



Development Services Reports

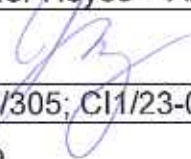
Committee Consideration – 14 February 2012
Council Resolution – 28 February 2012

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D01.12	No. 23 (Lot 759) Circe Circle, Dalkeith – Retrospective Front Fencing
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Committee	14 February 2012
Council	28 February 2012

Applicant	David Bayly – Two Kind Pty Ltd
Owner	David Bayly – Two Kind Pty Ltd
Officer	Laura Sabitzer – Planning Officer
Director	Jennifer Heyes – A/Director Development Services
Director Signature	
File ref.	DA11/305; CI1/23-02
Previous Item No's	D1.09
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This application is referred to Council for determination as officers have no delegation to determine an application once objections have been received.

Recommendation to Committee

Council approves an application for retrospective front fencing at No. 23 (Lot 759) Circe Circle, Dalkeith in accordance with the application dated 19 July 2011 and the plans dated 27 October 2011 subject to the following conditions:

1. **The front fencing on the eastern side boundary, as marked in red on the approved plans, shall be amended to meet the following conditions within 60 days from the date of this decision:**
 - a. **The fencing shall be a maximum height of 1.2 m from natural ground level and be visually permeable in accordance with the Acceptable Development provisions of Clause 6.2.5 A5 of the Residential Design Codes;**
 - b. **The surface of the fencing shall be finished to a quality finish and to a professional standard to the satisfaction of the City (refer to Advice Note 1); and**

- c. **The gap of the fencing around the retained tree, shall be enclosed and/or finished to the satisfaction of the City (refer to Advice Note 2).**
2. **The fencing and footings shall be constructed wholly inside the allotment.**
3. **Any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.**

Advice Notes specific to this approval:

1. **As a minimum, the finish of the fence shall be painted to a professional standard and be of a colour approved by the City;**
2. **The enclosure and/or finish of the gap of fencing around the retained tree, shall be carried out in consultation with the City's Manager Park Services.**

Strategic Plan

- KFA 3: Built Environment
- 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.
- KFA 5: Governance
- 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address: No. 23 (Lot 759) Circe Circle, Dalkeith
(Refer to attachment 1)

Zoning MRS: Urban

Zoning TPS2: Residential R10

Lot Area: 1012 m²

The property received planning approval in July 2007 for single storey additions/alterations. Following an inspection of the site at the completion of the works, it was found that retaining walls at the rear and the front fencing on the eastern boundary were constructed without planning approval. Subsequently, a retrospective development application for retaining walls and front fencing was lodged in November 2008. This application was approved at a Council Meeting on 10 March 2009, subject to conditions.

Key Relevant Previous Decisions:

COUNCIL RESOLUTION 10 March 2009.

Council approves a retrospective application for retaining walls to the rear and front fencing on the eastern boundary at No. 23 (Lot 759) Circe Circle, Dalkeith in accordance with the application dated 19 November 2008 and the amended plans dated 20 January 2008 subject to the following conditions:

- 1) **the fencing on the eastern side in the front setback area to have a maximum height of 1.2 m from natural ground level [emphasis added]** and be visually permeable in accordance with the Acceptable Development provisions of Clause 6.2.5 A1 of the Residential Design Codes 2008; and
- 2) any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council;

It has since come to the City's attention that front fencing has been constructed solid to 1.8 m in lieu of 1.2 m, which was required by Condition 1) of the previous Council decision. In addition, a portion of fencing along the front boundary has been constructed without planning approval (refer to attachments 4-6). A letter was sent by the City to the owner requiring the removal of the unauthorised fencing or the submission of a retrospective planning application for determination. A retrospective development application was submitted on 19 July 2011.

Proposal Detail

This retrospective development application is for fencing in the primary street setback area on the eastern (side) boundary and a portion of fencing along the Circe Circle street frontage (refer to attachments 2, 3, 5 & 6). The front fencing is solid up to 1.8 m above natural ground level.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Advertising Period 31 October 2011 – 14 November 2011

The variations identified were advertised by letter to surrounding affected landowner/s for fourteen days.

Comments received: One (1) comment

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

Summary of comments received	Officers technical comment
<p><i>"We object to the height of the fence in the front setback area...this solid fence is 1.8m in height, and results in a significant degradation of streetscape appearance and is inconsistent with the character objectives of the area".</i></p>	<p>Support</p> <p>The height of the unapproved front fencing does not meet the acceptable provisions of the Residential Design Codes nor does it meet the requirements in Council's Fill and Fencing Policy. This is discussed further in the Discussion section.</p> <p>The unapproved portions of front fencing on the eastern side are considered to be inconsistent with the existing streetscape. This is also discussed further in the Discussion section.</p>
<p><i>"..the 'stop and go' appearance at the tree location appears ridiculous"</i></p>	<p>Dismiss</p> <p>The tree is on the property at No. 23 Circe Circle. The tree has been retained, and the eastern boundary (side) front fencing is constructed around the tree trunk (refer to attachments 3, 5 & 6). The retention of the mature tree is considered to enhance the amenity of the area.</p>
<p><i>"..the materials used for the fence (flat fibrocement sheeting with polystyrene filling in steel frames) are not allowable as legal fencing material in Nedlands".</i></p>	<p>Dismiss</p> <p>The Fencing Local Law 2007 at Clause 16 (1) states:</p> <p><i>"A person shall construct a fence on a residential lot or a commercial lot from masonry, stone, concrete, wrought iron, tubular steel frame, link mesh, timber, plastic coated or galvanized link mesh, brushwood, corrugated reinforced cement sheeting, Colourbond metal or a material approved by the City"</i></p> <p>The 'Modular Wall' fencing is a polystyrene core with a cement outer. It is considered that this fencing material with outer cement sheeting satisfies the above Clause in the Fencing Local Law.</p>

