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
5. The swimming pool fencing installed is to comply with the *Building Act 2011*, the *Building Regulations 2012* and Australian Standard S 1926.1-1992.

6. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, at least 1.8m from the boundary of the block.
7. The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.

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

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

8. It is recommended that an anti-graffiti protective coating be applied to the whole of the fence structure, to the satisfaction of the City.
9. Dividing fences behind the front setback line, height no greater than 1.8m above approved levels and complying with the provisions of the *City of Nedlands Fencing Local Law 2007* are deemed to comply with the Scheme and do not require further planning approval. A further planning application and approval is required for other fencing, including heights greater than 1.8m above approved ground levels and/or forward of the front setback line.
10. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

### **3.0 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 requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

## 4.0 Legislation

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Residential Design Codes of WA 2013 (R-Codes).
- Local Planning Policy 6.23 – Carports and Minor Structures Forward of the Primary Street
- Council Policy – Fill & Fencing.
- Council Policy – Neighbour Consultation.

## 5.0 Budget / Financial Implications

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

## 6.0 Risk management

N/A

## 7.0 Background

### 7.1 Site Description

<b>Lot area</b>	1011.7m <sup>2</sup>
<b>Metropolitan Region Scheme Zoning</b>	Urban
<b>Town Planning Scheme No. 2 Zoning</b>	Residential – R10
<b>Detailed Area Plan/Outline Development Plan</b>	No
<b>Controlled Development Area</b>	No

The subject site is currently vacant as shown on the aerial image on the next page, with a 2m slope from the street to the rear of the lot and the west side being approximately 0.5m higher than the eastern side of the lot. The adjoining properties to the east, west and north are two-storey. The properties on the other side of Viking Road are a mixture of single and two storey (see **Attachment 7**).



Previously the application was referred to Council in September, however the applicant elected to withdraw the application to revise the design to better address the requirements of the R-Codes in relation to lot boundary setbacks.

## 8.0 Discussion

The application is for a three storey single house comprising of an under croft garage, two levels of habitable space above, rear cabana and pool as depicted in the submitted plans (**Attachment 1 – 6**). The proposal has been assessed under the provisions of the City's Town Planning Scheme No. 2 (TPS2), relevant council policies and the R-Codes.

The development complies with the City's TPS2, Council Policies and the 'deemed-to-comply' provisions of the R-Codes with the exception of the following:

- a) The cabana is proposed to be setback 1m from the rear boundary in lieu of the required 6m; and
- b) The upper floor of the dwelling is not setback from the eastern side boundary in accordance with Table 2A of the R-Codes.

## 8.1 Consultation

The development application was advertised to affected landowners for comment due to the rear cabana proposed to be setback 1m in lieu of 6m from the northern (rear) boundary and a portion of the upper floor being setback 2.3m in lieu of 2.5m to the eastern side boundary. The following is a summary of the concerns raised by the neighbouring landowner who has raised objections to the development:

- We strongly object to this massive residence as we feel that its huge bulk encroached beyond reasonable setbacks as required within the R-Codes
- We feel that the separation of the basement structure and ground floor of only 1.1m is inadequate for a building of this scale and bulk
- We would like to have the master ensuite skylight windows, bed 3 ensuite and bed 4 ensuite windows to be frosted to retain privacy
- We believe that the concrete roof area outside of bedroom 3 is a balcony and should be setback further than the proposed setback
- We feel that the chimney and balcony and bedroom 4 are also considered too close to the side boundary
- The size of this massive structure is not in keeping with the low density single residence dwellings within the area as is the aim of the R-Codes
- In our opinion, this structure is too close to the eastern boundary and the massive wall height of this three storey home will block out the afternoon sun, reduce the impact of sea breezes reaching our yard as well as impacting on our privacy.
- In addition it will not complement the streetscape due to its sheer size and scale.
- As we have previously stated, our understanding is that the R-Codes are designed to provide adequate separate to ameliorate the impact of building bulk. We believe that in this case the separate is not adequate and request refusal of the proposal.

The applicant for the proposed development has also provided several comments on the objections which have been raised (refer to **attachment 8**).

Despite the concerns raised by the submitter, administration believes that the proposal meets the design principles of Clause 5.1.3 (Lot Boundary Setbacks) of the R-Codes as discussed later in the report.

## 8.2 State Planning Policy 3.1 – Residential Design Codes

### 8.2.1 Cabana

The proposal is compliant with the Deemed-to-Comply provisions of the R-Codes with the exception of the following:

Deemed-to-Comply Requirement	Proposed
The cabana is required to be setback 6m from the rear boundary in accordance with Clause 5.1.3 and Table 1 of the R-Codes.	The proposed cabana has a 1m rear setback

Variations to the Deemed-to-Comply requirements can be considered subject to satisfying the following Design Principle provisions:



Design Principles	Assessment/Comment
<p><i>P3.1 Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <li>• <i>reduce impacts of <u>building bulk</u> on adjoining properties;</i></li> <li>• <i>provide adequate <u>direct sun and ventilation</u> to the building and open spaces on the site and adjoining properties; and</i></li> <li>• <i>minimise the extent of <u>overlooking</u> and resultant loss of <u>privacy</u> on adjoining properties</i></li> </ul>	<p><b>Impact of building bulk</b>                      The cabana is an open on three sides (northern side enclosed for privacy) and the structure is of single storey height. The cabana is located centrally to the lot adjacent to the rear boundary, ensuring that the rear neighbouring landowner is the only impacted neighbouring landowner. The rear neighbour also has a cabana structure also within their rear setback and pool area adjacent. Therefore the presence of similar type structures and single storey nature of the cabana ensures that the impact of building bulk is consistent with other properties within the locality.</p> <p><b>Access to direct sunlight and ventilation</b>                      The cabana is an open structure and located to the north of the dwelling ensuring that the proposed dwelling and neighbouring dwellings' have adequate access to sunlight and ventilation.</p> <p><b>Overlooking and privacy loss</b>                      The cabana has a solid wall to the rear ensuring that noise and light will not spill onto the northern neighbour's property. The cabana has large setbacks to the eastern and western side boundaries and is not proposed to be elevated more than 0.5m above the natural ground level so as to cause any visual privacy concern. Therefore the location of the cabana will not result in any overlooking or loss in privacy for neighbouring landowners.</p>

### 8.2.2 Upper floor setback to eastern side boundary

The proposal is compliant with the Deemed-to-Comply provisions of the R-Codes with the exception of the following:

Deemed-to-Comply Requirement	Proposed
The upper floor is required to be setback from the eastern side boundary in accordance with Clause 5.1.3 and Table 2A of the R-Codes.	The wall length from the balcony to the shower is 14.61m, with a maximum height of 9.37m and no major openings (as the balcony is screened). This wall requires a setback of 2.5m in lieu of the proposed 2.3m.

Variations to the Deemed-to-Comply requirements can be considered subject to satisfying the following Design Principle provisions:

Design Principles	Assessment/Comment
<p><i>P3.1 Buildings set back from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <li>• <i>reduce impacts of <u>building bulk</u> on adjoining properties;</i></li> <li>• <i>provide adequate <u>direct sun and ventilation</u> to the building and open spaces on the site and adjoining properties; and</i></li> <li>• <i>minimise the extent of <u>overlooking</u> and resultant loss of <u>privacy</u> on adjoining properties</i></li> </ul>	<p>The R-Codes states that the decision-maker, upon receipt of any comment/s from adjoining landowners, is required to consider and balance comment/s with its technical opinion when it exercises its judgement to determine the proposal. The neighbour consultation process is not considered by the R-Codes as a process to obtain ‘consent’ from the neighbouring landowner, but rather their input to ensure that the design principles are observed and complied with in considering a variation to the deemed to comply requirements of the R-Codes.</p> <p>The initial proposal had substantially greater setback variations to which the neighbouring landowner objected to and administration recommended refusal to in the application’s initial referral to Council for determination. The applicant has subsequently worked with administration to modify the proposal to have the bulk of the height located further into the property as depicted on the roof plan (attachment 4), leaving the a wall length setback 2.3m in lieu of 2.5m which has not had the roof setback further into the property. This wall length is designed for architectural appearance and is the tallest part of the building as viewed from the street and the neighbouring property.</p> <p>In the location of the setback variation, the impacted eastern neighbour’s dwelling is also located approximately 3 - 3.5m away from the shared lot boundary with some tall mature vegetation along the shared side boundary to screen the proposed dwelling. Whilst this vegetation is not permanent and is located on the neighbour’s property, it will minimise the visual impact of the building somewhat from the neighbour’s property and the neighbouring landowner has control over the maintenance of this vegetation.</p> <p>The building has been articulated with height stepped back from the lot boundary to reduce the appearance of building bulk from the neighbour’s dwelling. The upper floor of the dwelling has no major openings ensuring</p>

visual privacy is maintained between properties. Additionally the orientation of the lot and the setbacks provided ensure sunlight and ventilation is available to the proposed dwelling and neighbouring dwelling.

For the reasons stipulated above, the application is considered to meet the design principles of the R-Codes and hence recommended for approval without further modification.

## **9.0 Conclusion**

The proposal is for a three-storey single house on the property. The proposal involves two lot boundary setback variations under the deemed-to-comply provisions of the R-Codes – one being to the rear lot boundary and the other being to the eastern side boundary. The variations are considered to be compliant with the relevant design principles of the R-Codes. Accordingly, the application is recommended for approval to the Council subject to no further modification.

## **10.0 Attachments**

1. Site Plan
2. Basement Plan
3. Ground Floor Plan
4. Upper Floor Plan
5. Southern and Eastern Elevations
6. Northern and Western Elevations
7. Site Photographs
8. Applicant's Justification



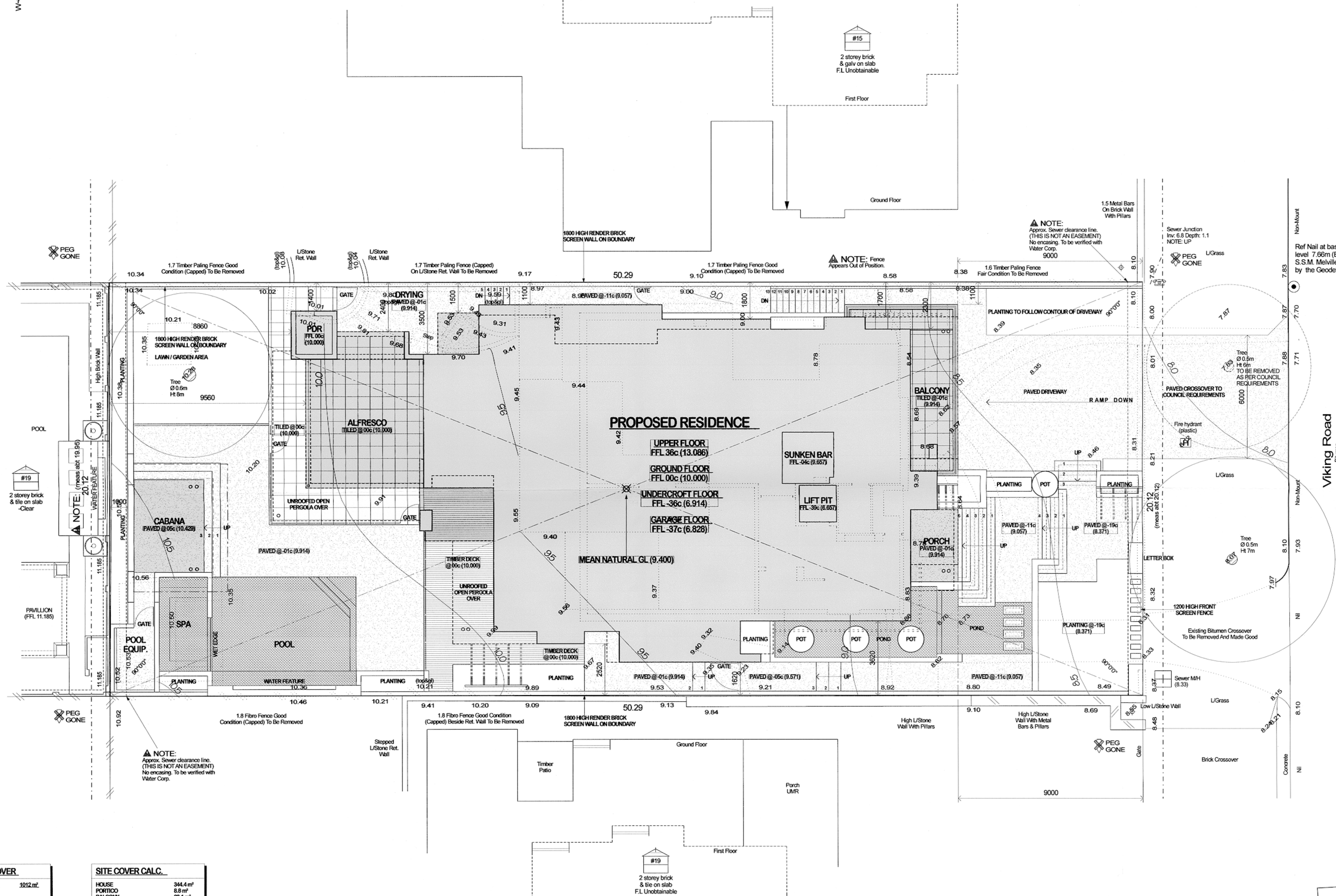
**NOTE:** ALL SEWER DETAILS PLOTTED FROM INFORMATION SUPPLIED BY WATER CORPORATION.  
**NOTE:** WATER METER NOT LOCATED ADJACENT TO LOT AT TIME OF SURVEY.  
**NOTE:** DUE TO LACK OF SURVEY MARKS / PEGS ALL BUILDING OFFSET DIMENSIONS & FEATURES ARE APPROX ONLY AND POSITIONED FROM EXISTING PEGS / FENCES AND WALLS WHICH MAY NOT BE ON THE CORRECT ALIGNMENT AND ARE TO BE VERIFIED WHEN REPOSED. ANY DESIGN THAT INVOLVES ADDITIONS TO ANY STRUCTURES SHOWN OR PORTION OF STRUCTURES REMAINING AFTER ANY DEMOLITION HAS TAKEN PLACE. BOUNDARIES MUST BE REPOSED AND EXACT OFFSETS PROVIDED TO YOUR DESIGNER / ARCHITECT BEFORE ANY PLANS ARE PRODUCED AND BEFORE ANY WORK IS STARTED ON SITE.

