



City of Nedlands


Planning and Development Reports

Committee Consideration – 14 April 2015
Council Resolution – 28 April 2015

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PD16.15	(Lot 122) No. 61 Louise Street Nedlands – Proposed Carport to Single House
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Committee	14 April 2015
Council	28 April 2015
Applicant	Mr J G Trench & Dr G Trench
Owner	Mr J G Trench & Dr G Trench
Officer	Miss K L Bainbridge
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	DA2014/620 – LO7/61

1.0 Executive Summary

This proposal is a carport addition which will be accessed from Louise Street. The application has been referred to Council for determination, as officers do not have the delegation to determine an application under instrument of delegation 6A, where objections have been received.

The development proposes a variation to the ‘deemed-to-comply’ Clause 5.1.4 (Open Space) provisions of the Residential Design Codes (R-Codes) and the City’s Local Planning Policy 6.23 – Carports and Minor Structures (LPP 6.23) forward of the Primary Street and as such, the proposal was referred to the impacted neighbouring landowners for comment. During the consultation period four (4) submissions were received.

The application is recommended for approval subject to modification to ensure a 3.5m street setback is provided so that the development meets the ‘design principles’ of the R-Codes for open space, the intent of the LPP 6.23 and Clause 5.5 and 6.4 of the City’s Local Planning Scheme no. 2 (TPS2).

1.1 Recommendation to Committee

Council approves the application for a Carport to Single House at (Lot 122) No. 61 Louise Street Nedlands, in accordance with the application received on 2 December 2014 and amended plans received on 23 January 2015, subject to the following conditions:

1. Revised plans showing the carport being setback 3.5m from the Louise Street frontage shall be submitted prior to the lodgement of a building application.
2. The front fence either side of the piers within the 1.5m visual truncation of the new vehicle access point to Louise Street is to be visually permeable above 0.75m.
3. The development shall at all times comply with the approved plans.
4. This planning approval only pertains to the carport facing Louise Street as marked on the plans.
5. No fencing is permitted in front of the carport to the street, including a gate without further planning approval being obtained.
6. All sides of the carport shall remain open, including the elevation facing the street, in accordance with the City of Nedlands Policy 6.23 Carports and Minor Structures Forward of the Primary Street Setback.
7. The total floor area of the carport shall not be greater than 36m² in area.
8. The conditions of the previous approval (DA14/373 – refer to Form 2, dated 07 October 2014) remain applicable.
9. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.
10. All crossovers to the street(s) 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.
11. 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.

Advice Notes specific to this approval:

1. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be

located at least 1.8m from any building, and at least 1.8m from the boundary of the block.

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

1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Governance and Civic Leadership

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

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

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

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

2.0 Background

Property address	(Lot 122) No. 61 Louise Street Nedlands
Lot area	1060m ²
Zoning:	R12.5
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential

The subject site has dual street frontage with Louise Street to the East and Princess Road to the South. There is an existing single storey dwelling and three previous development approvals as follows:

- Fencing along the street frontages (DA14/40 – approved 24th February 2014);
- Carport and porch facing Princess Road and patio along the northern side (rear) of the dwelling (DA14/46 – approved 3rd April 2014); and
- Verandah along the dwelling frontage to Princess Road (DA14/373 – approved 7th October 2014).

Clause 5.3.3 (a) of TPS2 requires 9m to be provided to the street alignment with the City's LPP 6.23 permitting structures such as porches and carports further forward of this nominated street alignment. In the case of properties with dual street frontage, only one street is required to provide a 9m setback with the other street to comply with

the secondary street requirements within the R-Codes. The dwelling has over 9m provided to both Louise Street and Princess Road.

The entry to the dwelling orientates towards Princess Road with the carport and porch approved within the Princess Road 9m street setback area based on the provisions of LPP6.23, which permit carports and verandahs in the 9m street alignment. Verandahs are not permitted within the 9m street alignment, and therefore the subsequent application for a verandah within the Princess Road 9m street alignment was approved based on a 9m setback still being provided to Louise Street (to ensure 9m is provided to a street from the dwelling to comply with Clause 5.3.3 (a) of TPS2).

The initial proposal for this development (DA14/620) was for a garage, however as only carports are permitted within the 'street alignment' in accordance with LPP 6.23, the applicants modified their proposal to propose a carport (amended plans received 23rd January 2015) to permit consideration under the City's LPP 6.23.

2.2 Legislation / Policy

- *Planning and Development Act 2005 (P&D Act).*
- City of Nedlands Town Planning Scheme No. 2 (TPS2 or **Scheme**).
- Residential Design Codes of WA 2013 (**R-Codes**).
- Council Policy – Neighbour Consultation.
- Council Local Planning Policy 6.23 – Carports and Minor Structures forward of the Primary Street Setback (**LPP6.23**)

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

3.2 How and when was the community consulted?

Community consultation period:	30 January 2015 – 13 February 2015
Response:	The City received four (4) letters which objected to proposed variations and raised other issues (detailed in section 6.3 below).

4.0 Budget / Financial Implications

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

5.0 Risk management

N/A

6.0 Discussion

The proposal involved the construction of a carport to a single house on the site as depicted in the submitted plans (**Attachment 2**).

The proposed carport will vary planning requirements as follows:

- a) The carport will further reduce the required open space below 60% with 55% open space proposed; and
- b) The carport is proposed to be setback 3m to Louise Street in lieu of the required 3.5m.

Consultation with impacted neighbouring landowners for the proposed variations resulted in four (4) submissions being received, which raised objection to aspects of the proposed development. The comments were taken into consideration with a condition of approval recommended to modify the proposal to demonstrate a 3.5m setback from the Louise Street frontage. The comments received are addressed in section 6.3 of this report.

6.1 Specific Planning Considerations

6.1.1 Variation clauses

a. Open space

Under the 'deemed-to-comply' requirements of the R-Codes, properties within the R10 zone are required to provide a minimum of 60% of a subject site as open space. The proposed dwelling will result in the provision of ~55% open space. The site coverage is inclusive of the dwelling, existing and proposed carports and the portion of patio/verandah/porch area which is over 50m² in area in accordance with the definition of open space within the R-Codes. When excluding the verandah/patio/porch area from the site coverage, the subject site would have 64.5% open space proposed (inclusive of the carports and the dwelling area). For this reason along with the open nature of the carports, it is considered that the proposal meets the intent of the R-Codes requirements, as discussed below:

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

“Development incorporates suitable open space for its context to:

- *reflect the existing and/or desired streetscape character or as outlined under the local planning framework;*
- *provide access to natural sunlight for the dwelling;*
- *reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework;*
- *provide an attractive setting for the buildings, landscape, vegetation and streetscape;*
- *provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and*
- *provide space for external fixtures and essential facilities.”*

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

Design Principle	Administration Response
Reflects the existing or desired streetscape	Louise Street has some examples of carports located within the front setback. Carports being open structures are not considered to significantly contribute to building bulk and therefore are permitted within the front setback for existing houses where the carport is less than 36m ² and setback 3.5m from the front boundary. If the carport is approved with a setback 3.5m, it will be reflective of the existing streetscape and as the carport is proposed to be constructed in a colour scheme to match the existing development on the property, it will not detract from the desired streetscape.
Access to natural sunlight for the dwelling	The carport is located to the east of the dwelling and even with a 3.5m setback, there will be separation between the dwelling and the carport to ensure that the dwelling will still have access to morning winter sunlight.
Reduces building bulk and is consistent with the expectations of the applicable density code	The verandah and carport space is open in nature and provides functional space for outdoor living purposes and the coverage of parked vehicles. The open nature of the patio and carport structures reduces building bulk compared to enclosed spaces which also contribute to site coverage and therefore the site coverage from the fully enclosed areas (i.e. dwelling area) is consistent with the other dwellings within the locality.
Provides an attractive setting for buildings, landscape,	The location of the dwelling within the north west corner of the site/lot reduces the ability to provide car parking areas behind or to the side of the dwelling and patio/alfresco areas to the rear of the dwelling for functional outdoor living purposes. Therefore the carports are located within the

vegetation and streetscape	street setback areas and the patio/verandah wrap around the dwelling. As viewed from the street, there will still be grassed areas, street trees and compliant street setbacks to the dwelling provided.
Opportunities for residents to undertake outdoor pursuits on site	The majority of the street setback area can be utilised for outdoor pursuits with the provision of fencing along the primary street and secondary street frontages, however the visually permeable nature of the fencing will still permit surveillance of the street.
Provides space for external fixtures and essential facilities	There is still space around the dwelling for external fixtures and essential facilities which can be screened from view from the street.

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

b. Setback of carport

The City's LPP6.23 requires carports located within the front setback area being setback 3.5m from the nominated primary street as per Clause 5.3.3 of the City's TPS2. The proposal shows the carport as being setback 3m from Louise Street frontage (the nominated primary street) in lieu of the required 3.5m. The purpose of LPP6.23 is as follows:

"To ensure that the present open character and street amenity of the City of Nedlands is not compromised by the construction of carports and other small structures within the primary street setback area."

LPP6.23 also states the following in relation to variations to the setback requirements:

"Where an application is received that does not comply with the abovementioned requirements, then an officer will evaluate the application to determine whether the variation will have impact on either the relevant adjoining property or the streetscape"

The dwelling is located in the north western corner of the lot, leaving a large primary street and secondary street setback and very little space not within the public realm for outdoor living area, parking of vehicles and outbuildings (for external storage). However, the dwelling location does not restrict a compliant setback being provided for the proposed carport and there is not a large prevalence of carports within the immediate Louise Street streetscape setback less than 3.5m.

No. 63 Louise Street across Princess Road from the subject property has a garage structure with a 1.28m setback to Princess Road, however Princess Road is the secondary street for this property and the garage location permitted the retention of a mature street tree. Therefore, under the provisions of TPS2 and the 'design principles' R-Codes, this setback was permitted.