Legislation

- Residential Design Codes
- Fencing Local Law 2007
- Council's Fill and Fencing Policy
- Policy 6.4 'Neighbour Consultation – Planning Applications'

The retrospective development application proposes the following variations to the Residential Design Codes and the Fill and Fencing Policy:

1. Clause 6.2.5 A5 of the Residential Design Codes requires that front walls and fences within the primary street setback area are visually permeable 1.2 m above natural ground level. The fence is solid to a height of 1.8 m above natural ground level.
2. The Council's Fill and Fencing Policy requires that the height of solid fencing in the primary street setback area shall be a maximum height of 1.2 m from natural ground level. The fence is solid to a height of 1.8 m above natural ground level.

Budget/financial implications

Nil

Risk Management

Nil

Discussion

The variations to the Residential Design Codes and Council's Fill and Fencing Policy are discussed as follows:

Issue: Height of eastern (side) fencing in the primary street setback area

<p>Requirement</p>	<p>Residential Design Codes The acceptable development provisions of Clause 6.2.5 require <i>'front walls and fences within the primary street setback area that are visually permeable 1.2 m above natural ground level'</i>.</p> <p>Fill and Fencing Policy <i>'Primary street fences, other than the portion abutting a vehicle access point where greater restrictions apply, shall be built in accordance with the following requirements:</i></p> <p>a) <i>the height of solid fencing shall be to a maximum of 1.2 m above natural ground level.'</i></p>
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<p>Proposal</p>	<p>The eastern (side) fencing and portion of fencing facing Circe Circle within the primary street setback area is solid up to 1.8 m above natural ground level.</p>
<p>Performance Criteria</p>	<p>Residential Design Codes <i>'P5 Front walls and fences to promote surveillance and enhance streetscape, taking account of:</i></p> <ul style="list-style-type: none"> • <i>The need to provide protection from noise and headlight glare where roads are designated as primary or district distributors or integrator arterials; or</i> • <i>The need to provide screening to the front setback; or</i> • <i>The need to provide privacy to north facing outdoor living areas."</i> <p>Fill and Fencing Policy <i>Fencing that does not meet the policy requirements shall, 'meet the performance criteria of Clause 6.2.5 of the RCodes; be assessed in terms of the development's likely impact upon streetscape'</i></p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p> <p>Note: Justification is provided by Modular Walls on behalf of the owner.</p>	<p><i>"Although the fence in question is in its factory finish with no paint or effects/textures applied, it does not in our opinion degra[de] the streetscape.</i></p> <p><i>In our opinion we believe it complements the existing walls and due to the existing elevation of the buildings on site does not at all appear out of place with the surrounding structures.</i></p> <p><i>If this were to be a 1.2 m High wall (picket or other), then it would not match any other architectural feature on the property. In addition to this, the only included advantage for the adjoining property owners would be that they could see (again) into the front setback area of No. 23.</i></p> <p><i>To summarise... if the fence were removed, all that will change is them being able to see into the front yard, but not beyond another wall to the street.</i></p> <p><i>If the wall was painted in a mutually agreed colour we are prepared to fund this and undertake it, it would blend in, its appearance</i></p>

	<p>would be as part of the entire dwelling on site. Streetscape in this circumstance is enhanced by this fence, as it blends in with the walls (predominantly at the front) on the entire lot. We are also prepared to enclose the gaps around the tree”.</p>
<p>Officer technical comment</p>	<p>The development is considered to not comply with the above performance criteria.</p> <p>The following comments are in relation to the Performance Criteria under Clause 6.2.5 of the RCodes;</p> <ul style="list-style-type: none"> • <i>The need to provide protection from noise and headlight glare where roads are designated as primary or district distributors or integrator arterials;</i> <p>The subject property is not located on a primary or district distributors or integrator arterial roads. The property is located in a low density residential zone and therefore it is considered the majority of traffic to the area would be local. Issues of vehicle noise and headlights are not considered to be any greater than that in any other of the surrounding streets in the neighbourhood and therefore the Performance Criteria of the Codes is not met.</p> <ul style="list-style-type: none"> • <i>The need to provide screening to the front setback;</i> <p>It is considered that the existing 1.8 m solid wall already provides sufficient screening to the front setback area. Historically, and in current planning provisions the front setback area is required to be open to enhance and maintain the amenity of the streetscape.</p> <p>In this case, the front setback area is already screened to a high degree with solid walls constructed many years ago. Additional fencing makes this situation worse, further deteriorating the streetscape's amenity. It is considered there is a large proportion of private outdoor area already screened and therefore as much of the front setback area should remain as open as possible. Therefore, as there is existing screening to the front setback area, it is deemed that the 1.8 m high eastern boundary fence in the front setback area is not justifiable under this performance criteria.</p>

- *The need to provide privacy to north facing outdoor living areas*

The rear yard of the property is the north facing outdoor living area. The solid portion of front fence is located on the eastern boundary of the front area. Therefore, it is considered this Performance Criteria is not applicable in this case.