**COTTAGE & ENGINEERING SURVEYS**  
 Licensed Surveyors

87-89 GUTHRIE STREET, OSBORNE PARK, WA 6017.  
 Ph: (8) 9446 7361 Fax: (8) 9445 2988  
 Email: perth@cottage.com.au Web: www.cottage.com.au

LOT : LOT 579 (#17) VIKING ROAD, DALKEITH.  
 PLAN# : 3395.  
 AUTHORITY : CITY OF NEDLANDS.

LEGEND	SOIL DESCRIPTION	LOT MISCLOSE
SEC Dome	Sand	(0.000 m)
Power Pole	Refer to Survey	
Phone		
Conc. Path		
Conc. Slabs		



SITE COVER	
SITE AREA	1012 m <sup>2</sup>
40% ALLOWABLE SITE COVER	404.8 m <sup>2</sup>
ACTUAL SITE COVER	399.9 m <sup>2</sup>

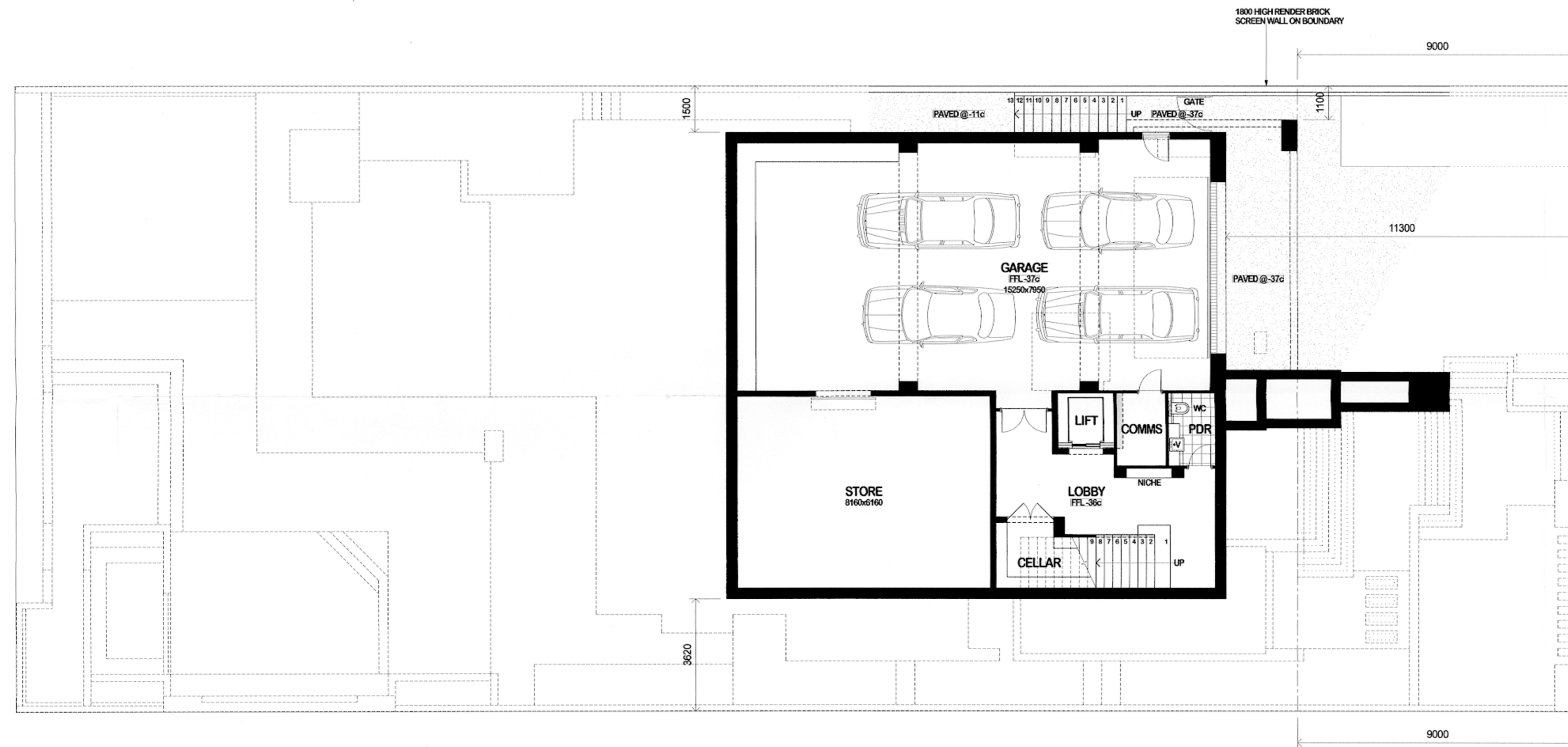
SITE COVER CALC.	
HOUSE	344.4 m <sup>2</sup>
PORTICO	8.8 m <sup>2</sup>
BALCONY	22.1 m <sup>2</sup>
POR	5.1 m <sup>2</sup>
ALFRESCO	21.3 m <sup>2</sup>
CABANA	15.5 m <sup>2</sup>
LIVY PORCH	4.0 m <sup>2</sup>
MEALS PORCH	9.2 m <sup>2</sup>
<b>TOTAL</b>	<b>50.0 m<sup>2</sup> 399.9 m<sup>2</sup></b>

**SITE PLAN**  
 SCALE 1:100

City Of Nedlands  
 31 AUG 2015  
 Received  
 Records Services

MLANKOV DESIGNS  
 PROJECT MANAGEMENT

**INDRA RESIDENCE - VIKING ROAD**



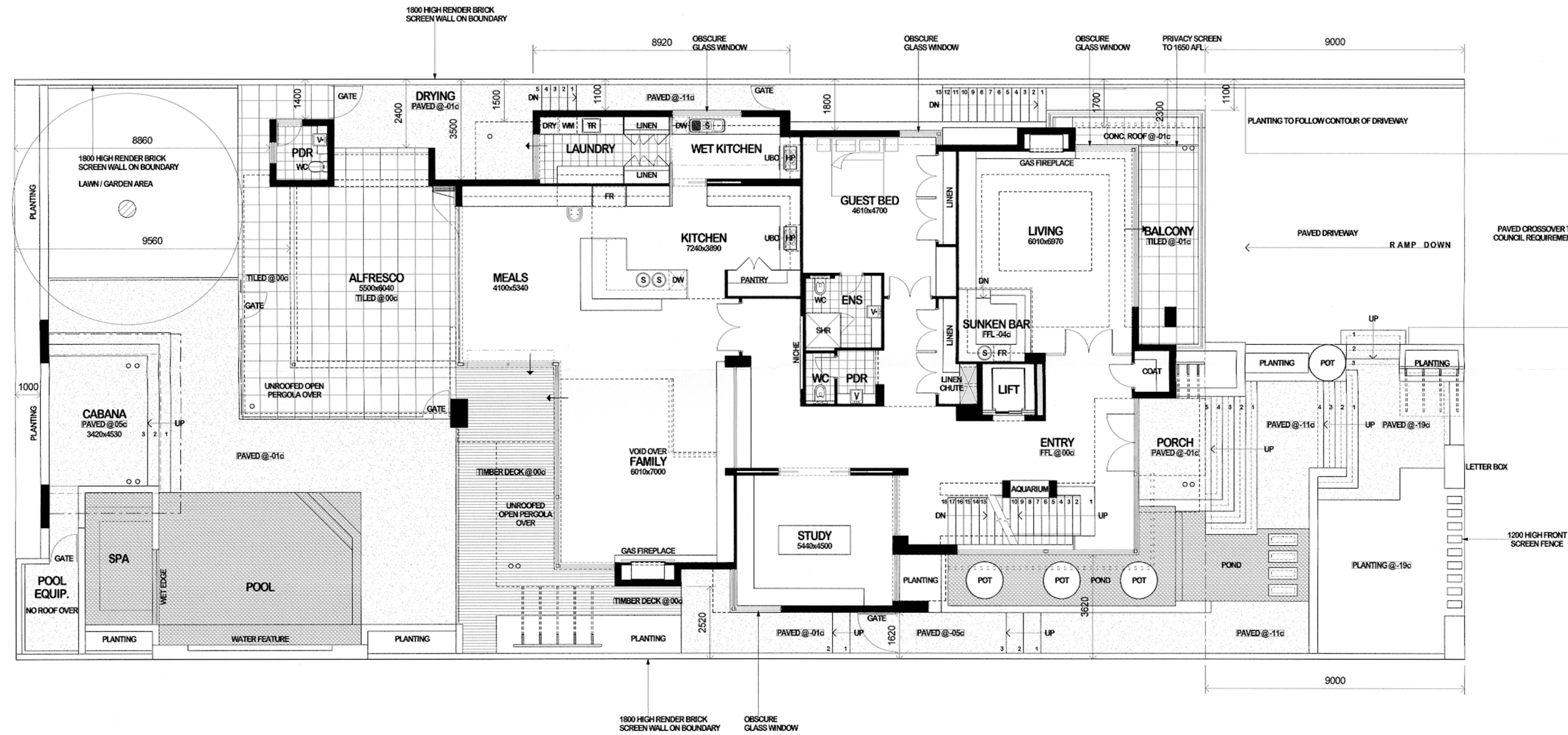
VIKING ROAD

U.C.F. AREAS	
HOUSE	49.7 m <sup>2</sup>
GARAGE	134.7 m <sup>2</sup>
STORE	57.1 m <sup>2</sup>
<b>TOTAL</b>	<b>241.5 m<sup>2</sup></b>

UNDERCROFT FLOOR PLAN  
SCALE 1:100

City Of Nedlands  
31 AUG 2015  
Received  
Records Services

MILANKOV DESIGNS  
**mopm**  
PROJECT MANAGEMENT



VIKING ROAD

G.F. AREAS	
HOUSE	344.4 m <sup>2</sup>
PORCH	8.8 m <sup>2</sup>
BALCONY	22.1 m <sup>2</sup>
PDR	5.1 m <sup>2</sup>
ALFRESCO	40.8 m <sup>2</sup>
CABANA	15.5 m <sup>2</sup>
LORRY PORCH	4.0 m <sup>2</sup>
MEALS PORCH	9.2 m <sup>2</sup>
<b>TOTAL</b>	<b>449.9 m<sup>2</sup></b>

GROUND FLOOR PLAN  
SCALE 1:100

City Of Nedlands  
31 AUG 2015  
Received  
Records Services

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**m d p m**  
PROJECT MANAGEMENT