No. 69 Louise Street has a carport setback ~3m from Louise Street which is the property's nominated primary street, however the location of the dwelling does not permit the carport being setback further into the property to comply with the 3.5m setback requirement.

The applicant's main justification for the proposed reduced setback is the prevalence of reduced setbacks for carports and garages within the streetscape and the desire to provide additional space between the dwelling and the carport. As discussed previously, the two examples within the immediate streetscape are based on locational factors which supports the reduced setback to the street. A compliant 3.5m setback can be achieved through either the reduction in the length of the carport to 5.5m which would still shelter a standard vehicle or to decrease the distance between the carport and the dwelling. Based on this reasoning, a recommended condition of planning approval is that the carport is setback 3.5m from the front boundary.

6.2 General Planning Considerations

6.2.3 Preservation of amenity

Scheme clause 5.5.1 (preservation of amenity) states (emphasis added):

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

It is considered that the proposed development does not adversely affect the amenity of the surrounding area, subject to the recommended condition to provide a carport setback of 3.5m to the Louise Street frontage. There are no design guidelines or provisions within the TPS2 or Local Planning Policies to specifically control the colour and material of construction for the proposed carport. The appearance of the development will match the existing carport, porch and verandah located within the Princess Road street setback area and therefore will match/complement existing development on the subject site. Accordingly, the proposal is recommended for conditional planning approval.

6.2.4 Orderly and proper planning

Scheme clause 6.5.1 (determination by council) states (emphasis added):

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

In response, the proposal complies with Scheme provisions and the design principles of the R-Codes for open space, as justified earlier in the report (for the aforementioned reasons). Accordingly, this section of the proposal represents orderly and proper planning, and is supported by the City, subject to the recommended conditions.

6.3 Submissions

Below is a summary of relevant comments received during the neighbour consultation, which have been taken into account in the Discussion section of the report:

- The proposal seeks variation when there are other developments on the subject property that have also sought variation.
- The submitter/s believe that the proposed carport may be constructed outside of the planning approval in terms of material and colours of construction;
- There is already another carport approved and constructed accessed from Princess Road which questions the need for another carport;
- The submitter/s believe that the height of the carport will block the street vista from their house and will have no aesthetic value;
- The submitter/s have concerns that the location of the carport may effect services to the property and other neighbouring properties (such as water connections);
- The submitter/s believe that the provision of an additional carport may be required to facilitate dual occupancy of the dwelling (i.e. grouped dwelling);
- The submitter/s believe that the existing development on the property is unsightly and the carport will further detract from the appearance of the property as viewed from the street;
- The submitter/s believe the provision of open space may be less than what is proposed based on the amount of verandah/patio space on the subject property;
- The site plan shows that there is sufficient distance to permit the carport to be setback 3.5m in accordance with council policy;
- The submitter/s believe that a further reduction in open space is considered unwarranted and not in accordance with other dwellings in this area; and
- There are only a few carports in Louise Street and all appear to be setback 3.5m or more.

The following responses are provided by administration in relation to the above comments:

- Variations to the deemed to comply requirements of the R-Codes are permitted where the development will still meet the 'design principles' As mentioned earlier in the report, the proposed carport is considered to meet the open space design principles of the R-Codes;
- If the City becomes aware that development has occurred absent approval or not in accordance with planning and building approvals, the City initiates compliance proceedings to rectify the development to ensure approvals are in place and/or the development is modified to comply with the planning and building approvals;
- The proposed carport accessed from Louise Street will be safer to use due to improved sightlines and no pedestrian conflict than the existing carport accessed from Princess Road. The applicant initially proposed a garage in the subject location, however modified the proposal so that it can be considered under the City's requirement;
- The carport height is proposed to be single storey with a post height of 2.8m and an apex height of 3.9m. The height complies with the requirements of the R-Codes;
- The application was referred to the City's Technical Services Design Engineer for comment who raised no concerns in relation to City infrastructure. Water corporation is responsible for the protection of their infrastructure assets;
- The application is for a carport, not for a grouped dwelling. If the City becomes aware of unauthorised development, we are required to initiate compliance proceedings to rectify the development;
- The carport is considered to meet the built form requirements of the City's TPS2, LPP 6.23 and the R-Codes and therefore cannot request modification to the material and colours of construction;
- The City can confirm that the open space calculation is based on the plans provided to the City as part of the application and in accordance with the definition of open space within the R-Codes; and
- A condition of planning approval is for the carport to be setback 3.5m to comply with the City's LPP 6.23.

A detailed submissions table has been provided as an attachment to this report inclusive of the administration and applicant's responses to the submissions received during the consultation period (refer to **Attachment 3**). The full copies of submissions and applicant responses to the submissions received by the City has been given to the Councillors prior to the Council meeting.

7.0 Conclusion

The proposal is for a second carport on the property facing Louise Street. The proposal involves two variations to the planning requirements proposing a 3m setback to Louise

Street in lieu of 3.5m and 55% open space in lieu of 60%. As a compliant setback can be provided to Louise Street a condition of approval is recommended to increase the carport setback to 3.5m. The open space variation is considered to be compliant with the relevant 'design principles' of the R-Codes.

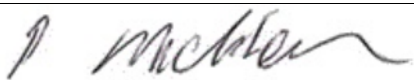
Accordingly, the application is recommended to the Council for approval subject to conditions.

8.0 Attachments

Attach only documents that have been referred to in the report.

1. Locality Plan
2. Proposal Plans
3. Submission Table

PD17.15	(Lot 62) 5B Marita Road, Nedlands – Proposed Cubby House
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Committee	14 April 2015
Council	28 April 2015
Applicant	C Webster
Landowner	C and C Webster
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/79 – MA2/5B
Previous Item	Nil

1.0 Executive Summary

The application seeks retrospective approval to retain a cubby house.

A variation to the rear and side setbacks stipulated under the Residential Design Codes (R-Codes) is being sought.

The proposal was advertised to nearby landowners for comment and during the advertising period two objections were received.

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

1.1 Recommendation to Committee

Council approves the retrospective application for a cubby house at Lot 62 (5B) Marita Road, Nedlands, in accordance with the application received on 6 March 2015 subject to the following:

- (1) The development shall at all times comply with the approved plans.
- (2) All stormwater from the development being contained on site to the City's satisfaction.
- (3) Screening being installed across the southern side of the cubby house by the landowner to the City's satisfaction. The screening being from the cubby house's floor to its roof, installed within 28 days of this decision, and being maintained thereafter by the landowner to the City's satisfaction (refer to advice note 1).

Advice Note specific to this approval:

- (1) The proposed visual privacy screen shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2013* (R-Codes).

1.2 Strategic Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address	(Lot 62) No. 5B Marita Road, Nedlands
Strata Lot area	945m ²
Zoning / MRS	Urban
Reserve / TPS2	Residential at R20 density
Density Code	

The subject site and those surrounding contain single dwellings. The exception being the property adjoining the western (rear) boundary which is owned by Main Roads Western Australia and contains a drainage basin and also a sewer main in close proximity to the cubby house. The topography of the land is relatively flat. Associated outbuildings and mature vegetation exist on the adjoining properties. Refer to the location plan below.

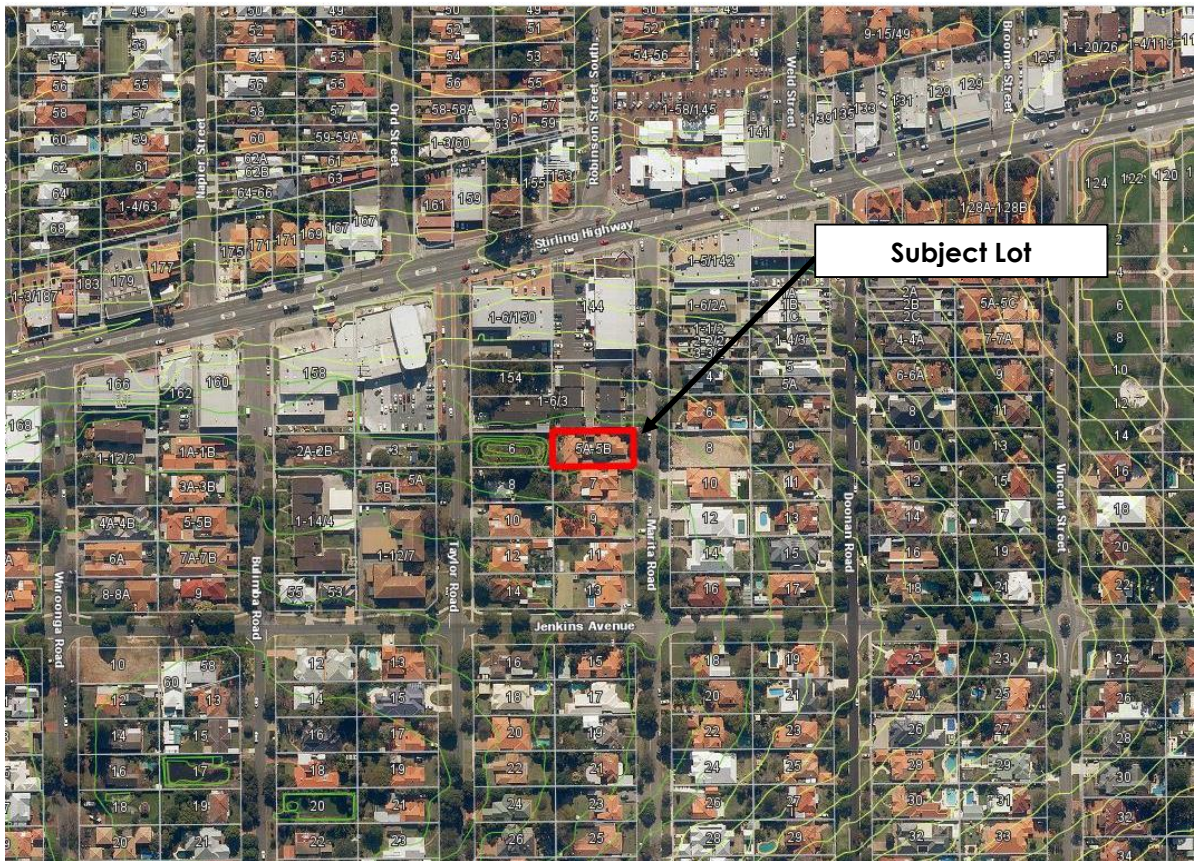


Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

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

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation: Yes No

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

3.2 How and when was the community consulted?

The proposal was advertised in accordance with Town Planning Scheme No. 2 (TPS 2) to adjoining landowners for comment in March 2015. During the advertising period two objections were received.