The following comments are in relation to the Performance Criteria under Council's Fill and Fencing Policy;

- *The development's likely impact upon streetscape*

The portion of front fencing facing the primary street is considered to not further impact the existing streetscape. This is because the fencing is a continuation of the existing 1.8 m solid wall facing Circe Circle. The front fence is also finished to the same standard as the existing wall, this is considered to be a quality finish.

However, the eastern (side) front fencing is not finished to a professional standard, with the contractors recommending that the fence be painted, rendered or applied with textures. This fencing being in an unfinished state is deemed to impact upon the streetscape.

Furthermore the height of the eastern (side) front fencing is deemed to further impact to the streetscape. The streetscape of Circe Circle North is open and spacious in character, with the majority of houses without front fences or having front fences compliant with acceptable development provisions Clause 6.2.5 of RCodes and Council's Fill and Fencing Policy. The unapproved portion of front fencing will further contribute to detract from the open nature of the existing streetscape. It would not be in orderly and proper planning to approve the eastern (side) front fencing which is deemed to not be compliant.

Conclusion

The portion of front fencing facing the primary street is considered to have minimal impact on the existing streetscape because it is a continuation of the existing solid wall facing Circe Circle and is finished to a quality standard. Therefore, it is recommended that this portion of front fencing is approved 'as is'.

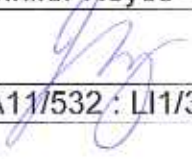
However it is considered that the eastern (side) front fencing currently does not comply with Clause 6.2.5 of the Residential Design Codes or Council's Fill and Fencing Policy. This is because the fencing exceeds the height requirements, is not a uniform colour, is not finished to a professional standard and is deemed to contribute to further detracting from the open nature of the streetscape. It is recommended that modifications are made to the eastern (side) fencing, as outlined in Condition (1).

Attachments

1. Locality Plan
2. Location of the Retrospective Front Fencing
3. Elevation Plan of the Retrospective Front Fencing
4. Previously Approved Site and Elevation Plan (OCM 10/03/2009)
5. Photos of the Retrospective Front Fencing
6. Photos Before and After Retrospective Front Fencing Constructed

D02.12	No. 37 (Lot 20) Lisle Street, Mount Claremont – Proposed Single Storey Dwelling & Carport
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Committee	14 February 2012
Council	28 February 2012

Applicant	Melissa Rowbottom & Paul Nimmo
Owner	Melissa Rowbottom & Paul Nimmo
Officer	Laura Sabitzer – Planning Officer
Director	Jennifer Heyes – A/Director Development Services
Director Signature	
File ref.	DA11/532 : L11/37
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This application is referred to Council for determination as the proposal does not meet the provisions in the City of Nedlands Town Planning Scheme No.2 and Policy 6.23 Carports and Minor Structures Forward of the Primary Street Setback.

Recommendation to Committee

Council:

1. Refuses an application for a single storey dwelling and carport at No. 37 (Lot 20) Lisle Street, Mt Claremont in accordance with the application dated 2 December 2011 and amended plans dated 8 December 2011 and 18 January 2012 for the following reasons:
 - a. The application does not meet Clause 5.3.3(a) and 5.5.6(i) of the City of Nedlands Town Planning Scheme No.2.
 - b. The proposed carport does not comply with Council's Policy 6.23 Carport and Minor Structures Forward of the Primary Street Setback.
 - c. The proposal will not be orderly and proper planning.

Strategic Plan

- KFA 3: Built Environment
 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.
- KFA 5: Governance
 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Property Address: No. 37 (Lot 20) Lisle Street, Mount Claremont
 (Refer to attachment 1)

Zoning MRS: Urban
 Zoning TPS2: Residential R10/R20
 Lot Area: 1011.7 m²

Previously, a development application was received on the 15 September 2011 for a carport and retaining walls at the abovementioned address. This application was approved on the 22 November 2011, subject to conditions. Condition (1) stated that *'this Development Approval does not pertain to the proposed carport, in accordance with Town Planning Scheme No.2 Clause 5.3.3(a) and Local Planning Policy 6.23, which requires structures to be setback 9 m from the front boundary'*. In other words, the retaining walls were approved and the carport was refused.

A development application was received on 2 December 2011 proposing a single storey residence and carport. The carport proposed in this development application is proposed in the same location as the carport proposed in the previous development application dated 15 September 2011.

Proposal Detail

This proposal is for a single storey dwelling and a carport (Refer to attachments 3-6).

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Notification Period: 7 December 2011–18 January 2012

Note: Due to the Christmas and New Year Period, dates from Monday 19 December 2011 – Sunday 15 January 2012 do not count as advertising days.

The variations identified were advertised by letter to surrounding affected landowners for fourteen days.

Comments received: None

Legislation

- City of Nedlands Town Planning Scheme No.2 (TPS2)
- Policy 6.23 Carport and Minor Structures Forward of the Primary Street Setback (Policy 6.23)
- Policy 6.4 'Neighbour Consultation – Planning Applications'

Statutory Framework

Clause 5.3.3 (a) of TPS2 requires a 9 m front setback, "unless otherwise provided in the scheme"

Is Discretion Available?

Clause 5.6.2 states that, 'Without limiting the generality of Clause 6.5 where in opinion of the Council a carport to be constructed on the portion of the lot between the street boundary and the setback line, by reason of height, bulk or proposed use may adversely affect the amenity of the surrounding area the Council may impose conditions on its approval...'

This allows Council to have discretion and impose conditions on the approval of a carport to be constructed in the front setback area. However the conditions must meet the design requirements of Clause 5.6.2 (a)-(d).