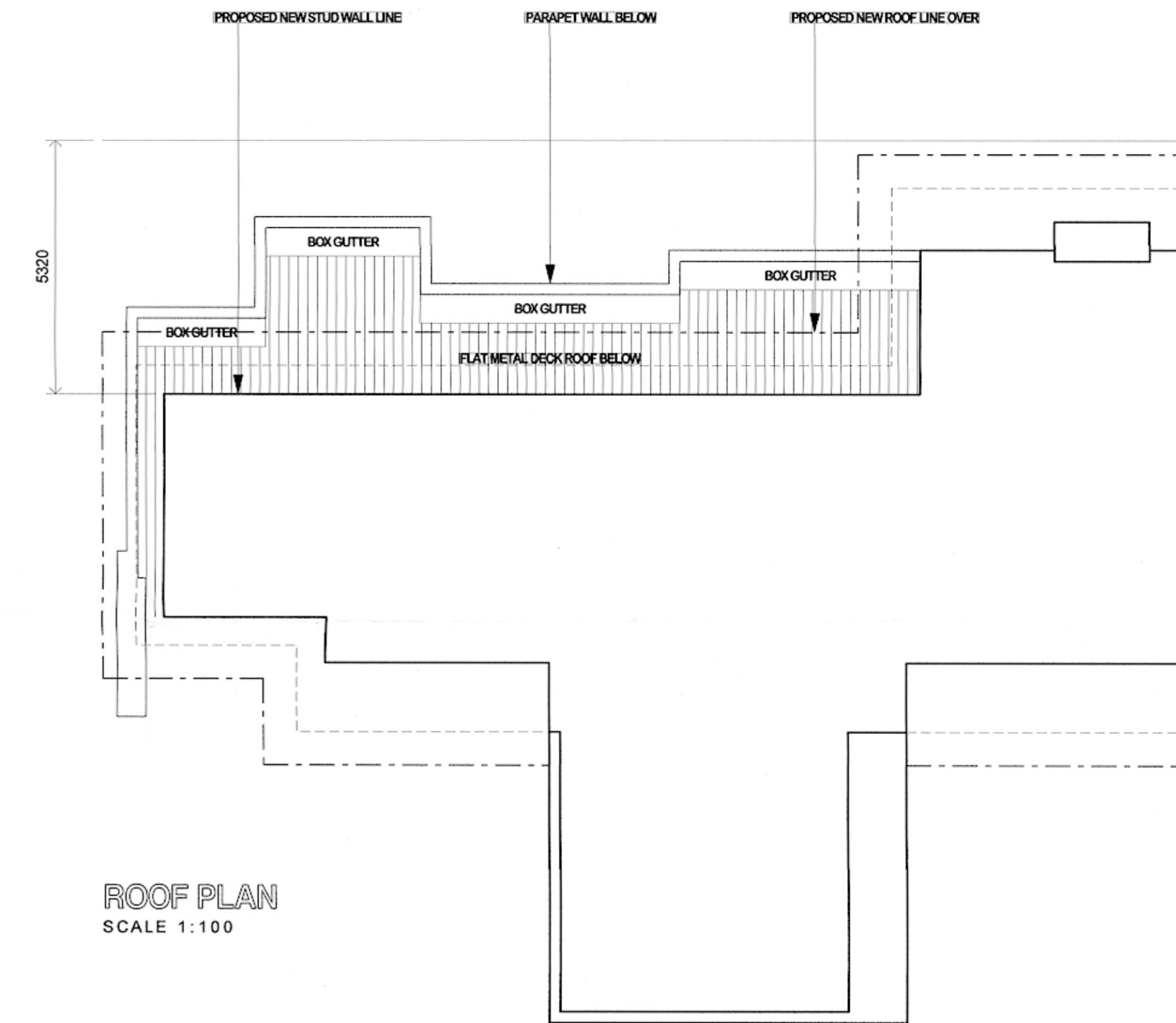
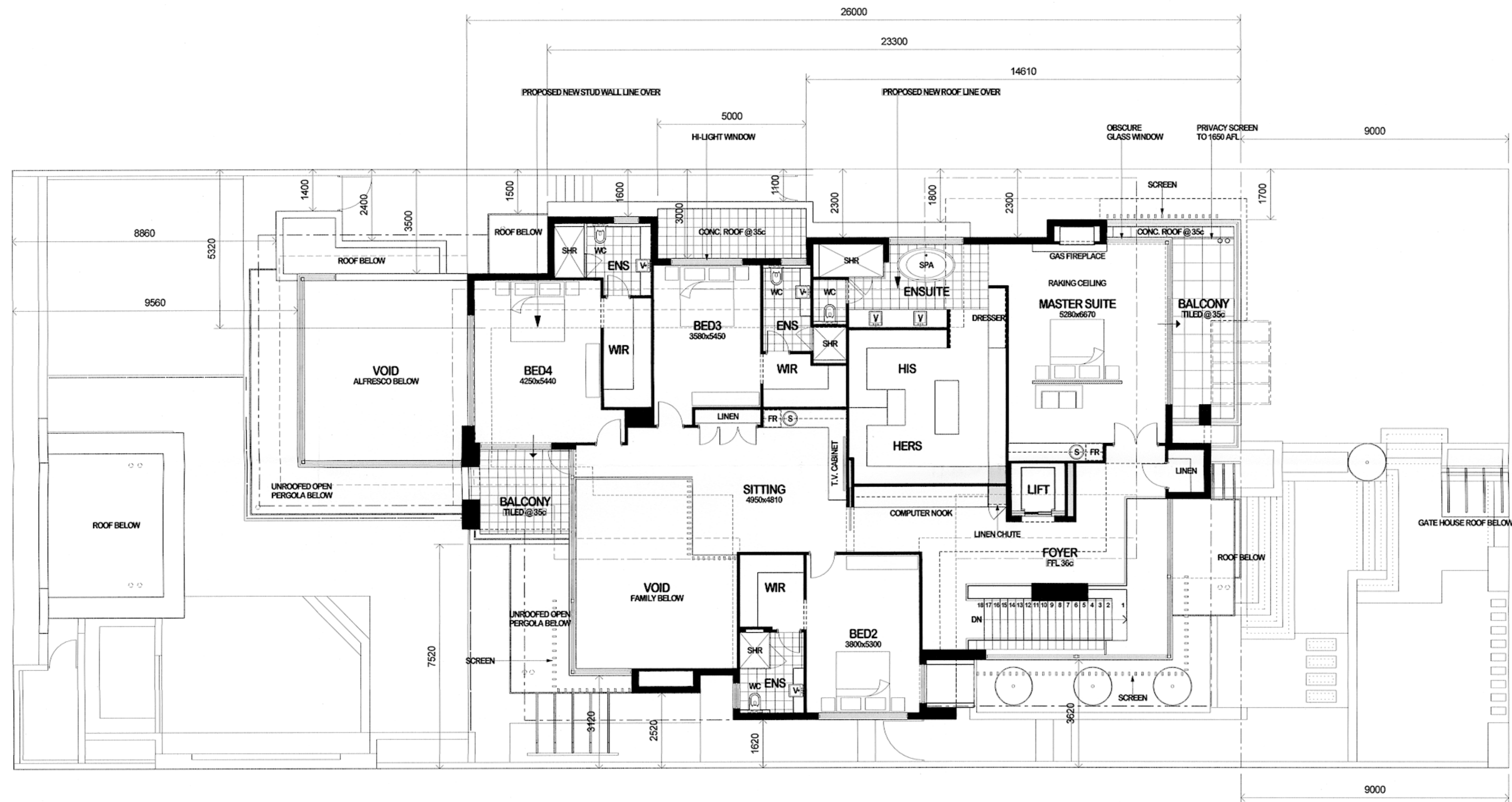
**INDRA RESIDENCE - VIKING ROAD**

LOT 579 (#17) VIKING ROAD, DALKEITH.

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3/6 Sketch # 5 (DA 28-08-2015)



U.F. AREAS	
HOUSE	329.6 m <sup>2</sup>
BALCONY	17.2 m <sup>2</sup>
BALCONY	11.0 m <sup>2</sup>
<b>TOTAL</b>	<b>357.8 m<sup>2</sup></b>

UPPER FLOOR PLAN  
SCALE 1:100

ROOF PLAN  
SCALE 1:100

City Of Nedlands  
31 AUG 2015  
Received  
Records Services

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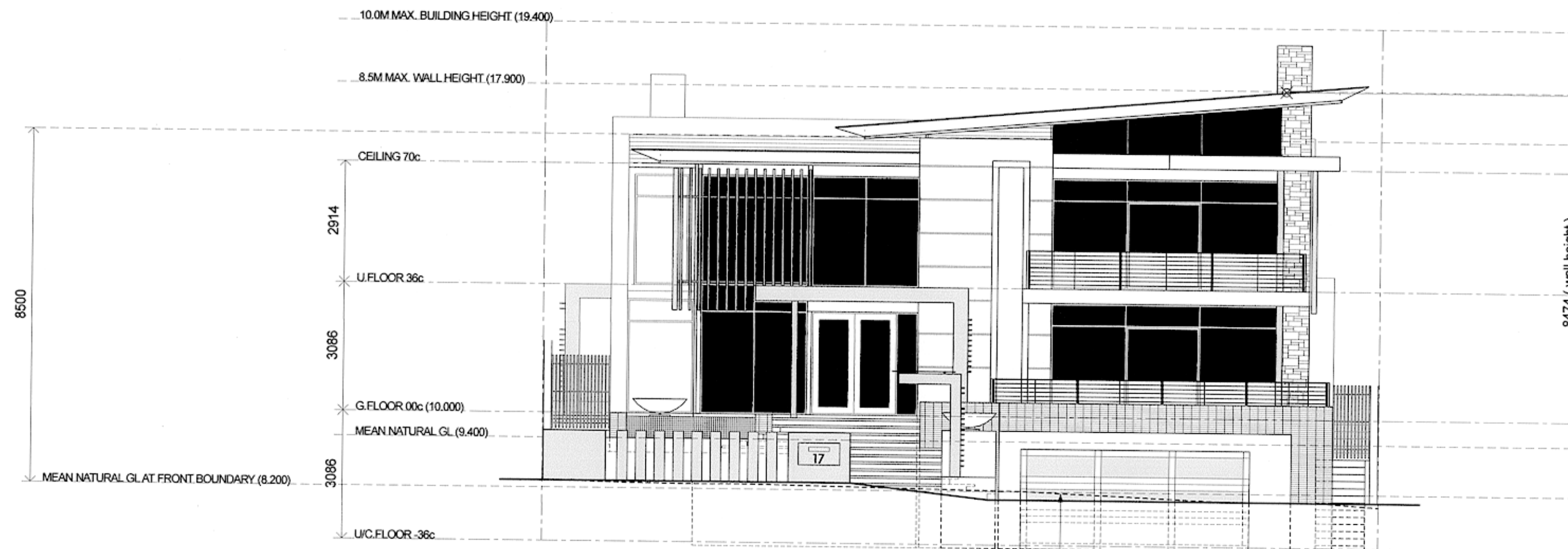
# INDRA RESIDENCE - VIKING ROAD

LOT 579 (#17) VIKING ROAD, DALKEITH.

4/6 Sketch # 5 (DA 28-08-2015)

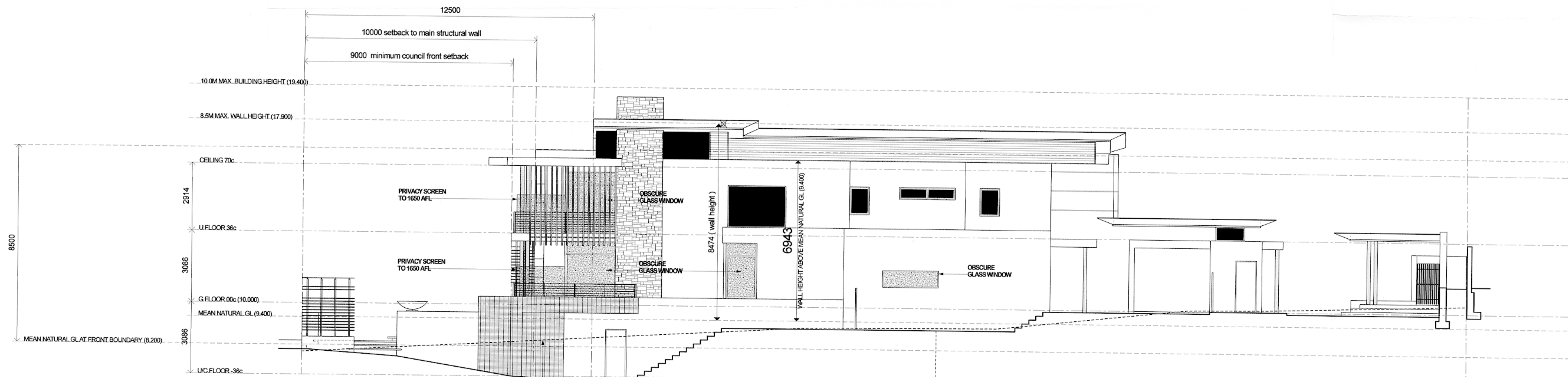
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SOUTH ELEVATION  
SCALE 1:100