The submissions raised concerns with regard to overlooking being possible from the cubby house into their property.

The application was also referred to the Water Corporation for comment due to the cubby house's proximity to a sewer main which runs through the rear of 6 and 8 Taylor Road. It advised that a cubby house is permitted to be built up to a sewer main as they are light weight and tend not to suffer from subsidence, and usually can be removed if necessary.

4.0 Budget / Financial Implications

None at present, however if the application is refused by Council and the cubby house remains on the property, legal action may be taken by the City due to the landowners having committed a prescribed offence under the *Planning and Development Regulations 2009*.

5.0 Risk Management

Not applicable.

6.0 Introduction

In January 2015, the City received a complaint from a resident with regard to the construction of a cubby house at the subject property. According to the City's records no approval had been obtained for the structure therefore a retrospective development application was requested to be submitted and was subsequently received by the City.

The application seeks retrospective approval to retain a cubby house on the property, details of which are as follows:

- a. The cubby house is proposed to be setback 0.5m from the boundaries with 7 Marita Road and 8 Taylor Road, and setback 0.4m from the boundary with 6 Taylor Road.
- b. The total height of the cubby house is 2.8m, with a platform 0.9m above natural ground level.
- c. Screening in the form of laticing is proposed to be erected across the southern side of the cubby house, the height of which will be from the cubby house's floor to its roof. On the original plans received by the City no screening was proposed however as a consequence of objections being received during advertising the applicant is willing to have screening installed.

Refer to the site plan (Attachment 1), north and south elevations (Attachment 2), east and west elevations (Attachment 3) and photographs of the cubby house (Attachments 4 and 5).

7.0 Statutory Requirements

7.1 Town Planning Scheme No. 2

Clause 5.5.1 (Preservation of Amenity) of Town Planning Scheme No. 2 (TPS 2) stipulates (emphasis added):

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

The proposal complies with clause 5.11 (Maximum Building Height) of TPS 2.

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

- (a) The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;
- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality; the form, layout, appearance and material of any building is in keeping with the existing character of the locality; and
- (c) any other matter considered relevant by Council.

7.2 Residential Design Codes

Under Appendix 1 (Definitions) of the R-Codes a building is deemed to be the following:

“Any structure whether fixed or moveable, temporary or permanent, placed or erected on land, and the term includes (but is not limited to) dwellings and structures appurtenant to dwellings such as carports, garages, verandahs, patios, outbuildings and retaining walls, but excludes boundary fences, pergolas and swimming pools.”

A cubby house is therefore deemed to be a building, as such, the visual privacy, overshadowing and building setback provisions apply.

The following requirements apply under the R Codes to a cubby house on properties with a density coding of R20:

	R Code (Deemed to Comply) Requirement	Proposed	Complies?
Boundary Setback:			
Southern (Side) Boundary	1m minimum	0.5m	No
Western (Rear) Boundary	1m minimum	0.4m	No
Visual Privacy Setback	7.5m minimum or 1.6m high screening.	0.4m and 0.5m. Following submissions being received by the City, screening is now proposed to be erected across the southern side of the cubby house.	Yes, with the proposed screening.
Open Space	50% minimum	56%	Yes
Overshadowing	25% maximum of the adjoining property.	2%	Yes

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

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

“Buildings setback from lot boundaries so as to:

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

8.0 Consultation

The proposal was advertised in accordance with TPS 2 to adjoining landowners for comment in February 2015. During the advertising period two objections were received.

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

Summary of comments received	Officer’s technical comment
<p>Objection.</p> <p>a) In January 2015, the cubby house was in the process of being assembled. Notified the City and took photographs.</p> <p>b) In February 2015, I was notified by the City that no application had been submitted for the cubby house.</p> <p>c) While our concern has always been loss of privacy it should be noted that in my initial contacts with the City my questions were, does this comply/does the City know.</p> <p>d) As a long term resident I recall that from time to time the Water Corporation needed to enter our property to inspect the sewerage pipes. I also vaguely recall major work near to where the cubby house is. I hope that the possibility of the structure being so close to these was investigated in the first instance.</p>	<p>a) Noted.</p> <p>b) Noted.</p> <p>c) Prior to being notified by the submitter the City was not aware of the cubby house’s existence.</p> <p>The proposed cubby house does not comply with the R Codes in terms of building setbacks and visual privacy, however as outlined above, such variations can be considered subject to satisfying the Design Principles.</p> <p>d) The application was referred to the Water Corporation for comment due to the cubby house’s proximity to a sewer main which runs parallel to the rear boundaries on 6 and 8 Taylor Road. It advised that a cubby house is permitted to be built up to a sewer main as they are light weight and tend not to suffer from</p>

<p>e) We object to this structure as it is.</p> <p>i) Proper procedure was not followed even though there were several instances where a correction could be made.</p> <p>ii) It is the blatant disregard for proper consultation which we find the most upsetting.</p> <p>f) Approval of the structure in its present form and location would send the wrong message.</p>	<p>subsidence, and usually can be removed if necessary.</p> <p>e) Noted. It is assumed that the submitter's reference to proper procedure and consultation not being done is with regard to the applicant prior to and during the construction of the cubby house.</p> <p>The City's TPS 2 allows for retrospective planning approval to be sought by landowners. Once the retrospective development application was received by the City it was advertised to effected adjoining landowners in accordance with TPS 2.</p> <p>f) Applications for such structures are determined on a case by case basis and if approved by Council would not set a precedence.</p>
<p>Objection</p> <p>a) We object to the current height and location of the cubby house as it allows for overlooking into our backyard and results in loss of privacy.</p> <p>b) We are planning to build a swimming pool in our backyard in the future.</p> <p>c) It will affect our property's value due to the overlooking.</p>	<p>a) The outdoor living area on the submitters property is more than 7.5m from the cubby house location, as a shed adjoins the boundary where the cubby house is located.</p> <p>b) Noted, however the City is to only have regard to what exists and has been approved on adjoining properties when determining applications.</p> <p>c) This is not a matter which the City is required to have regard to when determining applications.</p>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.</p>	

9.0 Conclusion

The proposal is compliant with the requirements of TPS 2 and the R-Codes with the exception of the rear and side boundary setbacks.

Having inspected the subject property and the complainants' property, it was noted that:

- a) in the areas of the neighbouring properties into which overlooking will be possible mature vegetation and outbuildings exist. The property at the rear is also only contains a drainage basin (refer to attachments 6, 7 and 8);
- b) fibrocement fencing of approximately 1.8m in height exists along the dividing boundaries; and
- c) the outdoor living areas on the neighbouring properties are between 11 and 24 metres from the cubby house.


As the City received objections with regard to overlooking during the advertising period, the applicant has advised that they are prepared to install screening along the southern side of the cubby house. Accordingly, a condition is recommended to this effect.

The proposal satisfies the Design Principles of the R-Codes with regard to the building's setbacks, it is therefore recommended that the retrospective application be approved by Council.

10.0 Attachments

1. Site Plan (A3)
2. North and South Elevations (A3)
3. East and West Elevations (A3)
4. Photograph of the cubby house looking south (A4)
5. Photograph of the cubby house looking west (A4)
6. View from cubby house of 7 Marita Road (A4)
7. View from cubby house of 6 Taylor Road (A4)
8. View from cubby house of 8 Taylor Road (A4)

PD18.15 Proposed Scheme Amendment No. 203 of Town Planning Scheme No. 2 - Re-zone Lot 96 (No. 61) Aberdare Road from R10 to R25.

Committee	14 April 2015
Council	28 April 2015
Applicant	City of Nedlands
Owner	Pearlfield Pty Ltd
Officer	Holly White – Graduate Strategic Planning Officer
Director	Peter Mickleson – Planning & Development
Director Signature	
File Reference	PLAN-PA-00001 : PLAN-PA-009346
Previous Item	Council Meeting 10 December 2013 C13/166 Council Meeting 28 October 2014 PLAN-PA-002884

1.0 Executive Summary

The purpose of this report is to recommend that Council adopt proposed Scheme Amendment No. 203.

The purpose of the amendment is to rezone Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25” to allow two dwellings on the property and enable the front portion of the lot to be ceded to the City free of charge.

At Ordinary Council meeting 28 October 2014, Council resolved to initiate proposed Scheme Amendment No. 203 and administration have since completed required consultation.

1.1 Recommendation to Committee

That Council:

1. Adopt the proposed scheme amendment to change the zoning of Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25.”

1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Transport

2.0 Background

Property address	Lot 96 (No. 61) Aberdare Road, Nedlands
Lot area	1045.0m ²
Zoning:	R10
Metropolitan Region Scheme	Urban
Town Planning Scheme No. 2	Residential

Historically, the Metropolitan Region Scheme (MRS) required that a property along the southern side of Aberdare Road give up an area of nine metres in depth, calculated from the original street alignment, for road widening. This provision was accordingly reflected in the City of Nedlands By-Law No. 27 entitled 'By-laws relating to new street alignment' adopted by Council in October 1978.

From October 1978 till December 1995, as a result of the MRS provision and the City of Nedlands By-Law No. 27, 11 properties had relinquished the nine metre road widening requirement. On 1 December 1995, the need for road widening under the MRS was reduced from nine metres to four metres, however the provisions of the City of Nedlands By-Law No. 27 remains unchanged and still seeks a nine metre road widening requirement. This has resulted in the City's By-Law No. 27 requiring a five metre portion of land at the front of the property which is in addition to the MRS four metre road widening requirement.