Policy 6.23 also allows for carports and other minor structures to be constructed within the 9 m primary street (front) setback area subject to policy requirements.

Therefore discretion exists if the proposal does not adversely affect the amenity.

Clause 5.5.6 (i) requires two covered car bays to be provided behind the front setback line for each new dwelling.

Is Discretion Available?

There is no discretion to Council under Clause 5.5.6 (i) to vary this provision.

Please note: Clause 5.5.6 (i) was added to the City of Nedlands Town Planning Scheme No. 2 with Scheme Amendment No. 193. Scheme Amendment 193 was approved by Council on 14 December 2010 and received final approval from the Minister of Planning on 24 January 2012. This application is required to be considered under this Clause as the Scheme Amendment has been seriously entertained for some time.

The application proposes the following variations to Policy 6.23 and TPS2:

1. Policy 6.23 requires when a carport is being proposed as part of a new residence, then the carport should be located behind the primary street setback area. A carport is proposed forward of the primary street setback, in conjunction to a new residence being proposed.
2. Policy 6.23 requires carports to be setback a minimum of 1 m from side boundaries. The carport is proposed to be setback nil from the northern side boundary.
3. Clause 5.5.6 (i) of TPS2 requires two covered car bays to be provided behind the front setback line for each new dwelling. The application does not propose two (2) covered car bays behind the front setback area, in conjunction to a new residence being proposed.

Budget/financial implications

Nil

Risk Management

This application is considered to contravene the provisions of Clause 5.3.3 and mandatory provisions of Clause 5.5.6 (i) of TPS2. Furthermore, if this application is approved it would likely lead to other applications of a similar nature contrary to Policy 6.23. This would result in the need to amend this policy. It is considered that this would compromise the purpose of the policy which is to ensure the open character and street amenity of the City.

Discussion

The variations to the requirements of Policy 6.23 Carport and Minor Structures Forward of the Primary Street Setback and City of Nedlands Town Planning Scheme No.2 are discussed as follows:

<p>Applicant justification summary</p> <p><i>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</i></p>	<p>The applicant's justification for the proposal are summarised as follows;</p> <p><i>'The plans...are for a passive solar house that is true to its principles, is highly energy efficient, low impact and with minimised carbon footprint'.</i></p> <p><i>'Every element of the house including sitting on the block, positioning and type of windows, doors and rooms has been specifically designed to maximise its passive solar potential'.</i></p>
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	<p><i>'We do not believe this open carport in front of the 9 m setback will have any negative impact on the amenity of the street. In fact, there are already a significant number of examples of such carports in Lisle St and the surrounding streets... It is apparent to conclude that the streetscape is such that carports within the 9m setback are common, and that having a carport within the 9 m setback at No 37 will not adversely affect the streetscape'.</i></p> <p><i>'If a carport/garage was positioned alongside the house on the northern side, the key element of passive solar principles, namely direct solar access, to the rooms positioned on the northern aspect would be lost. Thus natural heating, cooling and the ventilation of the entire house would be adversely affected'.</i></p> <p><i>'We are reluctant to put a 2 car garage at the rear of the property as we don't feel it's a safe alternative to entering the property from the front, especially at night... putting a large garage down the rear of the property would necessitate the removal of a magnificent 50 year-old lemon scented gum tree that we wish to retain and for which the home has been designed around'.</i></p> <p><i>'If the house was re-positioned to the north of the block, and the carport/garage run alongside the southern side of the house, the overshadowing by our neighbours' house during winter would critically compromise the passive solar system'.</i></p>
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Issue: Proposed carport in primary street setback area

Requirement	<p>Policy 6.23 requires that:</p> <p><i>'notwithstanding any other provision in this policy, where a carport is to be constructed as part of a site redevelopment (i.e. a new residence) then that carport should be located behind the required front boundary setback line'.</i></p>
Proposal	<p>The carport is proposed forward of the primary street setback, in conjunction to a new residence being proposed.</p> <p>The carport proposes a primary street setback of 3.2 m in lieu of the minimum primary street setback of 9 m.</p>

<p>Assessment under Policy 6.23</p>	<p>Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on <i>'either the relevant adjoining property or the streetscape'</i>.</p>
<p>Officer technical comment</p>	<p>The requirements of Policy 6.23 provided guidance for Clause 5.3.3(a) and 5.6.2 of TPS2 to be varied whilst ensuring that the open character and street amenity of the City is not compromised.</p> <p>The intent of Policy 6.23 is to allow for the minimum number of covered car parking spaces in the designated front setback, only where there is no adequate space or provision behind the front setback. Under the Residential Design Codes the minimum number of car bays is two (2).</p> <p>Policy 6.23 is generally used in the case of older homes which traditionally have been built up to the primary street setback and do not allow for space on the sides for the minimum number of covered car spaces. As a new residence is proposed, it is considered that there is opportunity for the proposal to be designed to allow for covered car spaces located behind the primary street setback.</p> <p>Although there are examples of other carports in the street being approved in the primary street setback area under Policy 6.23, they have been approved where there is an existing residence which does not allow for two covered car bays to be located behind the primary street setback area (refer to attachment 8).</p> <p>If new dwellings were approved with carports in the front setback area, it would mean that all dwellings could have carports in the front setback area, which would change the street character. The intent of the current policy means that there will only be a limited number of carports in the front setback area, and overtime when lots are redeveloped, the existing street character will be retained and enhanced as the need for carports in the front setback area reduces.</p> <p>The design of the new residence proposed permits a carport to be located behind the primary street setback. The proposed residence could be moved towards the rear to allow for a</p>

double carport or garage to be located 9 m from front of the lot (refer to attachment 7). This will result in the proposed residence being adjacent to the carport/garage structure for approx. 1.5 m - 2 m, therefore causing minimal disturbance to the direct solar access alongside the northern facing side of the building.