NATURAL GROUND LINE  
ALONG FRONT BOUNDARY



EAST ELEVATION  
SCALE 1:100

NATURAL GROUND LINE  
ALONG SIDE BOUNDARY

City Of Nedlands  
31 AUG 2015  
Received  
Records Services

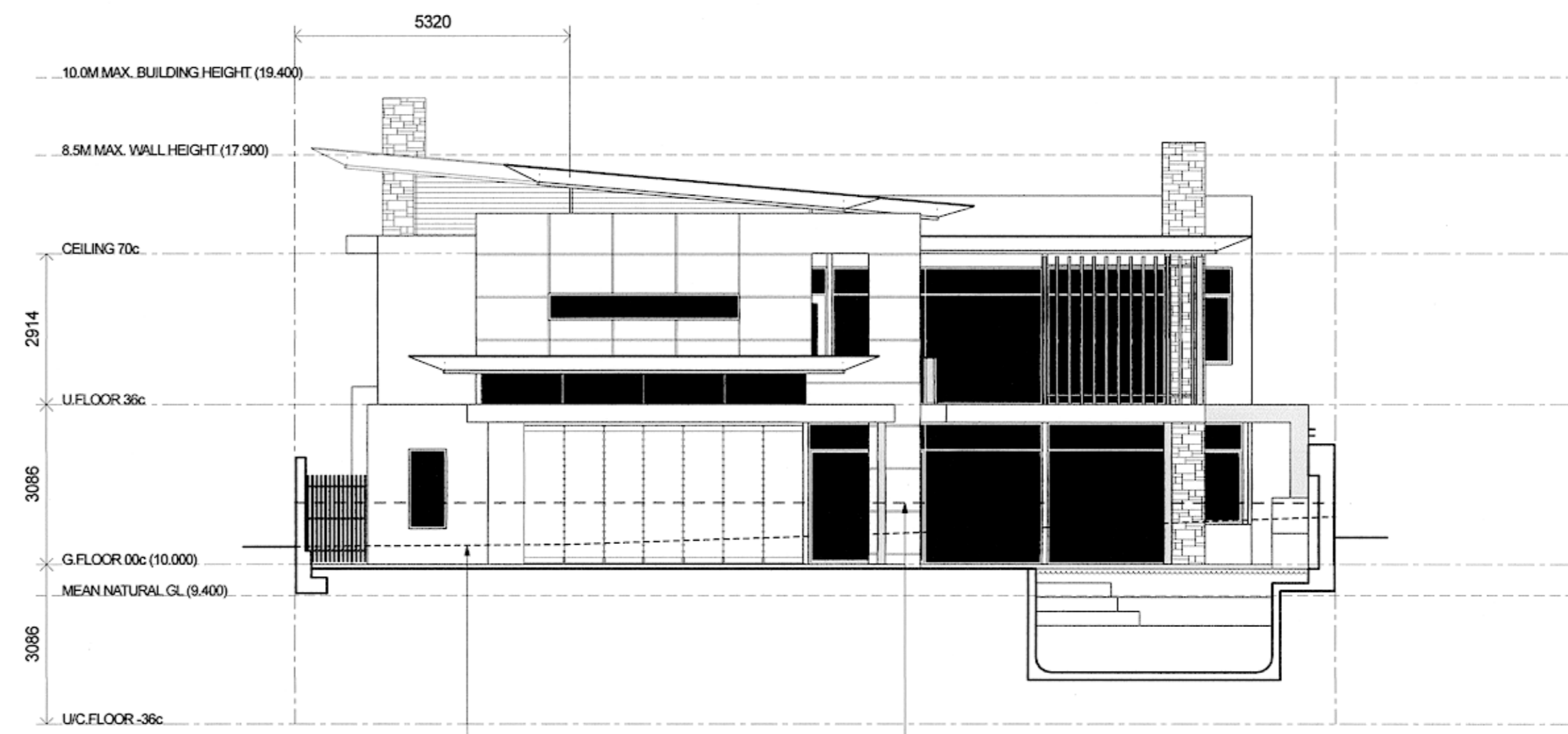
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PROJECT MANAGEMENT

**INDRA RESIDENCE - VIKING ROAD**

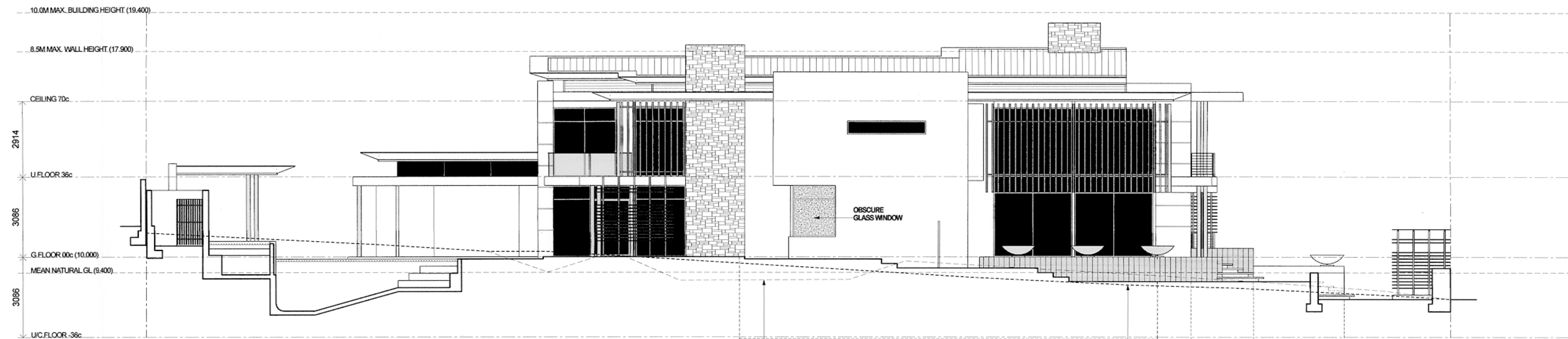
LOT 579 (#17) VIKING ROAD, DALKEITH.

5/6 Sketch # 5 (DA 28-08-2015)





**NORTH ELEVATION**  
SCALE 1:100



**WEST ELEVATION**  
SCALE 1:100

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31 AUG 2015  
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**INDRA RESIDENCE - VIKING ROAD**

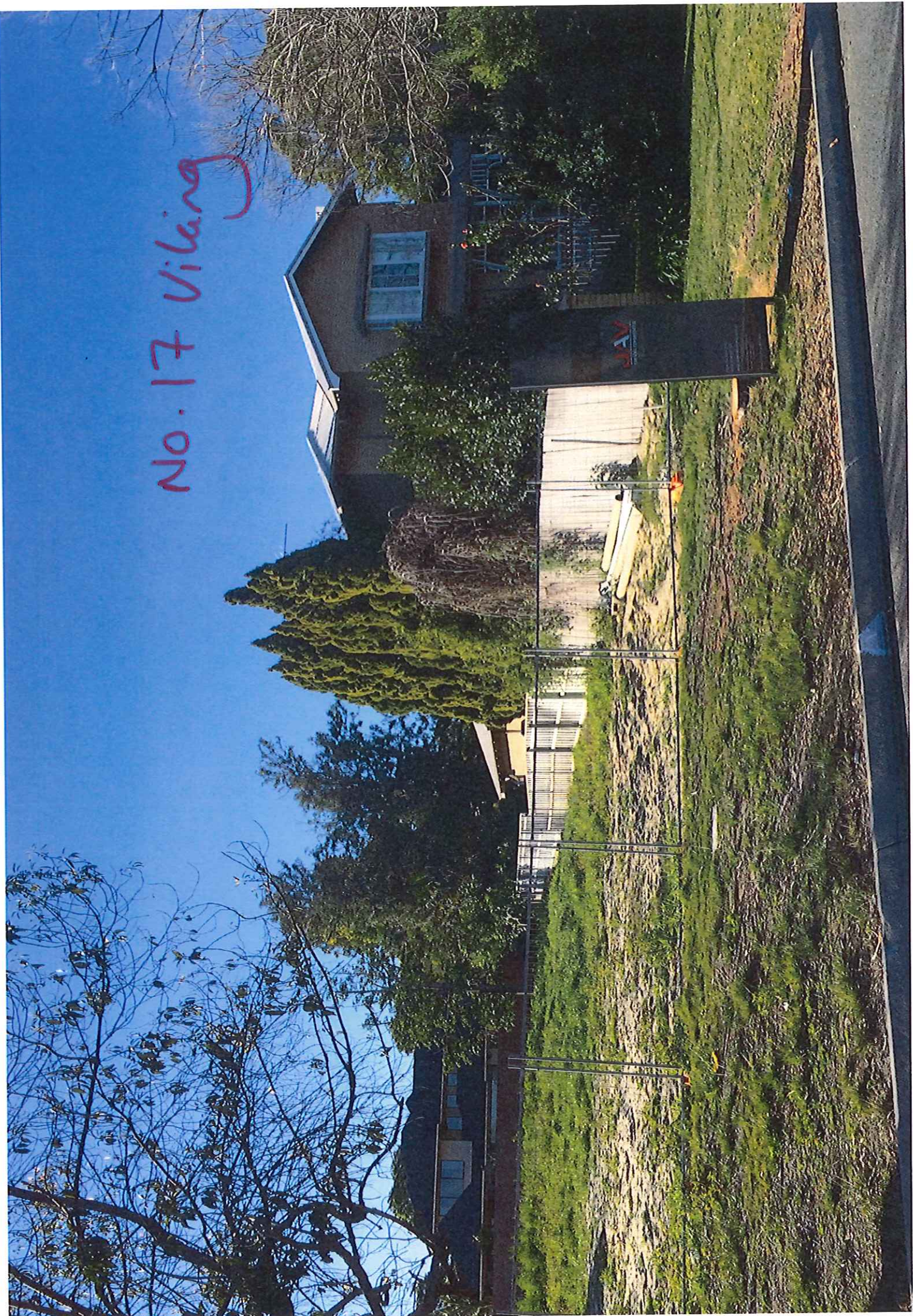
LOT 579 (#17) VIKING ROAD, DALKEITH.

6/6 Sketch # 5 (DA 28-08-2015)

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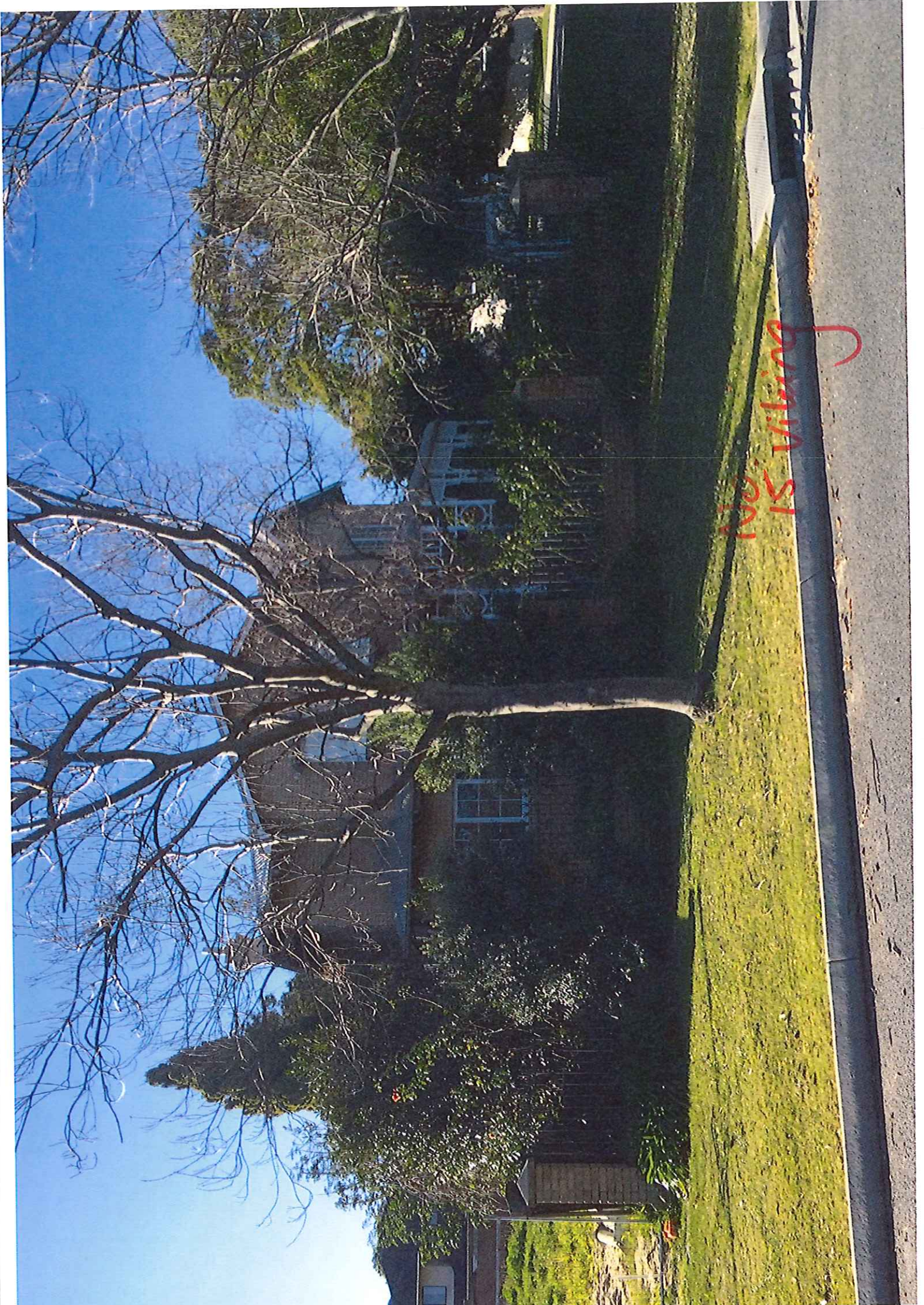
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No. 17 Viking