The new four metre MRS road widening requirement is non-negotiable, however the City's additional five metre requirement under By-Law No. 27 has been questioned by the remaining property owners which has prompted the need to deal with this discrepancy.

Council, at its meeting held 10 December 2013, passed a resolution that had the effect of maintaining the additional five metre road widening requirement, with the incentive to the land owners being that the City would rezone their properties to allow the development of two dwellings, should the owner cede the five metre portion to the City free of charge.

In order for the above to take effect, on 30 September 2014 the owners entered into a deed of agreement with the City setting out the specifics for each party. This caveat has been lodged with Landgate on 3 October 2014, document number M785843. Please see previous Council report with pro forma deed of agreement.

2.1 Key Relevant Previous Council Decisions

At the Ordinary Council Meeting held 10 December 2013 it was resolved that:

Council:

1. Advises landowners that Council's resolution at item 14.1 of the meeting of 26 November 2013 has now been subsequently rescinded;
2. Where the designated road widening is voluntarily surrendered free of charge by the land owner, the City will initiate rezoning the balance of land adjoining Aberdare Road affected by the City of Nedlands By-Laws relating to New Street Alignment gazette 20 October 1978, to allow two dwellings;
3. Invites any owner wishing to accept the City's offer to enter into an agreement at the time of their choosing;
4. Instructs administration to waive any fees it may charge for the rezoning application; and
5. Requests administration to write to each affected proprietor to advise them of the Council's decision.

At the Ordinary Council Meeting held 28 October 2014 it was resolved that:

Council:

1. Initiates the proposed scheme amendment to change the zoning of Lot 96 (No. 61) Aberdare Road, Nedlands from "Residential R10" to "Residential R25".
2. Instructs administration to progress the scheme amendment in accordance with requirements of the relevant legislation.

2.2 Legislation / Policy

- *Planning and Development Act 2005*
- Metropolitan Region Scheme
- State Planning Policy 3.1: Residential Design Codes
- City of Nedlands Town Planning Scheme No. 2
- City of Nedlands By-Law No. 27

3.0 Consultation Process

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

A favourable response was received from the Environmental Protection Agency, and the amendment was advertised for 42 days in accordance with legislative requirements.

The amendment was also referred to Main Roads who deemed the amendment acceptable.

Consultation of the affected property owners was undertaken as part of the amendment process. The responses are as follows:

Comment	Administration comment
Street trees retained/replanted.	No street or verge trees will be removed in this amendment process.
Lack of planning framework, amendment out of context and should be addressed on a larger scale.	Administration are currently working on a Local Planning Strategy which will address this comment.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.	

4.0 Budget / Financial Implications

Budget was allocated for the construction and lodgement of the legal agreement between the land owner and the City. Total cost was \$526.60.

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

5.0 Risk management

In the event that Council refuses to proceed or the Minister refuses to approve the scheme amendment, then the legal agreement shall be at an end. Should any of these events occur, the Owner shall be entitled to receive, at the City's cost, a withdrawal of any caveat lodged pursuant to the legal agreement upon written request by the Owner to the City.

6.0 Discussion

Following the resolution passed on 10 December 2013, Administration consulted property owners along Aberdare Road to gauge responses about entering into an agreement which would rezone their property to allow two dwellings, in return for ceding the five metre portion of the land originally required by the City's By-Law No. 27.

The owner of Lot 96 (No. 61) Aberdare Road, Nedlands expressed interest in entering into this agreement with the City. As such, a legal agreement has been drafted by the City's solicitors, McLeods which has been signed by the owners and the City and lodged against the title by McLeods.

The execution of the deed includes the owner charging its interests in the land in favour of the City and authorises the City to lodge an absolute caveat against the title of the land for the purposes of securing the owners obligations pursuant to the deed.

Within two (2) years of the approval of the Scheme Amendment the owner must:

- (a) cede the Road Land to the City; and
- (b) lodge with Landgate a plan of subdivision of the Land showing the Road Land as “road reserve” in order to effect the ceding of the Road, unless the Road Land has already been ceded through a development approval to construct a second dwelling on the Land prior to owner subdividing.

6.1 Conclusion


The proposed scheme amendment to rezone Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25” will allow the property to develop two dwellings as per Councils resolution from its meeting on 10 December 2013 and the more recent initiation by Council on 28 October 2014.

As part of this process the City will be ceded the front portion of the land in accordance with its By-Law No. 27. This will create consistency in streetscape and housing stock along Aberdare Road, align the majority of the street to provide a consistent built form and work towards providing the City with a uniform road reserve to allow future works for road widening and greenways.

7.0 Attachments

1. Scheme Amendment 203 Report

PD19.15	(Lot 469) No. 42 Viking Road Dalkeith – Proposed Extensions (Kitchen and Carport) To Single House
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Committee	14 April 2015
Council	28 April 2015
Applicant	Blane Brackenridge Architects
Landowner	Ms S A Healy
Officer	Julian Berzins – Planning Officer
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/498 – VI3/42

1.0 Executive Summary

This proposal is for a carport and kitchen extension to a single house in Dalkeith with variations to the planning requirements.

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

The kitchen extension does not satisfy all of the relevant deemed-to-comply, design principles and other planning requirements. As a result, the application is recommended for refusal.

The carport extension satisfies the relevant provisions of the City’s planning requirements for carports forward of the primary street setback and is recommended for approval.

1.1 Recommendation to Committee

Council:

1. Refuses the application for kitchen extensions at (Lot 469) No. 42 Viking Road Dalkeith, in accordance with the application received on 22 September 2014 and amended plans received on 31 October 2014, for the following reasons:
 - a. The proposal does not satisfy all the design principles relating to provision 5.1.3 Lot boundary setbacks as per the Residential

Design Codes (2013), as the impact of building bulk will be increased.

- b. The proposal does not comply with the amenity considerations of cl. 5.5.1 of Town Planning Scheme No. 2 as it is considered to adversely impact upon the appearance the neighbouring properties.
 - c. The proposal does not represent orderly and proper planning, in accordance with cl. 6.5.1 of Town Planning Scheme No. 2.
2. Approves the proposed carport extension at (Lot 469) No. 42 Viking Road Dalkeith, in accordance with the application received on 22 September 2014 and amended plans received on 31 October 2014, subject to the following conditions:
- a. The development shall at all times comply with the approved plans.
 - b. All crossovers to the street(s) 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.
 - c. The existing crossover(s) shall be removed and the nature-strip / verge reinstated with grass or landscaping in accordance with Council's Nature-Strip / Verge Development Policy.
 - d. All footings and structures of the fencing shall be constructed wholly inside the site boundaries of the Certificate of Title.
 - e. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development.

Advice Notes specific to this proposal:

- 1. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.
- 2. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.

1.2 Strategic Plan

KFA: Natural and Built Environment

2.0 Background

Property address	No. 42 Viking Road Dalkeith (the site)	
Lot area	1012m ²	
Zoning / Reserve / Density Code	MRS	Urban
	TPS2	Residential at R10 density

The subject site has frontage to Viking Road to the north as seen in the location plan below.



Figure 1 – Location Plan

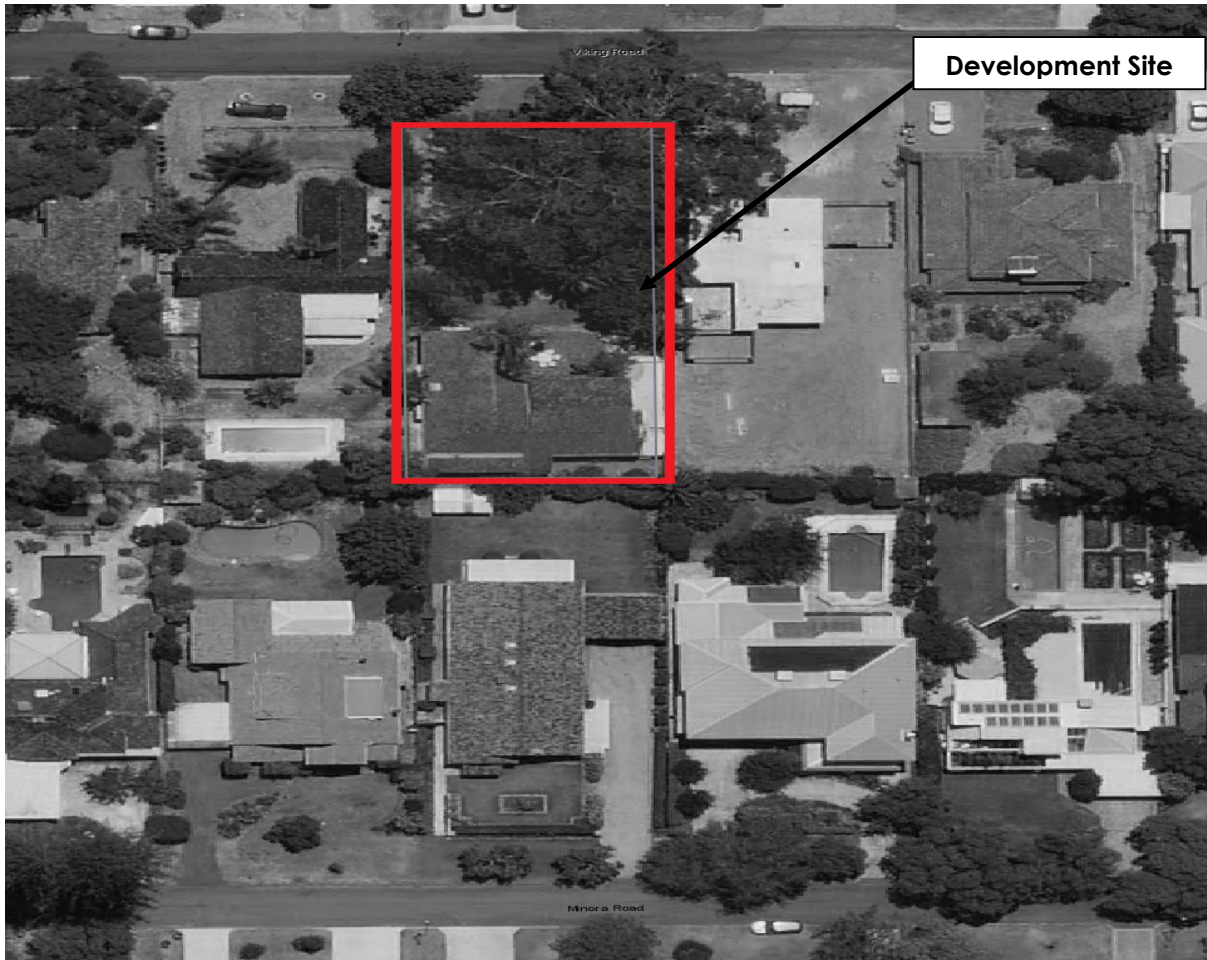


Figure 2 – Detailed Location Plan

The site features a single house, set into the rear of the lot as depicted in Figure 2. The property was originally built in 1938, with additions approved in 1981 to the rear (new laundry and kitchen) 1m from the boundary. In 2014 an application was received by the City of Nedlands for further additions to the rear of the property and a carport located at the front of the property.