Alternatively, the proposed residence could remain in its proposed location, with the rooms being redesigned to allow for the area of the property (approx 13.3 m² floor area) which would be affected by overshadowing from the carport/garage to be compensated with additional floor area/room to be built on the southern side of the lot, behind the proposed Bed 4 (refer to attachments 3-4). The mature tree in the rear yard would not be adversely impacted by development in this location.

Furthermore, the property allows for vehicular access from Rudis Lane at the rear of the block. This means that a garage could be provided at the rear of the property which will allow for covered car spaces behind the front setback area. Other properties on Lisle Street and Adderley Street have vehicular access from Rudis Lane at the rear (Refer to attachment 1). This is in line with significant numbers of properties in the City of Nedlands with vehicular access from laneways.

A fully enclosed garage could be constructed along with fencing to ensure that the garage could securely house cars and allow for safe access from the rear yard to the residence. The applicant notes that a double garage at the rear, *'would necessitate the removal of a magnificent 50 year-old lemon scented gum tree'*, however this is not the case. From viewing the site plan a double garage (i.e. 6m × 6m) could be constructed on the northern side or southern side at the rear of the lot and would not require the removal of the mature tree. There are existing metal sheds and retaining walls at the rear of the property, which have been constructed and have not required the removal of the tree (refer to attachment 2).

Issue: Side setback of proposed carport

Requirement	Policy 6.23 requires carports forward of the primary street setback area to have a minimum side setback of 1 m.
Proposal	The proposed carport has a side setback of nil.
Assessment under Policy 6.23	Policy 6.23 – where an application does not comply with the policy requirements, then the application is evaluated according to whether the variation will have impact on <i>"either the relevant adjoining property or the streetscape"</i> .
Officer technical comment	<p>The proposed carport piers are setback nil from the side boundary, however the carport roof is setback 0.6 m from the side boundary. The carport is an open structure and is not abutting a structure on the adjoining property. As a result, if the carport in conjunction with the new residence is approved the side setback variation is deemed to not adversely impact the adjoining property or the streetscape.</p> <p>Furthermore the adjoining owners at No. 35 Lisle Street have no objections to the proposed side setback variation of the carport.</p>

Issue: No covered car bays behind front setback area

Requirement	<p>TPS2 Clause 5.5.6 states that <i>"Within the residential zone the following parking requirements apply:</i></p> <p><i>i) Covered parking behind the front setback line for a minimum of two cars must be provided and maintained for each new dwelling"</i>.</p>
Proposal	The proposed carport is within the front setback area. No covered car parking areas are provided behind the front setback line.
Assessment under TPS2	Council has no discretion to the identified variation to Clause 5.5.6(i) in TPS2. As a result, this provision cannot be varied.
Officer technical comment	<p>As noted above, Clause 5.5.6(i) in TPS2 cannot be varied, and therefore two covered car bays are required behind the 9 m front setback area.</p> <p>There are a number of options for the proposal to be redesigned to comply with Clause 5.5.6 (i). These options have been discussed previously in the report. There are many examples of homes in the City of Nedlands being designed in accordance with solar principles whilst complying with the City of Nedlands Town Planning Scheme No.2, the Residential Design Codes and Council's Policies.</p>

Conclusion

The carport in the primary street setback area proposed in conjunction with a new residence is inconsistent with Clause 5.3.3 (a), Clause 5.5.6 (i) and Clause 5.6.2 of TPS2 and Policy 6.23. The proposed carport development, if approved, would contribute to adversely affect the open character and street amenity of the area.

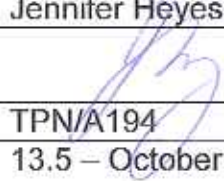
When constructing a new residence, the opportunity exists to retain and strengthen the streetscape characteristics. It is therefore considered that the proposed carport located in the primary street setback area, would be contrary to orderly and proper planning. There is scope for the application to be redesigned to comply with TPS2 and Policy 6.23, whilst ensuring that the proposal is a solar passive design. As a result, the current application is recommended for refusal.

Attachments

1. Locality Plan
2. Existing Site Plan
3. Proposed Site Plan
4. Floor Plan
5. Elevation 1 & 2
6. Elevation 3 & 4
7. Proposed Site Plan indicating possible alternative
8. Existing Development within Front Setback Area on Lisle Street

D03.12	Omnibus Scheme Amendment No. 194 – Actions to be taken by Council
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Committee	14 February 2012
Council	28 February 2012

Applicant	N/A
Owner	Various
Officer	Michael Swanepoel – Senior Strategic Planner
Director	Jennifer Heyes – A/Director Development Services
Director Signature	
File ref.	TPN/A194
Previous Item No's	13.5 – October 2010
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

The purpose of this report is for Council to determine the next actions to be taken on the Omnibus Scheme Amendment No. 194.

Recommendation to Committee

Council instructs Administration to seek approval from the Western Australian Planning Commission to delay its decision on Scheme Amendment No. 194 until the outcomes of the North Hollywood Precinct Study are confirmed.