No. 19 Vilahg



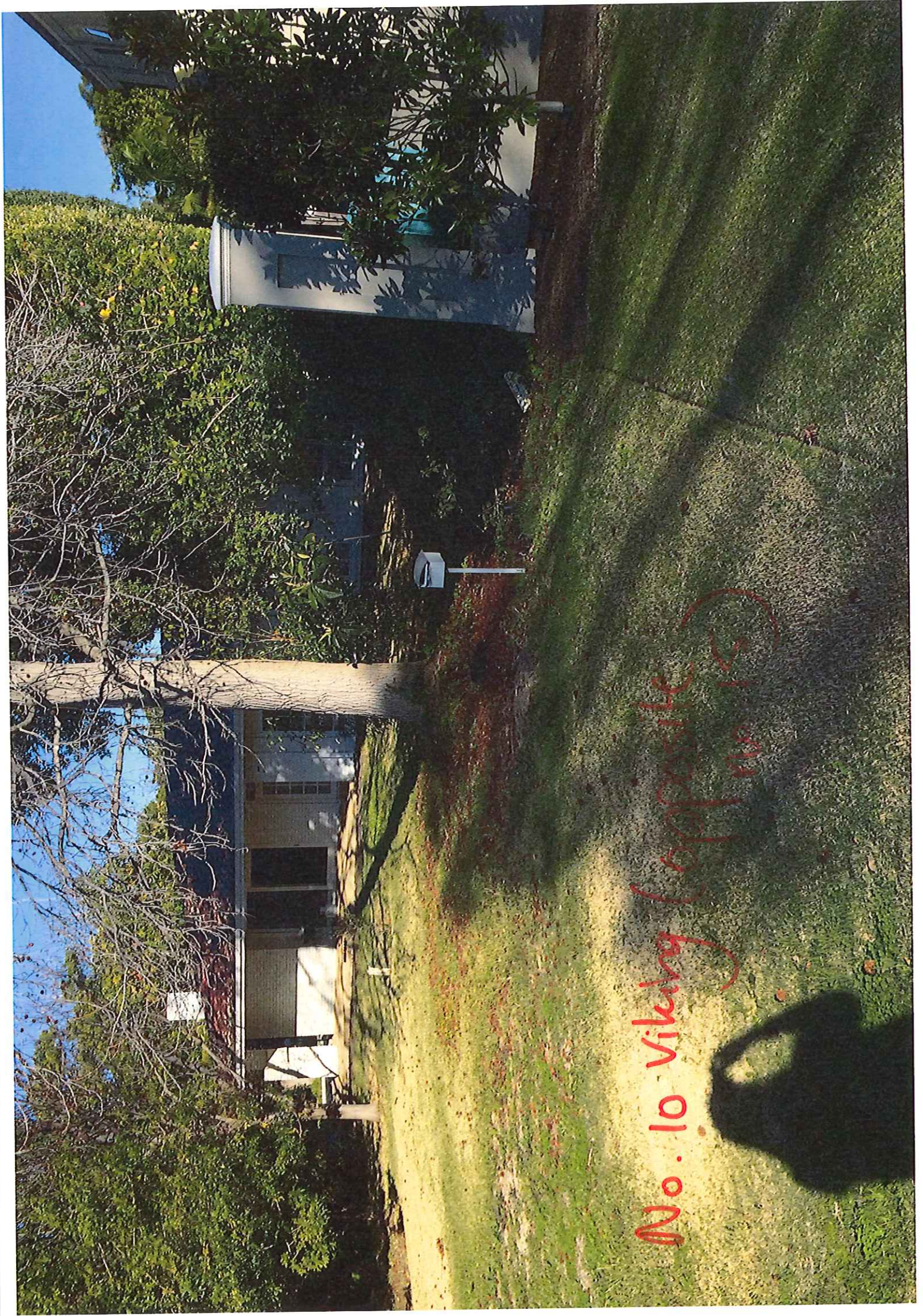


Miss Vining



No. 12 Viking (opposite)

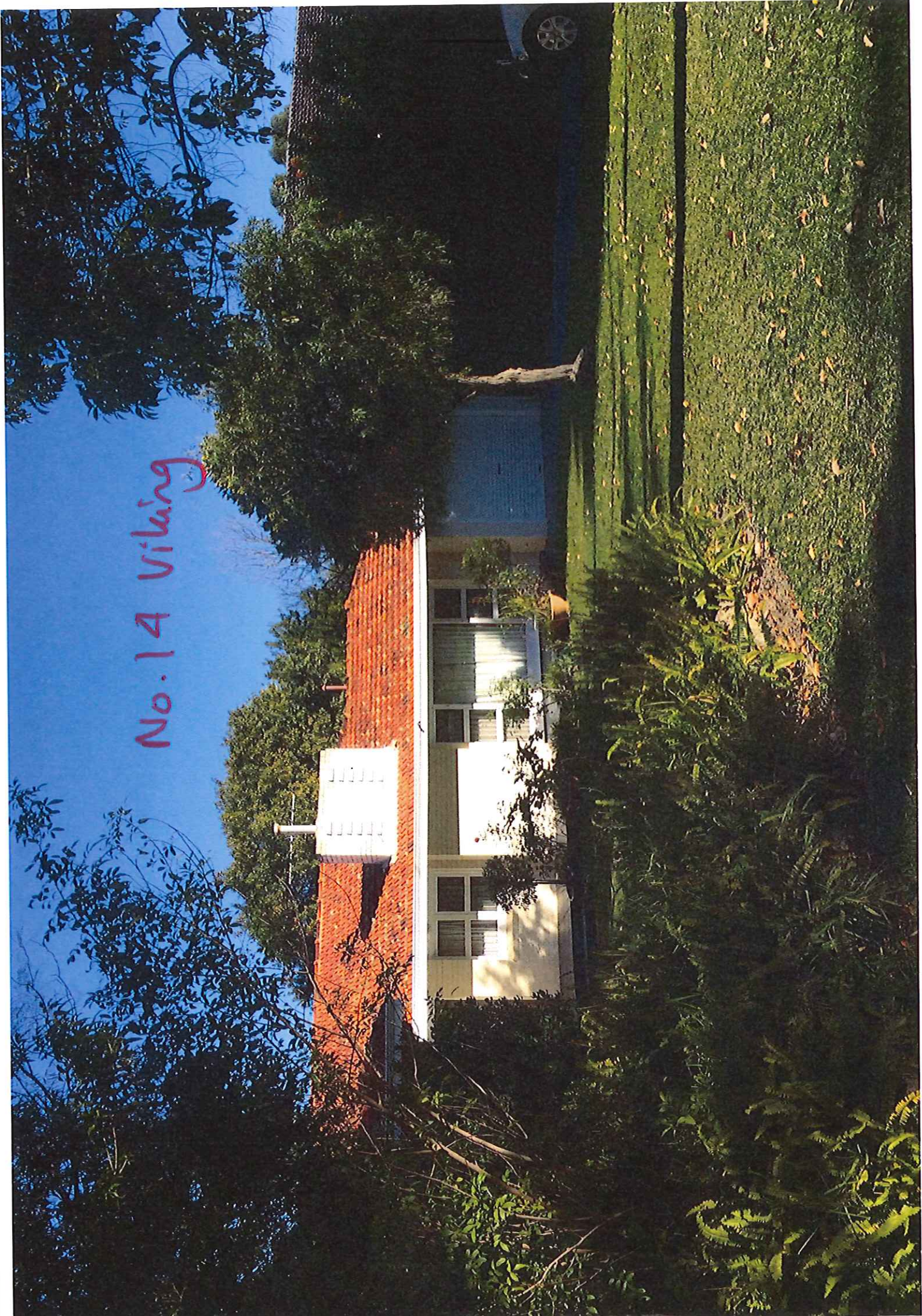
No. 10 Viking Composite



No. 21  
Viking.



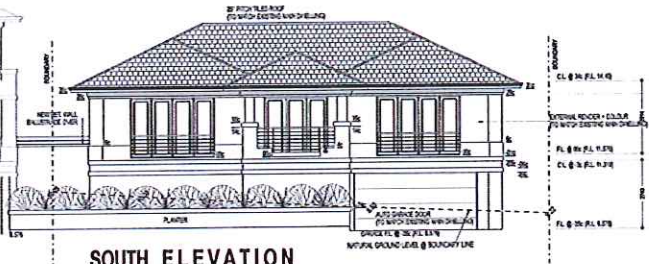
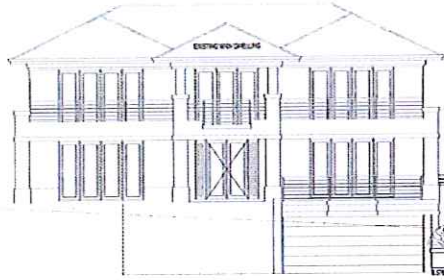
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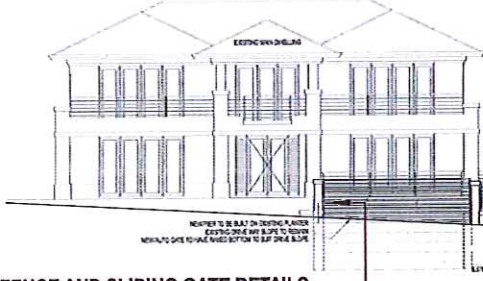




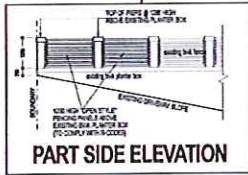
No. 29 Viking



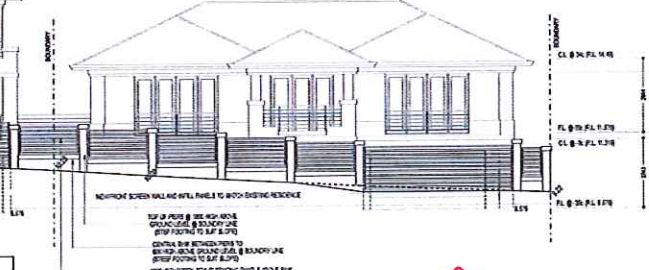
**SOUTH ELEVATION**



**FRONT FENCE AND SLIDING GATE DETAILS**



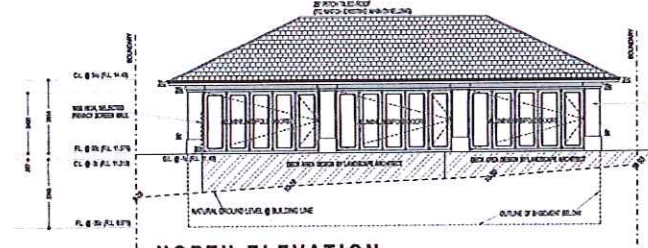
**PART SIDE ELEVATION**



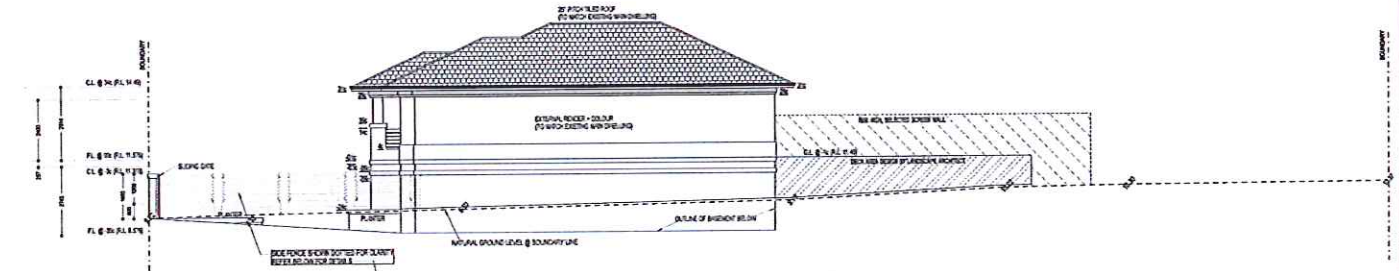
**NORTH ELEVATION**



No. 27  
Viking



**EAST ELEVATION**



**WEST ELEVATION**



**ROWEGROUP**

Job Ref: 8313  
18 September 2015

Chief Executive Officer  
City of Nedlands  
71 Stirling Highway  
NEDLANDS WA 6009

Level 3  
369 Newcastle Street  
Northbridge 6003  
Western Australia

p: 08 9221 1991  
f: 08 9221 1919  
info@rowegroup.com.au  
rowegroup.com.au

**Attention: Ms Kate Bainbridge: Senior Planning Officer**

Dear Ms Bainbridge

**Response to Submission  
Lot 579 (17) Viking Road Dalkeith**

Reference is made to the City's email of 15 September 2015 in respect to the above-mentioned matter.

It is understood that the amended plans for the proposal were re-advertised to the adjoining landowner. Regardless of the modifications made to the development the landowner objects to the proposal.

The objector's reasons for objecting to the proposal, as provided by the City, are detailed below along with the Applicant's response.

<b>Objectors Comments</b>	<b>Applicants Response</b>
We strongly object to this massive residence as we feel that its huge bulk encroached beyond reasonable setbacks as required within the R-Codes.	The size of the dwelling is commensurate with the development in the locality.  The photographs contained within Attachment 1 illustrate that the dwelling is of similar size and scale to that present on Viking Road as well as adjoining development.  The attached aerial photograph in Attachment 2 shows the size of the dwellings in relation to the lots to which the dwellings are contained. It is evident from a review of the aerial photograph that large dwellings are characteristic of the locality.  The proposal also complies with building height requirements.
We feel that the separation of the basement structure and ground floor of only 1.1m is inadequate for a	This setback conforms to the requirements of the R-Codes. It is also noted that the basement is contained, in part, below natural ground level which reduces any potential affect on the objector.