2.2 Legislation / Policy

- 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 Setback (Carport Policy).

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes):

Yes No

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

3.2 How and when was the community consulted?

Community consultation period:	29/10/2014 – 12/11/2014
Response:	One supporting/no objection, two objections, with the results found in Attachment 4 / below in Section 6.3 Submissions.

4.0 Budget / Financial Implications

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

5.0 Risk Management

Not applicable.

6.0 Discussion

The proposal involves the construction of additions (carport and rear additions) to the site, as depicted in the submitted plans (**Attachment 1**). In addition, the Applicant's report and site photographs describes the proposal in greater detail (**Attachment 2 and Attachment 3**).

The proposal involves the following:

- a) An extension of a single carport into a double carport.
- b) An extension of the kitchen (1.6m x 2.7m) located to the rear of the property.

Variations to the planning requirements are as follows:

- a) Council Policy 6.23 ' *Carports and Minor Structures Forward of the Primary Street Setback*' - 3m in lieu of 3.5m
- b) R-Code 5.1.3 Lot boundary setback (rear) - 0.9m in lieu of 6m

In addition, consultation with the community resulted in two (2) objections being received (**Attachment 4**/Section 6.3 Submissions).

The following assessment of the variations is based upon the relevant areas, being the front and rear setbacks.

6.1 Specific Planning Considerations

6.1.1 Variation clause

c. Carport in the front setback area

Clause 'Carports' (b) (ii) of the Carport Policy requires the following (emphasis added):

"...Carports may be constructed forward of the required primary street setback, but the side facing the street must be left open. Council will however consider wrought iron or tube steel gates/fencing along the side facing the street for security purposes.

The following setbacks shall be deemed as standard and measured to the columns of the carport. All setbacks are measured at right angles to the wall and not the boundary.

- *Primary Street Setback - 3.5 metres*
- *Side Boundary - 1.0 metres*

d. Wall Setbacks

Design principle P3.1 of the R-Codes requires the following (emphasis added):

"Buildings set back from lot boundaries so as to:

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

6.1.2 Response to variation clause

a. Carport in the front setback area

The following is considered in response to the abovementioned clause in the Carport Policy:

With regard to the setback of the carport from the front boundary, it is considered that this aspect of the proposal can be supported as there is not enough space for a double carport setback at 3.5m due to the location of the existing carport, garage and crossover (approved 1962). It is considered that the proposed 0.5m setback will not be detrimental to the streetscape of Viking Road as there are several examples of carports located at a similar setback from the front boundary. Accordingly, it is considered that this section of the proposal complies with the policy, and therefore is supported by the City.

b. Wall setback – rear boundary (south)

The proposal is for an addition of 4m² to be located off the existing laundry. The kitchen and laundry facilities will be flipped to allow a larger kitchen area and more natural light into the rear of the property. The extension has a wall height with skillion roof of 5m sloping up away from the rear boundary.

The following is considered in response to the abovementioned design principle:

- The impact of building bulk will be increased on the neighbouring properties due to the height of the wall and location of the existing setback.
- The proposal provides adequate direct sunlight and ventilation to the adjoining properties in accordance with CI 5.4.2 Solar access for adjoining sites (R-Codes, 2013). The proposal will overshadow the neighbouring grassed backyard and existing garden shed as opposed to designated outdoor living areas.
- The extension does not propose any non-compliant windows and will not increase overlooking or loss of privacy to the adjoining properties that is not already screened by dividing fences.
- Adequate sun and ventilation will be available to the site and neighbouring property.
- Objections from the neighbours regarding the above clause not being supported due to above points (see section 6.3 + Attachment 4)

As the proposal does not reduce impact of bulk, it is considered that this section of the proposal does not comply fully with the design principles, and therefore is not supported by the City.

6.2 General Planning Considerations

6.2.3 Preservation of amenity

Scheme clause 5.5.1 (preservation of amenity) states (emphasis added):

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

In response, it is considered that the rear extension will adversely affect the amenity of the surrounding neighbours and as such is not supported by the City.

6.2.4 Orderly and proper planning

Scheme clause 6.5.1 (determination by council) states (emphasis added):

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

In response, the proposal does not comply with Scheme provisions, with discretionary variations which are not acceptable (for the aforementioned reasons).

Accordingly, it is considered that this section of the proposal (rear additions) does not represent orderly and proper planning, and is not supported by the City.

6.3 Submissions

Summary of comments received	Officer’s technical comment
<p>Issue: 1 <i>The 0.9m rear setback of the existing additions exacerbates its bulk as viewed from the objector’s property and, when combined with the fact that it is 4.2m high, constitutes a visually obtrusive building that is inconsistent with the established and expected built form in the area.</i></p>	<p>The bulk is increasing and as such impacts further on the neighbours as it is only 0.9m from the boundary of the site.</p>
<p>Issue: 2 <i>The proposed addition does not reduce the impacts of building bulk on the adjoining property.</i></p>	<p>Any addition in this location would likely increase the impacts of building bulk.</p>
<p>Issue: 3 <i>The proposal will have a detrimental impact on the adjoining properties amenity.</i></p>	<p>There will be an increased impact on the adjoining properties due to the increased bulk of the building 0.9m from the boundary.</p>
<p>Issue: 4 <i>The proposed extension will abut the subject sites southern boundary and will therefore overshadow the objector’s property.</i></p>	<p>The proposal complies with overshadowing requirements of the R-Codes.</p>
<p>Issue: 5 <i>The existing dwelling does not allow adequate access to direct sun for the open space at the rear of the objector’s property.</i></p>	<p>The proposal complies with overshadowing requirements of the R-Codes.</p>
<p>Issue: 6</p>	<p>Agree refer to issue 1.</p>

<i>Whilst it is acknowledged the addition will not result in overlooking the increase in habitable floor space and will further reduce the privacy of their backyard as compared to the existing situation.</i>	
Issue: 7 <i>The highlight windows are clear-glazed and devoid of any window treatments, this will result in light from the existing kitchen being dispersed directly into the backyard.</i>	The existing dwelling has prior approval and is not subject to this particular application.
Issue: 8 <i>The existing dwelling is situated 0.9m from the rear boundary and approximately 29m from the front boundary. This is inconsistent with the established front and rear setbacks of the other dwellings in the locality.</i>	The existing dwelling has prior approval and is not subject to this particular application.
Issue: 9 <i>The external appearance of the proposed addition will be obtrusive and highly visible from the rear the objector's property.</i>	Agree, refer to issue 1.
Issue: 10 <i>1. The proposed development will appear as an obvious addition that does not integrate with the existing dwelling. The skillion roof does not match the roof form of the main dwelling or the predominant pitched roof form.</i>	The roof pitch has been designed to reduce impacts of bulk onto neighbouring properties.
Issue: 11 <i>Bulk and height of the extension + close proximity to the back boundary. The proposed eastern glass wall which is 4.8m high is visually obtrusive.</i>	Refer to section 6.1.2 Response to variation clauses.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.	

7.0 Conclusion

The proposal for additions (carport and kitchen) to a single house on Viking Road in Dalkeith has two variations to the planning requirements.

The carport is proposed to be extended from a single carport to a double carport and is to be setback in line with the existing single carport 3m from the primary street boundary in lieu of the required 3.5m. As discussed in section 6.0, due to the current location of carport, garage and existing streetscape the application can be supported by Council.


The 4m² extension to the existing laundry setback 0.9m in lieu of a compliant 6m does not satisfy the design principles of the Residential Design Codes cl 5.1.3 Lot boundary setbacks, and will negatively impact the amenity of neighbouring properties as per the specific objections received.

Accordingly, the part of the application for the carport is recommended to the Council for approval and the part of the application for the rear additions is recommended for refusal.

8.0 Attachments

1. Plans (site plan, floor plan, elevations)
2. Site photographs
3. Applicant's submission
4. Neighbour submissions (Confidential)

PD20.15	(Lot 50) 92 Rosedale Street, Floreat – Home Business (Custom Home Builder)
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Committee	14 April 2015
Council	28 April 2015
Applicant	Pinnacle Planning
Landowner	G and C Boulazens
Officer	Mr A D Bratley – Coordinator Statutory Planning
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2015/525 – RO5/92
Previous Item	Nil

1.0 Executive Summary

The applicant seeks retrospective approval to continue to operate a home business at the property.

The proposal was advertised to nearby landowners for comment and during the advertising period one objection and four non-objections were received.