Strategic Plan

- KFA 3: Built Environment
 - 3.1 Develop and implement a new planning scheme for the City.
 - 3.2 Encourage the development of diverse residential and commercial areas to meet the future needs of the whole City.
 - 3.3 Promote urban design that creates attractive and liveable neighbourhoods.

Background

Property Address: Verdun Street
 Zoning MRS: Urban
 Zoning TPS2: Residential R10

1. Location

This amendment specifically relates to lots along Verdun Street in North Hollywood. The street is located at the southern edge of the neighbourhood with the former Hollywood High School located to the west, Hollywood Hospital located to the south and Queen Elizabeth II Hospital to the east.

2. Historical information

2.1 Scheme Amendment No.144 (former Hollywood High School site)

Scheme Amendment No. 144, which dealt with the former Hollywood High School site, was adopted by Council in October 2004. The amendment facilitated the rezoning of the former Hollywood High School site from Metropolitan Region Schemes reserve (Public Purpose) to residential.

To accompany the scheme amendment, the Hollywood High School Design Guidelines were adopted by Council in December 2005. These guidelines allocated the portion of Verdun Street within the design guidelines area (Lots 214 – 231) a R30 coding.

2.2 Subdivision Application (lots along Verdun Street)

At its meeting held in October 2010, Council considered a proposed five lot subdivision at 19 Croydon Street and 20 Burwood Street. Although the subject sites are coded R10, the proposal was justified on the basis of the:

- R30 coding of the western side of Verdun Street (former Hollywood High School site);
- R20 coding for Verdun Street in draft Town Planning Scheme No. 3; and
- number of individual rezoning applications approved in the area due to the age of TPS2.

Council resolved to recommend to the Western Australian Planning Commission that the proposed subdivision application be refused due to non-compliance with the required minimum site area and minimum frontage under the Residential Design Codes.

At the same meeting and as part of the same item, Council also resolved to initiate a scheme amendment to change the density coding of the lots that have one boundary along Verdun Street from R10 to R30.

3. North Hollywood Precinct Study

In late 2010, following a petition from residents in the area, North Hollywood was incorporated into the Hampden Broadway Precincts Study. The precinct study included the area bounded by Aberdare Road in the north, Gairdner Street in the east, Verdun Street in the south and Kitchener Street in the west.

A number of preliminary draft proposed development options were prepared for North Hollywood. These options were:

- Development along the edge
- Incremental subdivision
- Comprehensive redevelopment
- Retain status quo

In May 2011, a survey was circulated amongst the community to provide residents the opportunity to consider options for North Hollywood to decide a preferred option.

The results were inconclusive. Each of the four (4) options received twenty five percent support from those people completing the survey. Analysis of the survey results identified that there did not appear to be any middle ground amongst the responses. People were either considerably for or against each of the proposed draft development options.

As consultation resulted in no clear direction the need for further study was identified. This was endorsed by Council at its meeting held in July 2011 when it adopted a revised project plan for the North Hollywood Precinct Study. To reflect the additional study required for this area, the project plan provides that the following outputs be prepared:

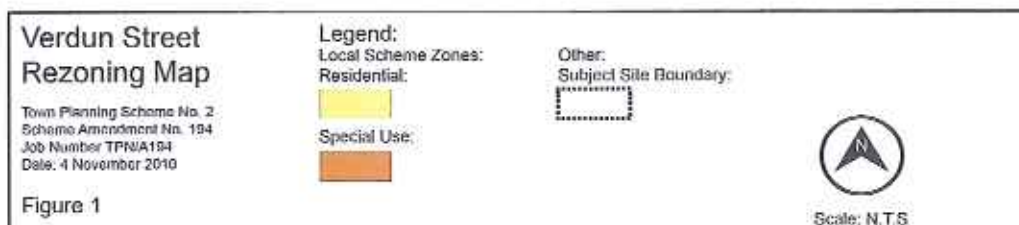
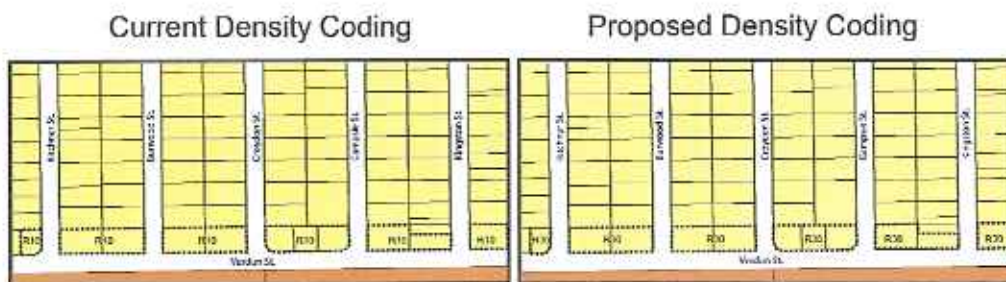
- Built Form Guidelines
- Movement Strategy
- Placemaking Strategy

Work is currently being done to prepare these outputs.

Proposal Detail

1. Recoding of lots along Verdun Street

The amendment proposes to recode the lots along Verdun Street from R10 to R20 as shown below.



2. A new clause included in Town Planning Scheme No. 2

The amendment proposes to include a new Clause 5.3.12 into the text of Town Planning Scheme No. 2 to accompany the abovementioned recoding.

The text for the new clause reads as follows:

"in the area affected by Scheme Amendment 194 any newly created corner lots located on the corners of the north/south aligned streets (i.e. Burwood Street, Croydon Street etc)and Verdun Street shall have its primary setback along the boundary facing the north/south aligned street so that future developments on these lots contribute to the streetscape of the streets".