<p>building of this scale and bulk.</p>	
<p>We would like to have the master ensuite skylight windows, bed 3 ensuite and bed 4 ensuite windows to be frosted to retain privacy</p>	<p>The ensuites are not classified as habitable rooms under the R-Codes and as such are not required to be obscured.</p> <p>The windows to the Master Suite along the eastern facade are greater than 1.6 metres above floor level. It is not possible from floor level to view out of these windows.</p> <p>It should further be noted that there are no major openings, as defined by the R-Codes, along the eastern facade of the building which</p>
<p>We believe that the concrete roof area outside of bedroom 3 is a balcony and should be setback further than the proposed setback</p> <p>We feel that the chimney and balcony and bedroom 4 are also considered too close to the side boundary</p>	<p>The concrete roof adjoining bedroom 3 is not a balcony. This area is completely inaccessible from the dwelling. No additional setback is required.</p> <p>In accordance with the R-Codes the chimney can project up to 750mm into the setback area. Thus, the Chimney meets the deemed to comply requirements of the R-Codes.</p> <p>Based on the City's calculations the building setbacks to the objector's property on the upper floor comply with the deemed to comply requirements of the R-Codes with the exception of the balcony to shower wall where a setback of 2.3 metres in lieu of 2.5 metres is proposed.</p> <p>In accordance with the R-Codes development is required to demonstrate compliance with the relevant design principle not the deemed to comply requirements. Meeting the deemed to comply requirements is one way of demonstrating compliance with a design principle.</p> <p>The design principle relevant to side setbacks is set out under Clause 5.1.3 P3.1 of the Codes. Clause 5.1.3.P3.1 of the R-Codes is as follows:</p> <p><i>Building setback from lot boundaries so as to:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Reduce impacts of building bulk on adjoining properties</i></li> <li>▪ <i>Provide adequate direct sun and ventilation to the building and open space on the site and adjoining properties.</i></li> <li>▪ <i>Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i></li> </ul> <p>The proposal demonstrates compliance with the above-mentioned design principle as:</p> <ul style="list-style-type: none"> <li>▪ A setback of 2.3 metres is achieved. This setback is considered sufficient to reduce any adverse affect of building bulk on the adjoining property. Moreover, in the location of the 2.3 metre setback screening vegetation on the neighbouring property would assist in screening views between the existing two storey residence and that proposed,</li> </ul>

	<ul style="list-style-type: none"> <li>The primary outdoor living area on the objector's policy is located well away from the wall in question to the north of the objector's property.</li> </ul>
<p>The size of this massive structure is not in keeping with the low density single residence dwellings within the area as is the aim of the R-Codes</p>	<p>The size of the dwelling is commensurate with the locality.</p> <p>The photographs contained within Attachment 1 illustrate dwellings of similar size and scale present on Viking Road as well as adjoining development.</p> <p>The attached aerial photograph in Attachment 2 shows the size of the dwellings in relation to the lots to which the dwellings are contained. It is evident from a review of the aerial photograph that large dwellings are characteristic of the locality.</p> <p>The proposal also complies with building height requirements.</p> <p>Given the above it is not correct to state that the size of the dwelling is not in keeping with dwellings in the area.</p>
<p>In our opinion, this structure is too close to the eastern boundary and the massive wall height of this three storey home will block out the afternoon sun, reduce the impact of sea breezes reaching our yard as well as impacting on our privacy.</p>	<p>The dwelling does not present as three stories in height. The basement level is located, in part, below natural ground level as viewed from the street (refer to the southern elevation).</p> <p>This type of dwelling construction is also seen in the example of residences provided within Attachment 1.</p> <p>The dwelling is unlikely to significantly shade the outdoor living area to the north of the objector's landholding. The part of the proposed dwelling adjacent to the outdoor living area is one storey in height and is setback 8.860 metres from the rear lot boundary.</p> <p>It is further noted that the eastern boundary wall along its length is articulated in such a manner so as to assist in 'breaking up' building bulk.</p>
<p>In addition it will not complement the streetscape due to its sheer size and scale.</p>	<p>Refer to previous comments above regarding size and scale.</p>
<p>As we have previously stated, our understanding is that the R-Codes are designed to provide adequate separate to ameliorate the impact of building bulk. We believe that in this case the separate is not adequate and request refusal of the proposal.</p>	<p>Refer to previous comments above regarding meeting the design requirement of the R-Codes.</p> <p>In addition, it is required to be acknowledged that the Applicant has undertaken notable modifications to the proposal in order to address the objectors concerns regarding the setback of the development from the adjoining boundary.</p>

The objections to the proposal should be dismissed as the proposal is considered to meet the design requirements of the R-Codes. It has further been demonstrated that the type of development in terms of size and scale is consistent with the existing built form of Viking Road.

It is understood that notwithstanding that the proposal complies with the design requirements of the R-Codes that an alternative recommendation may be put to Council requiring the balcony to ensuite wall be setback an additional 200mm.

As detailed earlier within this advice the Applicant has considered the objections to the proposed eastern setback and made modifications to the eastern facade. It is considered that the modifications to the eastern facade appropriately address the concerns raised by the objector in respect to the proposal.

It is considered that setting back the balcony to ensuite wall by an additional 200mm will not appreciably affect the impact of the wall on the objector's property. Therefore, it is requested that the proposal be approved without further modification.

Should you require any further information or clarification in relation to this matter, please contact Aaron Lohman on 9221 1991.

Yours faithfully,



**Aaron Lohman**

Rowe Group

CC: Client

# Attachment One

**Dwellings: Viking Road Dalkeith**



29 Viking Road



22 Viking Road





24 Viking Road



19 Viking Road (adjoining neighbour to the west)



12 Viking Road (adjacent neighbour)

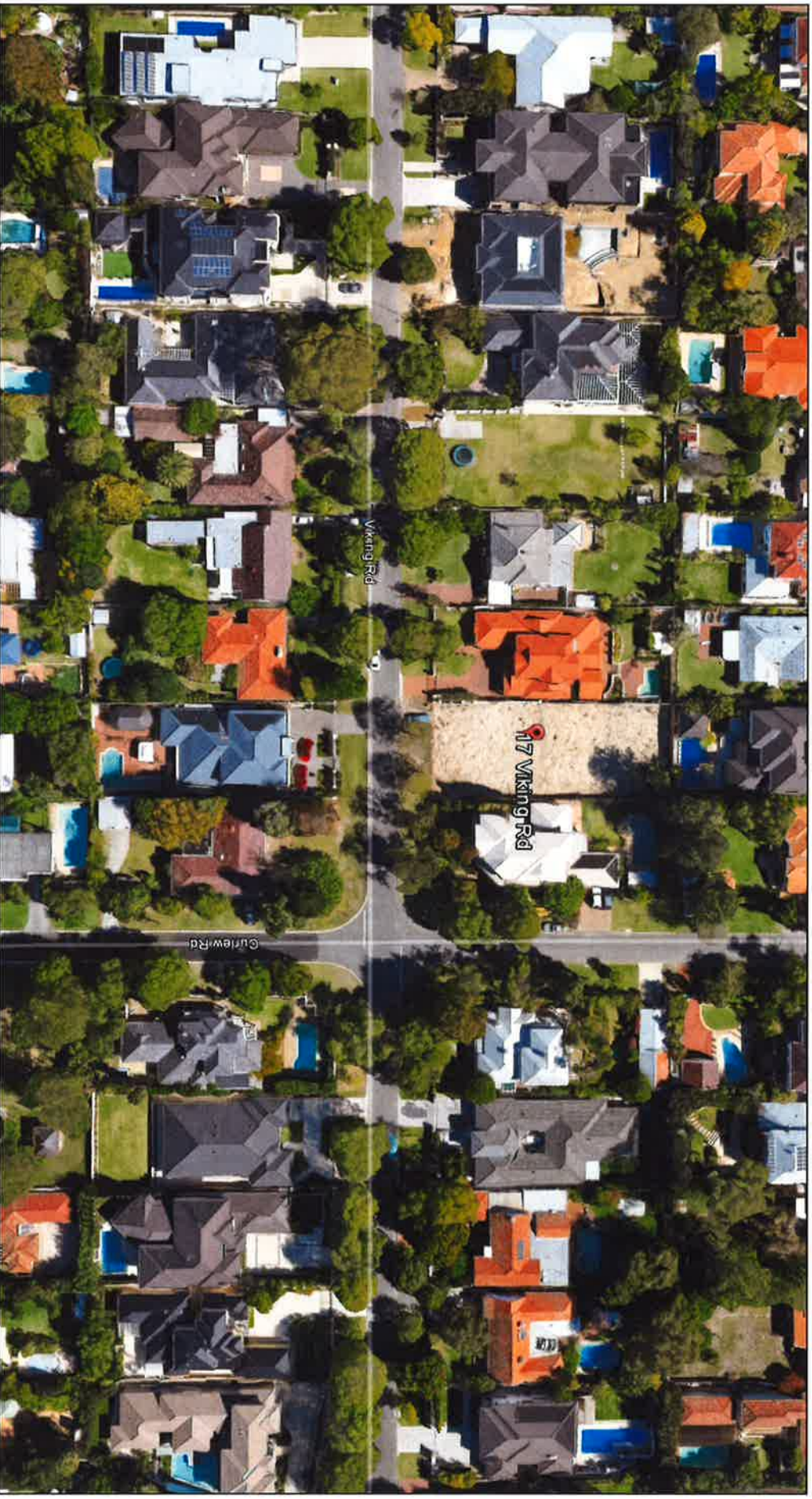


15 Viking Road (adjoining neighbour to the east)

(Images Google Earth)


# Attachment Two

Aerial Photograph



(Image Google Earth)

<b>PD43.15</b>	<b>Nedlands Child Health Clinic – 152 Melvista Avenue Nedlands Reserve 21657 - Lease by Department of Health (Child and Adolescent Community Health)</b>
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<b>Committee</b>	13 October 2015
<b>Council</b>	27 October 2015
<b>Applicant</b>	Department of Health – Child & Adolescent Health Service
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Rebecca Boley – Leased Assets Co-ordinator
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	CAP-LB-00058
<b>Previous Item</b>	CPS07.15 on 24 March 2015

## 1.0 Executive Summary

This item is presented to Council in order to settle the arrangements for the future tenancy at the Nedlands Child Health Clinic at 152 Melvista Avenue, Nedlands – Reserve 21657. The Child and Adolescent Community Health branch of the Department of Health have provided child health services from this building for several decades and with no formal agreement currently in place. The building has not been properly maintained and now requires capital works. The Department advise they are not in a position to assume such maintenance and the City must now decide how to respond bearing in mind its leasing policy, and the requirement of the City's ratepayers.

### 1.1 Recommendation to Committee

#### Council

1. Requires that the Department of Health enter into a formal lease of the Nedlands Child Health Clinic at 152 Melvista Avenue, Nedlands – Reserve 21657 on the City's standard terms of lease for community groups.
2. Requests that the Department of Health assume responsibility for capital items of maintenance and replacement at the premises, noting its current condition, in return for a peppercorn rental;

3. **If the Department of Health declines to formalise the Lease on the required terms, reluctantly requests they vacate the premises, giving 3 months' notice.**

#### **Alternative Recommendation Council**

1. **Agrees to consider the budget item necessary to undertake works at the Nedlands Child Health Clinic at 152 Melvista Avenue, Nedlands, to restore the building to an acceptable condition.**
2. **Agrees to enter into a Lease arrangement with the Department of Health for premises at Reserve 21657 on the basis that the lessee is responsible for all running costs of the building (including utilities, cleaning and consumables required) and routine maintenance and the City is responsible for capital works onsite.**
3. **Agrees to give consideration in its ongoing annual budget to allocating sufficient funds to a 'sinking fund' to provide for necessary capital works onsite.**

### **1.2 Strategic Community Plan**

KFA: Community Development- agreeing a lease of the premises by the Department of Health will ensure the much valued child health service continues in this community.

KFA: Governance and Civic Leadership – agreeing a lease of the premises by the Department of Health on the City's standard terms will ensure consistency with the City's leasing policy. Formalising a lease arrangement over the building on either basis as discussed will ensure this asset of the City's is properly maintained once more.

## **2.0 Background**

The Nedlands Child Health Clinic is a purpose built clinic constructed in 1951. The clinic is located on Crown Reserve 21657 with purpose "Child Health Centre". A management order for this reserve vests the City of Nedlands with the care control and management over the reserve.

The service provided by the the Child and Adolescent Community Health branch Department of Health (CACH) is as follows:

- *The hours of operation are from 0830 – 1700 five days per week.*
- *Number of children attending the clinic for a scheduled visit is around 30 per week, from this clinic CACH also offer New Parents' Group which can have 10 – 12 attendees per week. We also run Introduction to Solids' group also 10-12 attendees.*
- *The catchment area for this clinic includes; Dalkeith, Nedlands and Crawley. Majority of clients reside in these suburbs.*
- *General services offered from this clinic are as follows:*

***Child health services** aim to promote improved health outcomes for babies, young children and their families across Western Australia through the provision of universal and targeted prevention, early identification and intervention community health services. The universal community child health service begins with child health nurse contact with all mothers with new babies and additional contacts at the critical points in the child's development throughout the first four years. It is a vital entry point for families with young children into health and social services and a unique opportunity to improve outcomes for families experiencing difficulty in caring for their children.*

*The metropolitan **Child Development Service** provides a range of assessment, early intervention and treatment services to children with or at risk of developmental disorders and delay. Child development services also play a key role in health prevention and promotion through the delivery of community education, professional development and the delivery of universal prevention programs. Child development services in WA are important referral points from universal and specialist health service providers.*

There has been no formal agreement as to the terms of use of the clinic by CACH. And it is understood that these services have in many local governments been delivered through a partnership between Local Government Authorities and the Department of Health with Local Government providing the facility from which the Department provided the service.