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

1.1 Recommendation to Committee

Council approves the retrospective application for a home business to continue operating at (Lot 50) 92 Rosedale Street, Floreat, in accordance with the application received on 10 October 2014, subject to the following:

1. **The home business approval being valid for a period of 12 months from the date of Council’s decision in accordance with Council’s Home Business Policy, after which time it is not permitted to continue operating unless a separate planning application has been approved.**
2. **The use complying with the definition for the use ‘Home Business’ as stipulated under Town Planning Scheme No. 2.**
3. **All car parking associated with the home business being contained on site.**

4. The home business only being permitted to operate between 8.00am to 5.30pm Monday and Friday.

Advice Notes specific to this approval:

- (1) The applicant is advised that the use ‘Home Business’ is defined as being the following under the City’s Town Planning Scheme No. 2:

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

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

1.2 Strategic Plan

KFA: Natural and Built Environment

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

2.0 Background

Property address	(Lot 50) 92 Rosedale Street, Floreat (the site)
Lot area	943m ²
Zoning / Reserve / Density Code	MRS TPS2
	Urban Residential at R12.5 density



Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

- *Planning and Development Act 2005* (P&D Act).
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Home Business

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation:

Yes No

Required by City of Nedlands policy (Neighbour Consultation):

Yes No

3.2 How and when was the community consulted?

The proposal was advertised in accordance with clause 6.3 (Special Procedures) of Town Planning Scheme No. 2 (TPS 2) to nearby landowners for comment in February 2015. During the advertising period one objection and four non-objections were received.

4.0 Budget / Financial Implications

None at present, however if the application is refused by Council and the home business continues to operate, legal action may be taken by the City due to the landowners having committed a prescribed offence under the *Planning and Development Regulations 2009*.

5.0 Risk Management

Not applicable.

6.0 Introduction

In August 2014, it was brought to the City's attention that a business was operating from the subject property. Having investigated further, it was found out that a company by the name of 'Cambuild' was operating at the property for which no approval had been obtained from the City previously.

According to information available on the internet the company specialises in building customs homes and also has an office near Osborne Park.

Having inspected the property on numerous occasions, up to 6 vehicles are being parked on site during normal business hours between Monday and Friday. Refer to Attachment 1 (photograph of the subject property).

A retrospective planning application was requested and subsequently received from the applicant, who advised the following:

- Three people are employed as part of the home business, 1 of whom resides at the subject property.
- The home business operates between 8.00am to 5.30pm Monday and Friday.
- No signage is used to advertise the home business.
- A home office of 40sqm is used on the subject property (refer to Attachment 2).

7.0 Statutory Requirements

7.1 Town Planning Scheme No. 2

Under Table 1 (Use Class Table) of TPS 2 the use 'Home Business' is an 'AA' use on properties zoned Residential and therefore is not permitted unless approval is granted by Council.

Under clause 1.8 (Interpretation) of TPS 2, the use 'Home Business' is defined as follows:

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

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

Clause 5.5.1 (Preservation of Amenity) of TPS 2 stipulates (emphasis added):

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

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

- (a) The nature and intensity of the proposed use or development will not detrimentally affect the locality in terms of its environmental impact by way of its hours of operation, illumination, emission of any kind and the effect on any use or development within the locality;

- (b) the plot ratio, site coverage, setbacks, height, landscaping and parking provisions are in keeping with the general character of the locality;
- (c) the vehicular and pedestrian access, including on-site circulation and provision for deliveries will not create any danger;
- (d) the vehicle flows to and from the subject land will not be disruptive to existing traffic movements or circulation patterns;
- (e) that any traffic generated must be capable of being accommodated within existing streets; and
- (f) any other matter considered relevant by Council.

7.2 Council Policy – Home Business

Under Council Policy – Home Business it stipulates that when assessing applications for a home business the Council shall have regard to the following:

- 1) Residential areas as primarily a place to live, not primarily a place to work whilst recognising that working from home is an expanding area of employment, and a significant contributor to local employment.
- 2) Ensure Home Businesses are small in scale, unobtrusive and compatible with surrounding buildings and land uses.
- 3) The location and nature of home business, including hours of operation, proposals to minimise any impact on the amenity and character of residential locations.
- 4) The protection of the amenity and character of residential areas by ensuring that potential impacts associated with home business such as noise, traffic, pollution, people and advertising signs are minimised and adequately controlled.

In addition to meeting the definition of TPS 2 the application for a Home Business should comply with the following:

- 1) An initial approval for a Home Business application is limited to 12 months and any subsequent approval is limited to 3 years, or another such time limit deemed applicable by Council; and
- 2) No more than one sign being required or provided attached to the wall of the house or fence and not exceeding 0.2 m² in area.

8.0 Consultation

The proposal was advertised in accordance with Council Policy – Business for 14 days to nearby landowners for comment in February 2015. During the advertising period one objection and four non-objections were received.

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

Summary of comments received	Officer's technical comment
<p>Objection</p> <ul style="list-style-type: none"> a) There are a number of vehicles on the property. b) 'Home business' implies that the property is inhabited but no one actually lives there. c) If the application is approved it may lead to inappropriate redevelopment for a residential lot. d) The proposal may cause surrounding properties to be undervalued. e) The building company should be forced to lease offices in a commercial area, not a quiet residential street. 	<ul style="list-style-type: none"> a) Noted. b) The applicant has advised that 1 person employed as part of the home business resides at the subject property. c) Approval of the use 'Home Business' will not necessarily result in inappropriate development in future. Like with all development in residential areas, it will be dealt with on a case by case basis, and be expected to comply with Town Planning Scheme No. 2 and the Residential Design Codes. d) This is not a matter Council is required to have regard to when determining Planning applications. e) Noted.
<p>Non-Objection</p> <p>There has been no problem with the way the business is run. Traffic has not increased and there has been no problem with street parking.</p>	<p>Noted.</p>
<p>Non-Objection</p> <ul style="list-style-type: none"> a) We are aware that the property is currently used as a business premises. We find that this is not 	<ul style="list-style-type: none"> a) Noted.

adversely affecting our amenity or enjoyment of our property. b) We do strongly oppose any rezoning of the property, and any increased business use that may impact on the enjoyment of our property.	b) No rezoning of the property is proposed. Approval is being sought only for the use to continue operating from the property.
Non-Objection Subject to no increase in noise and number of vehicles at the property.	Noted.
Non-Objection We are happy for them to continue as they area.	Noted.
Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.	

9.0 Conclusion

The subject property is used for administrative purposes only as part of the home business. All building work is done off site at other properties. There are three employees in total; one household member and two non-household members.

No advertising signage nor additions to the existing dwelling associated with the home business, are proposed as part of the application.


The home business operates between 8.00am to 5.30pm Monday and Friday, and employs 3 people, 1 of whom resides at the subject property.

Considering the above, the scale and nature of the home business means that the amenity of the area will not be detrimentally impacted upon. It is therefore recommended that the application be approved by Council for a period of 12 months.

10.0 Attachments

1. Photograph of the subject property (A4)
2. Internal Floor Plan of Dwelling (A4)

PD21.15 Future planning for Captain Stirling Hotel & Shopping Centre site and surrounds Neighbourhood Centre

Committee	14 April 2015
Council	28 April 2015
Applicant	City of Nedlands
Owner	Various
Officer	Jennifer Heyes – Manager Planning
Director	Peter Mickleson – Planning & Development
Director Signature	
Previous Item	27 November 2012 PD49.12 16 December 2014 PD47.14

1.0 Executive Summary

The purpose of this report is to gain Council endorsement for Administration to undertake future planning for the Captain Stirling Hotel site (Hotel site) and Captain Stirling Shopping Centre site (Shopping Centre site).

The Captain Stirling Hotel and Shopping Centre and surrounds is an important neighbourhood centre and there is currently pressure to redevelop some of the sites within it. Two scheme amendment requests have already been made (and refused) on the Hotel site and the Shopping Centre site is currently being sold and it is expected this will lead to requests for redevelopment.

The community in particular, have indicated that although they do not agree with recent proposals, they do accept the need for redevelopment and want Council to come up with a clear direction including more appropriate planning provisions.

In order to provide this, a study needs to be undertaken to ascertain options and provide recommendations for a comprehensive planning framework for the Centre.

1.1 Recommendation to Committee

Council request the CEO to allocate appropriate resources to undertake future planning for the neighbourhood centre, comprising the Captain Stirling Hotel, Captain Stirling Shopping Centre and surrounds, as a matter of urgency.

1.2 Strategic Community Plan

KFA: Natural and Built Environment
 KFA: Transport
 KFA: Governance and Civic Leadership

In order to protect the City's strategic priority of a quality living environment, it is imperative that future planning is undertaken to ensure activities are compatible and clear direction is available for both community and developers.

2.0 Background & Site Details

As the Centre has not been comprehensively planned in the past there is no specific or defined boundaries, however, the main sites to be studied include:

Address	MRS	TPS2	Use	Lot area
56 (Lot 50 & 51) Dalkeith Road	Urban	Retail Shopping	Drainage sump	870.1 m ²
94 (Lot 1) Stirling Highway	Urban and Road Reserve	Retail Shopping	Vet Clinic	935.8 m ²
92 (Lot 2) Stirling Highway	Urban and Road Reserve	Retail Shopping	Post Office	1229.2 m ²
90 (Lot 3, 4 & 5) Stirling Highway	Urban	Retail Shopping	Captain Stirling Shopping Centre	4658.9 m ²
80 (Lot 1) Stirling Highway	Urban and Road Reserve	Hotel	Captain Stirling Hotel and liquor store	7618 m ²
2 (Lot 21) Florence Road	Urban	Residential R10	Single house	1012 m ²
4 (Lot 22) Florence Road	Urban	Residential R10	Vacant	1012 m ²
6 (Lot 23) Florence Road	Urban	Residential R10	Single house	1012 m ²
7 (Lot 33) Stanley Street	Urban	Residential R10	Single house	1012 m ²
9 (Lot 32) Stanley Street	Urban	Residential R10	Single house	1012 m ²
Total				20372 m ²

Refer Attachment 1 for aerial photograph showing sites and surrounds.

2.1 Key Relevant Previous Council Decisions

Council considered a scheme amendment for the Captain Stirling Hotel site in November 2012 and December 2014, and resolved not to proceed.