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Consultation type:

Letters were mailed to residents and landowners affected by the proposal with a comment form and explanatory document enclosed.

The amendment was also advertised in the Post newspaper on 11 February 2011 and information was placed on the City's website.

Dates:

The proposal was open to consultation for a period of 42 days from 11 February 2011 to 25 March 2011.

Response to submissions

Twenty two (22) submissions were received, including one (1) submission from a State Government authority. Of residents who lodged a submission, there were seven (7) submissions supporting the amendment and fourteen (14) submissions objecting to the amendment.

An analysis of submissions identifies the following themes:

Theme	Explanation and proposed response
A comprehensive approach is needed	<p>This theme is based on the limited scope of the amendment. A number of objections to the proposal noted the importance of considering the whole neighbourhood rather than proceeding in an adhoc manner.</p> <p>Officer comment: The North Hollywood Precinct Study represents a more comprehensive approach to planning for the future of the neighbourhood.</p>
Ongoing traffic and parking concerns	<p>This theme is based on current traffic and parking problems. The expansion of Queen Elizabeth II hospital is also exacerbating concerns about traffic and parking.</p> <p>Officer comment: An output of the North Hollywood Precinct Study is a Movement Strategy that focuses on the neighbourhood. The intent of this strategy is to investigate the current problems and to propose solutions for mitigating these traffic and parking problems.</p>
Retain current character	<p>This theme is based on concerns that additional housing choice at different densities will threaten the residential character of the neighbourhood.</p> <p>Officer comment: An output of the North Hollywood Precinct Study is to prepare a set of Built Form Guidelines. The intent of this document is to investigate the current character of the area and to include development criteria to ensure a quality built environment that retains North Hollywood's current character.</p>

A schedule of submissions is included in attachment 3.

Legislation

- Town Planning Regulations 1967
- *Planning and Development Act 2005*

Budget/financial implications

Nil.

Risk Management

The risk associated with not adopting the amendment is that the Minister of Planning can order Council to proceed with the amendment.

The risk associated with adopting the amendment is that the decision to proceed with incremental subdivision of the area may contradict with the outcomes of the North Hollywood Precinct Study.

Discussion

In considering this item, the following is relevant:

1. Strategic Plan

It is generally accepted that a consistent housing stock and streetscape are important factors to reinforce the qualities of an attractive and liveable neighbourhood.

This is reflected in the City's Strategic Plan which seeks to:

- promote urban design that creates attractive and liveable neighbourhoods; and
- facilitate appropriate development of existing residential housing to compliment the surrounding residential amenity.

This amendment facilitates comparable codings for the lots along Verdun Street by introducing R30 to match with the existing R30 section of the street. This will assist in ensuring a more seamless transition along the street rather than having abrupt and noticeable inconsistencies in housing stock and streetscape.

2. North Hollywood Precinct Study

The North Hollywood Precinct Study considers the future redevelopment, if any, of the entire neighbourhood. The study will include ongoing community consultation that will assist in preparing a more comprehensive and coordinated approach for dealing with the future of North Hollywood. Ultimately the study seeks to result in a set of built form guidelines, a movement strategy and a placemaking strategy for the area.

Given the above, the following options that are available to Council include:

1. Adopt scheme amendment with or without modifications.

Council can resolve to adopt the amendment with or without modifications.

In this instance, adopting the amendment prior to the completion of the North Hollywood Precinct Study represents an adhoc approach to planning for the area given that the outcomes of the study are unknown. For example, the North Hollywood Precinct Study may conclude that this amendment is not suitable.

2. Seek approval for an extension to complete the scheme amendment process.

Council can resolve to delay its final decision until the outcomes of the North Hollywood Precinct Study are known.

Delaying the final decision requires approval from the Western Australian Planning Commission. The rationale for requesting approval is based on Council wanting to ensure that any decision about this amendment is consistent with an overall outcome for the area.

3. Discontinue the scheme amendment

Council can resolve to discontinue the amendment.

Conclusion

As part of the scheme amendment process, the proposed amendment has been progressed to the end of the consultation stage. In the meantime, through the North Hollywood Precinct Study, work has begun on preparing a more comprehensive and coordinated approach for planning the future of the entire North Hollywood residential area. This study is expected to be concluded in June 2012. An analysis of submissions confirms the relevance of a more comprehensive and coordinated approach.

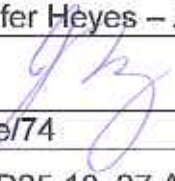
Therefore, it is recommended that Council seek approval from the Western Australian Planning Commission to delay its decision on this amendment until August 2012 so that the outcomes of the North Hollywood Precinct Study can better guide decision-making on this amendment.

Attachments

1. Location map
2. Scheme amendment documentation
3. Schedule of submissions

D04.12	Sub-Lease of a portion of Nedlands Yacht Club Inc leased premises, Reserve 17391 (Lot 254 on Deposited Plan 37070), House Number 254 Birdwood Avenue, Dalkeith.
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Committee	14 February 2012
Council	28 February 2012

Applicant	Nedlands Yacht Club Inc & Yachting Western Australia Inc
Owner	State of WA – Vested to City of Nedlands
Officer	Neil Scanes – Property Management Officer
Director	Jennifer Heyes – A/Director Development Services
Director Signature	
File ref.	Lease/74
Previous Item No's	Item D25.10, 27 April 2010
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This report recommends that Council approves and endorses an exclusive use one (1) year Sub-Lease with the option of two further two (2) year terms between the City of Nedlands, Nedlands Yacht Club Inc and Yachting Western Australia Inc for the latter's use of an office administration facility and two dry boat storage sheds located within Nedlands Yacht Club Inc's leased premises.