The City's Administration has previously attempted to negotiate a lease agreement for the building. In 2010, following a request to the Minister for Lands the City received in-principle consent to lease this reserve to the Department of Health. This request was made in preparation for negotiations at the time and this in-principle consent is valid for a period of 6 months from issue the City would need to make a further request when new terms have been negotiated. At this time WALGA was involved in leading negotiations with the Department of Health to seek some form of agreement however this was subsequently abandoned.

The building that is the clinic has continued to go unmaintained and deteriorated. In 2014 the City engaged an independent contractor to assess the condition of the City's buildings. The assessment of Clinic resulted in an overall rating of "fair" although several components of the building were rated as "poor". The condition assessment is included in **Attachment 1**.

There are 310 Child Health Centres across Western Australia. Other clinics in the vicinity include Peppermint Grove and Shenton Park. A full list of other clinics in the Perth Metropolitan area is included at **Attachment 2**.

In September 2014 Administration briefed Councillors on the matter noting the absence of any lease arrangements between the City and Department of Health advising that the City would be liaising with the Department with view to requiring a lease be in place by the end of the financial year (2014/15). Terms of this lease were to accord the City's standard leasing practices – that is the Department responsible for operating and maintenances costs.

Further to this briefing session the City wrote a letter to the Department of Health (CACH) with request for lease negotiations to commence and outlining requirement for terms to be based on the City's standard terms and noting the example of this arrangement to the south of the clinic, at 150 Melvista Ave, where the Department of Education leases premises that are the Nedlands Park Early Learning Centre.

Following no response from the Department the City further contacted the Department requesting response. In March 2015 the Department responded with an annotated copy of the City's standard Deed of Lease (previously provided). Annotation essentially noted that the Department was unable to assume responsibility for items of capital maintenance and that it was contrary to Department policy. A copy of this annotated Deed of Lease is in **Attachment 3**. The Chief Executive of the Child and Adolescent Health Service (CAHS) wrote to the City in April 2014 noting the history of such clinics on the basis of a "mutually beneficial partnership between LGAs and the Department". The Chief Executive of CAHS further noted that "One of the legacies of this history is that CACH is unfunded for lease costs. However CACH can contribute to minor works repairs to facilities arising from its occupancy and it will meet the costs of its outgoings". And further noting that "the Nedlands Child Health Clinic is well positioned in a community in which the numbers of children 0-4 years of age are forecasted to increase by 25% in the next 6 years. It is a presence CACH would like to maintain."

Until the beginning of the new financial year in 2015/16 the City covered operational costs of the building with payment of telephone services, building insurance cleaning contractors and utilities. The City is now moving toward model of on-charging the utilities to the Department and requiring them to arrange its own cleaners. And the formalisation of an agreement for use of the building would assist in this regard.

This year the City has received two separate enquiries into any opportunities regarding commercial leasing of the clinic building for the purposes of child care and early childhood education. The enquirers identified the location adjacent to the Nedlands Park Early Learning centre as ideal. They have continued to follow up on the progress of the current tenancy with one enquirer advising that they are willing to submit a formal expression of interest.

## **2.1 Key Relevant Previous Council Decisions**

The relevant previous decision by Council was in item CPS07.15 on 24 March 2015 when Council resolved to adopt the City's reviewed policy entitled "Use of Council Facilities for Community Purposes". The policy guides the leasing of City premises for community purposes and specifically includes lessees such as government departments.



Essentially the policy requires that leasing of premises required for exclusive use by an appropriate organisation with a community purpose be on basis of a peppercorn rentals and at “no cost to Council”. The City’s standard terms of lease require that in return for the exclusive use of a municipal building the lessee agrees to bear all costs associated with its operation from and maintenance of the building in good repair and condition. This specifically includes items of capital replacement and development at a lease premises.

## 2.2 Legislation / Policy

The Local Government Act 1995 at s3.58 outlines the requirements of a local government authority in disposing of property – the lease or licence of land in this instance. However in this particular situation the transaction is exempt under the Local Government (Functions and General) Regulations 1996 at Reg. 30 as the proposed lessee / licensee is a government department.

Section 18 of the Land Administration Act 1997 requires that any lease of Crown reserve land is agreed by the Minister for Lands. In-principle consent has previously been provided however this has now lapsed and further consent would be sought upon agreement by the parties.

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

The City has consulted with the Child and Adolescent Community Health branch of the Department of Health on future terms of its tenancy at the Nedlands Child Health Clinic. CACH comment is contained within annotation of the draft Deed of Lease in Attachment 3.

In consultation with internal departments within the City the following comments were noted:

Community Development Department – consider the service provided by CACH to be a valuable and necessary service to the community. However they believe it is a cost shifting exercise by state government on to local government. Community Development consider it appropriate for state government entities to tenant the City’s premises on the same basis as community and sporting groups, being at no cost to Council.

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

If Council were to agree to assume responsibility for maintaining the Nedlands Child Health Clinic for the duration of the Department of Health’s tenure this would require

budget allocation for the immediate works to bring the building into an acceptable condition as well as the ongoing allocation of funds for capital works and maintenance onsite. On an initial assessment of the Building Condition report compiled in 2014 the components of the building considered “Poor” would equate to approximately \$45,000 - 50,000 in works to attend to; guttering, roof, eaves, walls, doors, hardware / locking, painting, windows and frames, internal floor coverings and cabinetry. There would then be further and ongoing provision of a sinking fund to ensure ongoing maintenance and replacement is undertaken. This annual amount is estimated to be approximately \$2000 (being an annual contribution that aligns with the City’s standard term of lease requiring an annual contribution to a building maintenance fund). This amount is an approximation based on City leasing practice.

## **5.0 Risk management**

The bulk of risk associated with this item relates to the continuance of the current arrangement for occupation of the clinic by the Department of Health’s CACH service. Without any agreement over terms of tenancy the building continues to deteriorate and risk goes unmetered. The lines between responsibilities are blurred and parties are unclear on building related matters. Settling the terms of future tenancy provide surety and therefore a risk management framework.

## **6.0 Discussion**

It is unquestionable that the service provided from the Nedlands Child Health Clinic by the Department of Health’s CACH branch is a valuable and worthwhile service to our community. However the City has competing requirements in its leasing policy which requires that a tenancy on an exclusive use basis be in the form of a lease agreement on the basis of no cost to Council. There are many examples of this around the City with lease by community and sporting groups as well as two premises leased to the Department of Education. This is particularly relevant in that the state government department for education leases 2 premises: in Nedlands; and Dalkeith on the basis of a peppercorn rental with all maintenance undertaken by the Department. Until 2012 the Department of Education leased 3 premises on this basis, with the third on the corner of Hackett Rd and Melvista Avenue. Therefore it seems unfounded to say that state government departments do not assume responsibility for items of capital maintenance at lease premises.

The City acknowledges that historical practice involved a partnership between local government and state government in the provision of health clinics in the community where a local government would provide the building from which the Department of Health would provide the service. Over time this arrangement has shifted somewhat with cost pressures and resource rationalisation. It is now clear that the model at Nedlands Child Health Clinic needs review and formalisation.

The options open to Council include the following:

- In accordance with the City's leasing policy and in line with neighbouring property to south of the clinic (leased to Department of Education on peppercorn rental basis with maintenance undertaken by lessee) request that the Department of Health enter into a lease on the City's standard terms of lease and if the Department reject this arrangement reluctantly request that they vacate the premises with a 3 month notice period.
- Alternatively the City could assume responsibility for capital works and maintenance at the building; making provision in its budget for immediate works required (estimated to be \$45,000 - \$50,000) and further commitment to maintain the building going forward (setting aside an annual sinking fund of approximately \$2000. On this basis the Department would be required to be responsible for operational costs, cleaning, telephone and utilities and consumables required and any fit out necessary. This option would be contrary to the City's leasing policy and provide the Department of Health with a concession in this regard, which could be regarded as a 'grant' of sorts.
- A middle ground between these approaches that Council may consider is to make provision for works to bring building into a good condition (at estimated cost of \$45,000 - \$50,000) and then require the Department of Health to lease building on the City's standard terms of lease; paying a peppercorn lease and absorb costs of routine and capital maintenance as well as their running costs.

However in an effort to move forward and address this standoff between local and state government Council must now consider whether it is appropriate to continue the historic partnership in providing this facility in the community and agree to undertake the works to bring the building into a good condition. Council must also consider whether to continue to be responsible for the ongoing maintenance of this building while tenanted by the Department of Health – CACH. Or alternatively Council could resolve to be consistent with the City's leasing policy and require the Department of Health to continue its occupation at the clinic on standard terms of lease, with the Department being responsible for capital maintenance as well as operating costs.

With regard to alternative options on leasing the building to the Department of Health any other use of the building would need to be consistent with the current purpose of the reserve which is 'child health centre'. To entertain a lease for purpose of education centre, as interest has been registered by third parties, would require an amendment to the management order for the reserve. This involves a process with Department of Lands.

## **7 Conclusion**

The Nedlands Child Health Clinic has now reached a state of 'poor' to 'fair' condition with only indications of further deterioration without addressing the terms of tenancy onsite. The history of tenancy at this building and more broadly health clinics across the state have often seen a partnership between local government and state government in providing such services. However over the course of time roles and responsibilities have shifted and policies changed and for this reason the Nedlands Child Health Clinic building is in a state of deterioration. At this point the clinic requires investment to bring it to a good condition and it is necessary for the future terms of tenancy to be settled to provide that surety over responsibilities for capital

maintenance and repair. There is now required a resolution to the state government and local government divide over acceptable terms of future tenancy. The City must now balance this cost shifting exercise against requirement of its ratepayer.

## **8 Attachments**

1. Building Condition Assessment Report July 2014
2. Draft Deed of Lease with annotation by Department of Health

**Building Condition Audit**

LGA: City of Nedlands

<b>Asset Name:</b>	Nedlands Child Health Clinic	<b>Built:</b>	1937
<b>Address:</b>	152 Melvista Avenue Nedlands		

Asset Type	N/A	Asset Rating - Overall					Estimated Quantity	Make / Description	Defect / Repair
		Very Poor	Poor	Fair	Good	Excellent			
<b>1.0 ELECTRICAL</b>									
1.1 Distribution Services									
1.2 Emergency lighting	X								DELETE
1.3 Exit Lights	X								DELETE
1.4 External Lighting	X								DELETE
1.5 Fire Detection	X								DELETE
1.6 GPO's				X			9	Fluro and globe type.	
1.7 Internal Lighting				X			8		
1.8 Security Systems	X								DELETE
1.9 Switchboards	X							Not sighted - to be checked.	DELETE
<b>2.0 COMMUNICATIONS</b>									
2.1 Telephone				X			1		
2.2 Data	X								DELETE
<b>3.0 HVAC</b>									
3.1 AC Equipment Type						X	2	Splits (Fujitsu and Dakon) - wall mounted.	
3.2 Exhaust Systems	X								DELETE
3.3 Heating							1	Box heating.	
3.4 Ventilation Systems				X			2	Fans.	
<b>4.0 ROOF</b>									
4.1 Covering				X				Tile covering.	

Asset Type	N/A	Asset Rating - Overall					Estimated Quantity	Make / Description	Defect / Repair
		Very Poor	Poor	Fair	Good	Excellent			
4.2	Downpipes			X					
4.3	Guttering		X						Needs replacing in sections.
4.4	Insulation	X							DELETE
4.5	Roof Framing		X					Timber framed.	
<b>5.0</b>	<b>EXTERIOR STRUCTURE</b>								
5.1	Eaves		X						Needs repair.
5.2	Exterior Walls		X						Needs painting and repair.
5.3	Exterior Doors		X						
5.4	Hardware/Locking		X						
5.5	Paint		X						
5.6	Security Doors/Screens	X							DELETE
5.7	Type of Glass			X				Clear and frosted pane.	
5.8	Verandah/Patio	X							DELETE
5.9	Windows & Frames		X					Timber.	Need painting and repair.
5.10	Directly abutting Paths			X				Concrete pavers.	
<b>6.0</b>	<b>INTERIOR STRUCTURE</b>								
6.1	Cabinetry		X					Timber.	Difficult to operate / open / close.
6.2	Ceilings			X				Plaster.	Some moisture damage - repair.
6.3	Doors			X				Timber.	
6.4	Fixtures	X							DELETE
6.5	Fixed Appliances	X							DELETE
6.6	Floor Coverings		X					Carpet and lino.	Some wear and tear - monitor.
6.7	Floors			X				Concrete and timber.	
6.8	Hardware/locking			X				Steel and hard locks.	



ATTACHMENT 3 - DRAFT DEED OF LEASE WITH ANNOTATION BY  
DEPARTMENT OF HEALTH

Standard Precedent Lease

*Lease Nedlands Child Health Centre, 152 Melvista Avenue,  
Nedlands*

---

**City of Nedlands**

*and*

**Minister for Health**



McLEODS  
Barristers & Solicitors  
Stirling Law Chambers 1220-222 Stirling Highway  
ICLAREMONT WA 6010  
Tel: (08) 9383 31331 Fax: (08) 9383 4935  
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.com.au  
Ref: TF:NEDL-  
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## Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009

(Lessor)

Minister for  
Healthof 189  
Royal Street, East  
Perth WA 6004  
(Lessee)

## Background

- A The Lessor is the management body of the Land under the Order.
- B Under the Order, the Lessor has the power to lease the Land for any term not exceeding 21 years, subject to the approval of the Minister for Lands being first obtained.
- C 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 11.1(1)(b); 11.1(1)(c)11.1(1)(d); and 11.1(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);

Casual Hire means the Hire of the Premises (or part thereof) on an irregular basis, for the purpose of temporary or occasional use of the Premises (or part thereof). Casual Hire does not require the entering into a formal legal agreement, but will require hire application form to be completed. Casual Hire will mean that the hirer does not have exclusive possession of the Premises, and the Premises will be available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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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* (WA).