2.2 Legislation / Policy

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

3.0 Consultation Process

Consultation with community and stakeholders would be required as part of any comprehensive planning process.

4.0 Budget / Financial Implications

It is intended Administration carry out the work in-house, but if other expertise is required this has not been budgeted.

5.0 Risk management

1. Do nothing

- a. If further scheme amendment requests are made which are refused by Council, the Minister may instruct Council to initiate and adopt an amendment.
- b. If further scheme amendment requests are made which have merit, there is no comprehensive planning strategy and/or objectives to provide Council with direction when assessing and considering such scheme amendments.
- c. If a Development Application (DA) is made for the Captain Stirling Shopping Centre site, the current zoning rules allow significant discretion. The determination of any application would be by JDAP and without clear planning controls the outcome would be extremely uncertain.

2. Undertake study of planning options for the site

A robust study to understand the best way to plan in the immediate future for this important neighbourhood centre, would minimise the risk if, and when future scheme amendments and/or development applications are made for sites within the neighbourhood centre area.

6.0 Discussion

There have been two requests by Woolworths to amend the Town Planning Scheme to allow for a supermarket development on the current Hotel site and surrounds. On both occasions, the Council has refused to initiate a scheme amendment.

However, it became very apparent during the last attempt for a scheme amendment, that although the community did not want the supermarket development as it was being proposed, they did accept the need for development of the site and were looking to Council to provide a set of rules which would have a clear and more appropriate direction for the future redevelopment of the site.

In addition to this, the shopping centre across the road, which includes the IGA supermarket and a number of other small retail shops, is in the process of being sold and as such, may be redeveloped in the near future.

Although, the Shopping Centre site is zoned for retail shopping, the current Town Planning Scheme No.2 requirements do not provide a robust set of planning rules for appropriate redevelopment of the site. The current rules are limited and allow for significant discretion.

There is also no specific comprehensive set of objectives to base discretionary decisions on and any redevelopment of the site would be required to be determined by the Joint Development Assessment Panel (JDAP). This being the case, the significant discretion would be left to the JDAP and with no current appropriate and clear strategy or objectives for the site in the Town Planning Scheme, the outcome may not be in the best interests of the Council or the community.

Both the Captain Stirling Hotel site and the Captain Stirling Shopping Centre are part of one of only a few neighbourhood centres in the City and as such should have a comprehensive future planning regime to ensure the best planning outcome for both the community and the developers.

Administration is currently working on updating the Local Planning Strategy (LPS) which provides the overall strategy for the City of Nedlands current and future land uses. Town Planning Scheme No.3 will also eventually provide a more comprehensive regime for the Centre based on the outcomes in the LPS, however, given the current interest in both the Hotel site and the Shopping Centre site, it is recommended Administration allocate appropriate resources more urgently to look specifically at this Centre and provide Council with future planning options.

6.2 Conclusion

Both the community and potential developers are looking to Council to provide a clear strategic direction for this neighbourhood centre. The pressure to do this sooner rather than later is increasing due to the sale of the Captain Stirling Shopping Centre and the recent refusal of two scheme amendment attempts by Woolworths on the Captain Stirling Hotel site.


To ensure Council is in the best position possible to facilitate good development of the site if further applications are made (and to avoid strategic decision making being taken out of Council hands), it is recommended Council endorse allocation of

appropriate resources to undertake future planning for the entire neighbourhood centre.

7.0 Attachments

1. Aerial showing Captain Stirling Hotel and Shopping Centre sites and surrounds

**PD22.15 Residencies and Purpose of Lease by
Fellowship of Australian Writers Western
Australia – Mattie Furphy House, Allen Park**

Committee	14 April 2015
Council	28 April 2015
Applicant	Fellowship of Australian Writers Western Australia
Owner	City of Nedlands
Officer	Rebecca Boley – Leased Assets Co-ordinator
Director	Peter Mickleson – Planning & Development
Director Signature	
Previous Item	Item 17.1 on 26 October 2004

1.0 Executive Summary

This item is presented to Council for its consideration as landlord to permitting certain activity at the lease premises of Mattie Furphy house at Allen Park heritage precinct. The lessee group – the Fellowship of Australian Writers Western Australia (FAWWA) wish to host writers and artists in residence at the heritage cottage.

1.1 Recommendation to Committee

Council

- 1. Approves the Fellowship of Australian Writers Western Australia as lessee at Mattie Furphy house hosting residencies by writers and artists for temporary and short term stays. The residencies will be permitted as follows:**
 - a) Short term – 1-8 weeks at a time
 - b) Writers and artists with normal residence outside of Perth
 - c) Residents to be writers and artists completing works or hosting workshops onsite during residency
 - d) Any deviation from this criteria must first receive City approval before confirming a residency
- 2. Agrees to amend the Deed of Lease to permit residencies at Mattie Furphy house.**

Alternative Recommendation to Committee

Council

1. Does not approve the Fellowship of Australian Writers Western Australia hosting residencies at Mattie Furphy house.
2. Does not agree to amend the Deed of Lease to permit residencies at Mattie Furphy house.

1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Community Development

KFA: Governance and Civic Leadership

This item requires Council to make a determination after considering the most appropriate use of its natural environment / reserve land with an intended purpose of recreation with interests of community development specifically the furthering of culture and arts in the community.

2.0 Background

The Fellowship of Australian Writers Western Australia (FAWWA) is a non-profit organisation dedicated to providing advocacy, training, support and friendship to Western Australia's writing community. The group leases 2 portions of City reserve land at the Allen Park Heritage Precinct – Wood St Swanbourne on which is located two buildings **owned by the Group** – Tom Collins and Mattie Furphy Houses.

Following a site visit by a City officer in late 2014 it was noted that there was someone living at Mattie Furphy house. It was further discovered that the person in residence was a local resident whose home was being refurbished at the time. In communication with the President of the Group it was advised that the tenant was a member of the Group and would be in residence until mid-January. The President also advised that the Group often have "writers in residence" staying at Mattie Furphy house and that the design of the house for the Groups purposes was such as to facilitate these residencies, with writers often coming from interstate to stay for between 1 week – 2 months.

The item was then considered by the City's Executive team on 16 December 2014 as the terms of the Lease for this site were silent on "residencies" being permitted. The permitted purpose of the lease is to "provide advocacy, training and support and friendship to Western Australia's writing community and uses reasonably ancillary thereto".

FAWWA contend that the term used in the Lease's defined purpose - to "support" writers includes the hosting of residencies at the house for the purpose of providing space to write (or practice an art form) and that this is a usage "reasonably ancillary thereto". FAWWA cite their intention when signing the lease was to include this practice and refer to common practice around Australia regarding residencies by writers and artists within heritage quarters and precincts. FAWWA note that these

locations often include reserves, parks and gardens. (Please see letter in **Attachment 1** from FAWWA for further detail).

In accordance with the Executive team’s determination the FAWWA were advised that the current residency would have to cease and that such activity was not permitted under the terms of the Lease.

Following further communication with the FAWWA a subsequent item was considered by the City’s Executive team on 9 February 2015 and the item is now referred to Council for determination.

2.1 Key Relevant Previous Council Decisions

Item 17.1 26 October 2004 - Council considered the relocation of the cottage that is Mattie Furphy house to the Allen park heritage precinct. In considering this item the report noted that an option for relocation and refurbishment of the building included “a display centre for work of the Arts and Crafts movement or a residency for visiting interstate and international artists, craftspeople and or writers”. Council resolved to approve the relocation of the house on condition that a lease would be agreed with the FAWWA, as owner of the building.

2.2 Legislation / Policy

Nil. Lease agreement already in place. This item just seeks to clarify permitted activity onsite.

3.0 Consultation Process

3.1 What consultation process was undertaken?

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

Community consultation is not required for this item. It is a matter for landlord approval and Ministerial endorsement.

4.0 Budget / Financial Implications

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

There are no financial implications to consider with this item.

5.0 Risk management

Any risk associated with this item will be mitigated in the terms of lease, specifically in which lessee indemnifies the City against any damage or loss suffered through lessee’s activities onsite.

6.0 Discussion

Further to the discovery of a local resident in tenancy at Mattie Furphy house it was questioned whether residencies were appropriate for the site, for a class “A” crown reserve. To assist in determining this the terms of the lease were reviewed, however as noted above there is little guidance provided by the terms as the permitted purpose does not specifically refer to residing in the building. Although the lessee group contend that the wording of the Lease permitted purpose does extend to include residencies. FAWWA have noted that while they host interstate and international guests they would also like to host writers / artists from within the State in order to provide “a quiet retreat in which to work and as a location for associated workshops with other writers coming in for periods of 2-3 hours at a time during the main artist's residency, which may run a number of weeks”. FAWWA have also noted that “Residence is also a key factor for some artists who may be domiciled in Perth but need a space to get away from normal domestic routine, during which to complete a body of work. This principle is widely recognised and it is a well-established practice for Writers' Centres. Residencies often vary from 3-6 weeks but they may extend to months for a major work and taking the example of established Centres in other parts of Australia, 3 -6 months residencies are not unusual for novelists and playwrights because of the scale of their projects.”

FAWWA cite their intention when signing the lease was to include this practice as well as common practice around Australia regarding residencies by writers and artists within heritage quarters and precincts. FAWWA note that these locations often include reserves, parks and gardens. (Please see **attached** letter from FAWWA for further detail).

While the Lease agreement and associated report to Council in 2011 on the lease item is silent specifically on such “residencies” the Council report in 2004 relating to the item of relocation of the Mattie Furphy house to Allen Park notes an option for relocation and refurbishment of the building included “a display centre for work of the Arts and Crafts movement or a residency for visiting interstate and international artists, craftspeople and or writers”. This would suggest that at some point it was considered by Council the possibilities for the building at this site and approved as the relocation to Allen Park was approved. FAWWA also note that submission of plans to Council for the building included self-contained accommodation for visiting artists.

The City's planning department have commented on the proposed residencies onsite saying that the land is not zoned or reserved under the City's Scheme and is reserved as Parks & Recreation under the Metropolitan Region Scheme. It is noted that residential aspect of building is not in “spirit” of reserve but an argument may be possible for permitting activity.

It would seem then that if Council agreed to permit such residencies onsite there should be restrictions imposed on the activity to ensure that such residencies are indeed for the purpose of writing or Arts and Crafts. To achieve this the following conditions of residency are suggested:

- a) Residencies are to be for a short term – 1-8 weeks at a time

- b) Residents are to be writers or artists with normal residence outside of Perth
- c) Residents to be writers and artists completing works or hosting workshops onsite during residency
- d) Any deviation from this criteria must first receive City approval before confirming a residency


6.1 Conclusion

In the interests of good governance Council must now consider the request and interests of the writers group, FAWWA and more generally Perth writers as well as the purpose and most appropriate use of the reserve land. Council must consider whether the hosting of temporary residencies at Mattie Furphy, a building located on Class A crown reserve land, in a heritage precinct of Swanbourne is an appropriate use of the land and permitted activity at a City lease premises. Council must also determine whether to impose certain conditions on such residencies if they are to permit this type of activity at all. Administration would recommend that such conditions are imposed in the form previously mentioned to ensure that such activity accords the spirit of the already stated purpose of the Lease.

7.0 Attachments

1. Letter from FAWWA dated 20/01/15

PD23.15 Assignment of Lease and Sublease of Café Premises at 278 Marine Parade Swanbourne – The Naked Fig Cafe

Committee	14 April 2015
Council	28 April 2015
Applicant	The Naked Fig Pty Ltd
Owner	City of Nedlands
Officer	Rebecca Boley – Leased Assets Co-ordinator
Director	Peter Mickleson – Planning & Development
Director Signature	
Previous Item	N/A

1.0 Executive Summary

The proposed Assignment of Lease and Sublease of premises at Swanbourne Beach known as the Naked Fig Café is now presented to Council for its consideration as landlord following a request by (sub)lessee Naked Fig Pty Ltd to assign its interests in the premises to Shorething Hospitality Pty Ltd.

1.1 Recommendation to Committee

Council

1. Approve the Assignment of Lease and Sublease by The Naked Fig Pty Ltd of premises at 278 Marine Parade Swanbourne to the proposed assignee Shorething Hospitality Pty Ltd; and
2. Delegates authority to the CEO and Mayor to execute the Deed of Assignment prepared by City legal counsel on the CEO's direction.

1.2 Strategic Community Plan

KFA: Governance and Civic Leadership

This item relates to this aspect of the City's strategic community plan in that it requires Council to consider certain criteria of a legal agreement and determine an outcome that accords principles of sound decision making in allocating use of City resources. Criteria for decision making are explored further in this report.

2.0 Background

By a Deed of Sublease dated 17 June 2009 the City agreed to sublease to The Naked Fig Pty Ltd, guaranteed by Greer Julia Marns and Lorna Alexandra Marns, premises at 278 Marine Parade Swanbourne. The Naked Fig Pty Ltd developed the site to install the café and restaurant building that is currently located onsite. The Naked Fig Pty Ltd pay a commercial rental for these premises. By a Deed of Lease and Variation of Sublease dated 22 September 2009 between the parties it was acknowledged that part of the premises known as the “stage area” was located within a separate parcel of land, being City freehold land and not land owned by the State of WA, already leased to the City for purpose of the cafe. Hence the requirement for both a Lease and Sublease for the site.

By a letter, incorrectly dated 16 March 2013 although received via email on 17 March 2015 the Directors of The Naked Fig Pty Ltd, Greer and Lorna Marns requested an assignment of lease to Shorething Hospitality Pty Ltd. This email with letter forms **Attachment 1**. The Naked Fig Pty Ltd and Shorething Hospitality Pty Ltd have agreed a handover date of 29 May 2015 conditional on the receipt of landlord approval to the assignment and liquor licensing approvals.

The City has since been in communication with Scott Taylor, a Director of the proposed assignee company - Shorething Hospitality Pty Ltd. The City has also met with both Scott Taylor and business partner George Kailis to discuss the proposed Assignment and the concept for “Shorehouse”, the venue following an Assignment.

2.2 Legislation / Policy

The relevant legislation to this item is the Commercial Tenancy (Retail Shops) Agreements Act 1985 “the Act”. Section 10 of the Act relates to Assignment and Sub-leasing. Relevant to this item, the section provides that a Lessor can not withhold consent to an assignment, except on reasonable grounds. The section further provides that a Lessee is entitled to assume the Lessor’s approval to the assignment if they have not received a reply within 28 days after seeking that approval in writing.

3.0 Consultation Process

3.1 What consultation process was undertaken?

Consultation is required in so far as parties to the Lease and Sublease have requested an assignment of their interests in the premises and the City as landlord is prudent to make investigations of the proposed assignee, which requires some amount of consultation. This has taken place with the operators of the Naked Fig café to determine intentions and advise process as well as with the proposed assignees – Shorething Hospitality Pty Ltd. to learn their intentions for the operation of the site and their suitability for the assignment.

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"/>

3.2 How and when was the community consulted?

The community have been consulted in so far as the proposed assignee has spoken with neighbours of the café premises at Swanbourne beach and by all accounts there is strong support from neighbouring residents for the proposed assignees to take over the ownership and management of the café. This has been provided in several letters and emails of reference by neighbours residing along Marine Parade Swanbourne, Odern Crescent Swanbourne, James Road Swanbourne, Reeve St Swanbourne, Watt St Swanbourne, Ozone Rd Cottesloe, and Margaret St Cottesloe. These letters of reference are included for Council's viewing in **Confidential Attachment 2**.

4.0 Budget / Financial Implications

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

There are no financial implications immediately foreseeable with the proposed assignment. Any costs associated with legal preparation of documentation to record the assignment will be borne by the sublessee, as provided in the Sublease agreement.

5.0 Risk management

Any risk associated with the proposed assignment will be mitigated by the terms of the Deed of Assignment as prepared by the City's legal counsel. Terms of lease and sublease will remain the same beyond any assignment.

6.0 Discussion

The Deed of Sublease contains Clause 21. Assignment Sub-letting and Charging. The relevant section of this clause is included below:

21.3 Sublessor's Consent to Assignment or Mortgage

The Sublessor may not unreasonably withhold its consent to the assignment mortgage or charge of the Subleasehold estate created by this Sublease if:

- (a) the proposed assignee is in the opinion of the Sublessor a respectable and responsible person of similar financial standing to the Sublessee and who possesses experience in the operation and management of a cafe/restaurant of a comparable or higher standard to the business carried on by the Sublessee;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach of any of the Sublessee's Covenants;

- (c) the Sublessee procures the execution by the proposed Sublessee of a deed of assignment to which the Sublessor is a party and which deed is prepared and completed by the Sublessor's solicitors at the cost of the Sublessee in all respects; and
- (d) the assignment contains a covenant by the assignee with the Sublessor to pay all Amounts Payable and to perform and observe all the Sublessee's Covenants.

21.4 Costs for Assignment

If the Sublessee wishes to assign or sublet the Sublease hold estate created by this Sublease the Sublessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Sublessor or other person whose consent is required under this Sublease, of and incidental to:

- (a) the enquiries made by or on behalf of the Sublessor as to the respectability, responsibility, competency and financial standing of each proposed assignee; and
- (b) any consents required under this Sublease or at law; and
- (c) all other matters relating to the proposed assignment

whether or not the assignment proceeds.

Clause 21.3(a) specifically defines criteria for an assignment and particularly where the City may not unreasonably withhold its consent to the Assignment where proposed assignee is considered:

- a respectable and
- responsible person
- of similar financial standing to the Sublessee and
- who possesses experience in the operation and management of a café/restaurant of a comparable or higher standard to the business carried on by the Sublessee

These points were specifically addressed with Scott Taylor and George Kailis of Shorething Hospitality Pty Ltd at a meeting on the 24th of March 2015. The following points were noted to demonstrate fulfilment of the above criteria. Further information as provided by the proposed assignee is contained in **Confidential Attachment 3**.

- Shorething Hospitality Pty Ltd consists of 5 shareholders and 1 sole director. The parties involved in the company have an abundance of experience in the hospitality industry with several restaurant and bar venues located around the Perth area currently owned and controlled by the various parties of the proposed assignee company. The proposed assignee has advised its intention to run the premises as a restaurant and café and advised its primary focus will

be on breakfast, lunch and early dinner. They have also advised intention to make the site more environmentally friendly by modifying seaside windows to reduce noise output.

- The proposed assignee has advised the City the following: “I would like to reconfirm the financial position of The Shorehouse as a company and its shareholders is very strong. Given that the Naked Fig’s financials were analysed during Due Diligence, I can confirm that The Shorehouse and its shareholders have financial capacity in excess of that demonstrated by the current owners. Furthermore, the persons involved in Shorehouse also own and operate six other successful hospitality venues which form a strong financial support base for any new ventures, including this one.”
- The proposed assignee has received many endorsements as contained in the attached documentation and in particular in reference to the standard of venue likely to follow an Assignment - an endorsement is provided by Rob Broadfield – Food Editor, Columnist for The West Australian and Editor for the West Australian Goof Food Guide. Mr Broadfield’s endorsement of the proposed assignee is very positive and expectant of a high quality venue.

6.3 Conclusion

The proposed assignment of lease and sublease of cafe premises at Swanbourne beach is a reasonable request by The Naked Fig Pty Ltd. As demonstrated above the proposed assignee satisfies the criteria for an Assignment and the beginning of the City’s relationship with the proposed assignee Shorething Hospitality Pty Ltd has been only positive to date indicating a positive outlook for the site.

7.0 Attachments

1. Letter of request for an Assignment – received by email on 17 March 2015.

Confidential Attachments

2. Letters and emails of reference in support of an Assignment.
3. Summary of proposed assignee – Shorething Hospitality Pty Ltd.