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;

Hire means the hiring out of the Premises (or part thereof) on a temporary basis, for the purpose of providing them with temporary or shared use of the Premises. The Hire of the Premises may be in the form of Casual Hire or Regular Hire. Hire would normally be applied for by filling out a simple hire application form, and would not require a legal lease or sub-leasing document. Hire means that the hirer does not have exclusive possession of the Premises (or part thereof), and the Premises will remain available for Hire by other hirers at other times. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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 sub-lessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Leased 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;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;

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

Order means the vesting order published in the *Government Gazette* under the former *Land Act 1933* (and which now has the status of a Management Order made by the Minister under section 46 of the *Land Administration Act 1997*), or the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of [insert purpose of order];

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

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

Regular Hire means the hire of the Premises (or part thereof) on a repeated basis (such as hire for a full year at the same time each week), for the purpose of regular use of the Premises (or part thereof). Regular Hire will not require the entry into a legal agreement, beyond a hire application form. With the exception of storage areas, the Premises hired for use would normally be available for hire at other times by other hirers. The Lessee may grant a regular hirer exclusive use of a storage area, without affecting the hirer's classification as a hirer rather than a permanent tenant or sub-tenant requiring a formal lease agreement and compliance with clause 24 of the Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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

Schedule means the Schedule to this Lease;

Sub-leasing or Sub-letting means the use of the Premises (or part thereof) by an organisation or individual on a long-term basis, for the purpose of providing them with security of tenure. Sub-leasing or Sub-letting would normally be for the purpose of granting an individual or organisation exclusive use of the Premises (or part thereof). If the Lessee wishes to sub-lease or sublet the Premises (or part thereof), it must comply with the requirements of clause 24 of this Lease. The Lessor may in its absolute discretion determine whether an arrangement for use of the Premises (or part thereof) constitutes a Hire, Casual Hire, Regular Hire or Sub-leasing or Sub-letting;

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.

## **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

-

## ATTACHMENT 3 - DRAFT DEED OF LEASE WITH ANNOTATION BY DEPARTMENT OF HEALTH

- (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 -
    - (A) both express and implied provisions; and
    - (B) 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) anything (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, sub-clause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, sub-clause, 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 an Authorised Person; 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. Conditions**

This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

**3. Grant of lease**

The Lessor, subject to **clause 2** of this Lease, 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.

**4. Quiet enjoyment**

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Order, 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.

**5. Rent and other payments**

The Lessee covenants with the Lessor –

**5.1 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.

**5.2 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 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

**5.3 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

## 5.4 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 registration fees in connection with this Lease; 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 an Authorised Person;
  - (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 5.4** or any matter arising out of this Lease.

## 5.5 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.

## 6. Accrual of amounts payable

The Amount Payable accrues on a daily basis.

## 7. Insurance

### 7.1 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 9** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

### 7.2 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.

### 7.3 Details and receipts

In respect of the insurances required by **clause 7.1** and **clause 7.2** 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.

### 7.4 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 7.1** or 7.2 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).

### 7.5 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.

### 7.6 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 7.1** and **7.2**.

### 7.7 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 7.1** and **7.2**;
- (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 7.1** and **7.2**;
- (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.

## **8. Indemnity**

### **8.1 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.

### **8.2 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.

### **8.3 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 8.2** 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.

#### **8.4 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.

#### **8.5 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.

### **9. Limit of Lessor's liability**

#### **9.1 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.

#### **9.2 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.

### **10. Maintenance, repair and cleaning**

#### **10.1 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.

## **10.2 Repair**

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises including damage of a structural nature, regardless of how it is caused.

## **10.3 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.

## **10.4 Cleaning**

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

## **10.5 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.

## ATTACHMENT 3 - DRAFT DEED OF LEASE WITH ANNOTATION BY DEPARTMENT OF HEALTH

### 10.6 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.

### 10.7 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.

### 10.8 Maintenance fund

- (1) The intention of this subclause is to ensure that the Lessee establishes a reserve fund and sets aside sufficient funds to maintain the Premises in accordance with this Lease and for the replacement of any structures or improvements on the Premises which will require eventual replacement. The fund may also be used for capital development of the Premises.
- (2) The Lessee must-
  - (a) establish and maintain a fund to be retained under its own management for the purpose of providing adequate funds for ongoing maintenance of the Premises and to allow for the depreciation of structures or improvements forming part of the Premises (**the Fund**);
  - (b) keep the Fund in an interest bearing bank account as a separate fund to other monies held by the Lessee;
  - (c) ensure that the Fund is clearly identified, as a distinct and separate fund in the Lessee's accounting records and is reported as such in all general financial statements produced by the Lessee;
  - (d) ensure that the Fund is audited in accordance with the Lessee's audit requirements and that the Lessor is provided at least once in each year of the Term with a copy of an audited financial statement showing the amount in the Fund; and
  - (e) make regular contributions to the Fund in accordance with this subclause (**Fund Contributions**).
- (3) The amount of money the Lessee will deposit in the Fund by the first anniversary date is specified in **Item 8** of the Schedule.



(4) The amount of money the Lessee will deposit in the Fund each subsequent year and frequency of Fund contributions will be reviewed annually.

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- (5) Before each annual review of the Fund Contributions, the Lessor's Building Services will meet with the Lessee to review the maintenance requirements for the Premises. The intention of the meeting will be for the Lessor's Building Services and the Lessee to reach agreement on the amount and frequency of Fund Contributions for the next twelve months.
- (6) The Lessee must only use the Fund for purposes and on specific items agreed between the parties.
- (7) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction.
- (8) The Lessee agrees to use the Fund to rectify all items identified by the Lessor as in need of repair, replacement or reconstruction, in preference to using the Fund for capital development of the Premises. The Fund may be used for capital development of the Premises, but only if all maintenance items as identified by the Lessor have been completed.

### 11. Alterations

#### 11.1 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 10**, 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.

#### 11.2 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 11.1** 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 11.1** -
    - (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.

### **11.3 Cost of Works**

All works undertaken under this **clause 11** will be carried out at the Lessee's expense.

### **11.4 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.

## **12. Use**

### **12.1 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 for the purposes for which the Premises are held by the Lessor, as set out at **Item 6** of the Schedule; 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 anything 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

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- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.



## 12.2 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.

## 12.3 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.

## 12.4 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 12**.

## 13. Lessor's right of entry

### 13.1 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 13.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

### 13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 13.1(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.

## 14. Statutory obligations and notices

### 14.1 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 the use of the Premises specified at **clause 12**;
- (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.

### 14.2 Safety & Testing Obligations

- (1) 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.
- (2) To comply with its obligation pursuant to **clause 14.2(1)** 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

### 14.3 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 14.1 and 14.2**; and

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- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clauses 14.1 and 14.2.**



## 15. 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.

## 16. Default

### 16.1 Events of Default

A default occurs if-

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;
- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period; or
- (g) 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.

### 16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** 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 18**,

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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.

### 16.3 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.

### 16.4 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.

### 16.5 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **10** (Maintenance, Repair and Cleaning), **12** (Use), **24** (Assignment, Subletting and Charging), **36** (Goods and Services Tax), **42** (Alcohol) and **43** (Minimise Nuisance to Neighbours) is an essential term of this Lease but this clause **16.5** does not mean or imply that there are no other essential terms in this Lease.

### 16.6 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;

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- (d) the Lessee agrees that the covenant set out in this **clause 16.6(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 16.6(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.

### 17. Damage or destruction

#### 17.1 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.

#### 17.2 Insurance proceeds

- (1) If the Lessee terminates the Term in accordance with **clause 17.1** 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.

### 18. 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 terms and conditions similar to this Lease other than this **clause 18** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Sublessor may consider appropriate.

## **19. 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.

## **20. 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.

## **21. Yield up the premises**

### **21.1 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.

### **21.2 Clause 21.1 to survive termination**

The Lessee's obligation under **clause 21.1** will survive termination.

## **22. Removal of property from Premises**

### **22.1 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.

### **22.2 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.

## **23. Hire of Premises**

### **23.1 Casual Hire or Regular Hire Only**

The Lessee may Hire out the Premises or any part thereof on a Casual Hire or Regular Hire basis only PROVIDED -

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- (a) such use is consistent at all times with the Permitted Purpose;
- and
- (b) the Lessee ensures any hirer complies strictly with the relevant terms of this Lease.

### 23.2 Lessee remains responsible for Premises at all times

The Lessee ACKNOWLEDGES that at all times, including when the Premises are hired to a third party, it remains responsible for the Premises, including without limitation any damage that may be caused or occurs during any hire period.

## 24. Assignment, sub-letting and charging

### 24.1 No assignment or sub-letting without consent

Subject to **clause 23**, 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.

### 24.2 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 use for non-profit making community purposes;
- (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.

### 24.3 Where sublessee is a community group

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 24.2(c)**.

### 24.4 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.

## **24.5 *Property Law Act 1969***

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

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### 24.6 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 sub-lessee;
  - (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.

### 24.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises.

### 25. 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.

### 26. 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.

### 27. 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.

### 28. Notice

#### 28.1 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.

#### 28.2 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 28.1(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 28.1(b)**, on the second business day following the date of posting of the Notice.

### **28.3 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.

### **29. 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.

### **30. Disputes**

#### **30.1 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.

#### **30.2 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.

### **31. 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.

### **32. 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.

### **33. 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.

### **34. 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.

### **35. Waiver**

#### **35.1 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.

#### **35.2 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.

### **36. Goods and services tax**

#### **36.1 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.

#### **36.2 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 36.2(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.

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### **36.3 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 36.2(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.

### **37. 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.

### **38. Caveat**

#### **38.1 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.

#### **38.2 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,

## ATTACHMENT 3 - DRAFT DEED OF LEASE WITH ANNOTATION BY DEPARTMENT OF HEALTH

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.

### **39. Indemnity and ratification**

#### **39.1 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 38**.

#### **39.2 Indemnity**

The Lessee indemnifies the Lessor against -

- (a) any loss arising directly from any act done under **clause 38** and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 38**.

### **40. Prior notice of proposal to change rules**

The Lessee agrees that it will not change its rules of association under the Associations Incorporations Act 1987 without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

### **41. Provision of information**

The Lessee agrees to provide to the Lessor -

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor.

### **42. Alcohol**

#### **42.1 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.

#### **42.2 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 11 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.

#### **43. Minimise nuisance to neighbours**

- (1) The Lessee acknowledges that the Premises are located in close proximity to residential premises.
- (2) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Premises.
- (3) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

#### **44. Additional terms, covenants and conditions**

Each of the terms, covenants and conditions (if any) specified in Item 7 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.



*Optional Clause - to be inserted on a case-by-case basis*

- (1) Notwithstanding any other provision of this Lease, the parties agree that either party can terminate this Lease for any reason upon six (6) months written notice to the other party.
- (2) If this Lease is terminated in accordance with this clause, **clause 21** will apply.

**Schedule**

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**Item 1 Land and Premises**

**Land**

Reserve [insert details]- Lot [insert details] on Deposited Plan [insert details] whole of the land comprised in Crown Land Title Volume [insert details] Folio [insert details]

**Premises**

[if whole of lot – The whole of the Land together with all buildings, structures, alterations, additions and improvements on the Land or erected on the Land during the term]

[if part of lot – The part of the Land depicted 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]

**Item2 Term**

10 years commencing on [insert date] and expiring on [insert date]

**Item3 Further Term**

5 years commencing on (insert date) and expiring on (Insert date)

**Item4 Commencement Date**  
(Insert date)

**Item5 Rent**

One peppercorn per annum payable on the Lessor's demand.

**Item6 Permitted purpose**

(Insert purpose) and uses reasonably ancillary thereto.

**Item 7 Additional terms and covenants**

**Item 8 Maintenance Fund**

(Insert sum) per year (to be reviewed on an annual basis in accordance with the terms of **clause 10.8**), this sum must be expended on the Premises in each year of the Term to the Lessor's satisfaction and in accordance with the provisions of **clause 10.8**.

**Item 9 Public Liability Insurance**

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

Signing page

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**EXECUTED**

2011

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

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Mayor

---

Chief Executive Officer

SIGNED BY PROFESSOR **BRYANT STOKES,**  
ACTING DIRECTOR GENERAL OF HEALTH  
AS DELEGATE of the MINISTER FOR HEALTH  
in the presence of

---

Signature of Professor Bryant Stokes

---

Witness Sign

---

Name of Witness

---

Address

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ATTACHMENT 3 - DRAFT DEED OF LEASE WITH ANNOTATION BY  
DEPARTMENT OF HEALTH

**Annexure 1 – Sketch of Premises**

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(Required if part of lot or reserve)