Recommendation to Committee

Council approves and endorses an exclusive use Sub-Lease for a one (1) year term with the option of a further two, two (2) year terms between the City of Nedlands, Nedlands Yacht Club Inc and Yachting Western Australia Inc for the latter's use of an office administration building and two dry boat storage sheds as shown in attachment 1, annexure 1.

Strategic Plan

This application is in accordance with the City of Nedlands Strategic Plan 2008-2013. In particular, the following objectives are addressed:

- KFA 3: Built Environment
 - 3.4 Plan and develop the sustainable provision of community infrastructure and facilities with a focus on flexible and multiple uses.

- KFA 4: Community Wellbeing
- 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
 - 4.2 Encourage, support and provide for a range of recreation and leisure opportunities, both active and passive.

Background

Nedlands Yacht Club Inc (NYC) operates out of a purpose built facility that is leased from the City.

Crown Reserve 17391 is a Category "A" Crown Reserve. The portion of the reserve that NYC resides on is legally described as Lot 254 on Deposited Plan 37070, Birdwood Parade, Dalkeith being the whole of the land contained within Certificate of Title Volume LR 3131, Folio 762.

Lot 254 has been vested to the City since 1947 for the purpose of "Recreation" by way of Management Order. This grants the City the power to lease Crown Reserve 17391 for any term not exceeding 21 years subject to the consent of the Minister for Lands.

The said premise consists of the following buildings:

- Nedlands Yacht Club Clubhouse;
- Control Room/Boat Shed;
- Yachting Western Australia administration office;
- Rescue & Boat Shed; and
- Additional Boat Shed.

The Yacht Club, grounds and pens are on the City of Nedlands municipal heritage list.

On the 27 April 2010, Item D25.10, Council approved a fifteen (15) year lease with the option of a further five (5) year term between the City and NYC. NYC is responsible for all maintenance, cleaning, utility fees and insurance for the buildings and land contained within the leased premise. This lease, dated 11 June 2010 commenced on 1 May 2010 and provides NYC the ability to sub-let.

On 4 November 2011, NYC notified the City of a building and two (2) dry boat storage sheds that it currently sub-lets to Yachting Western Australia Inc (YWA). The building is used by Yachting Western Australia Inc (YWA) for administrative purposes whilst the boat storage sheds enable the organisation to store their boats and associated equipment.

City Administration had no knowledge of Yachting Western Australia Inc (YWA) occupying the said facilities. Subsequently, the City has been in negotiation with both entities to arrange a suitable Sub-Lease that protects the City's interests whilst allowing both clubs to operate independently within current logistical and legislative requirements.

NYC and YWA have written formally to the City to request a Sub-Lease of the administrative building and two (2) dry boat storage sheds. The proposed tenure is for an exclusive use one (1) year Sub-Lease with the option of two further two (2) year terms between the City, NYC and YWA. The tenure of the proposed Sub-Lease runs in conjunction with the tenure of the NYC lease.

McLeod's Barristers & Solicitors drafted a Sub-Lease which was sent to both organisations for review.

The proposed Sub-Lease encompasses a portion of Crown Reserve 17391.

Key Relevant Previous Decisions:

Item D25.10, 27 April 2010: NYC - Council resolved a fifteen (15) year lease with the option of an additional five (5) year lease term.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

The proposed Sub-Lease has been prepared in consultation with NYC and YWA and is presented as attachment 1 of this report.

Administration has received in principal consent to the draft Sub-Lease from the Minister of Lands pursuant to Section 18 of the *Land Administration Act 1997*.

Legislation

- Section 18 of the *Land Administration Act 1997*.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

YWA and NYC will be responsible for all costs in relation to the preparation of the proposed Sub-Lease.

NYC has proposed to charge YWA the following annual fees:

- \$7,656 per annum plus CPI for the administrative building; and
- \$1,120 per annum for the use of two dry boat storage sheds. The boat storage charge is the same charge as NYC applies to their own members.

As NYC is only charged an annual peppercorn rental by the City in respect of its current lease, the City has inserted Clause 6.22 into the draft Sub-Lease. This will ensure that NYC is only allowed to use the annual rental from YWA for not-for-profit purposes as per the following:

- utility payments;
- cleaning;
- future development of the premises;
- YWA affiliation fees; and
- Youth activities & youth development.

It should be noted that NYC pay YWA an annual affiliation fee of \$15,000 per annum. This enables NYC to come under the YWA organisational umbrella which facilitates the management and development of boating in WA.

Risk Management

City Administration was not aware that NYC and YWA were co-located on-site until recent communication. This arrangement has been in place since 29 January 1981. In addition, the City was unaware of any formal legal agreement being in place between the two parties until late 2011.

Previous Sub-Lease agreements between NYC and YWA have not been presented and/or signed by the City or endorsed by the Minister for Lands and therefore to all intent and purposes were void.

The proposed new Sub-Lease will clarify and formalise all of the said parties' responsibilities, adhere to the necessary legislation and satisfy any current City exposure to indemnity and insurance issues.

City Administrations initial concern regarding the amount of annual rental a peppercorn rental lessee is charging YWA can be allayed by the inclusion of Clause 6.22 within the Sub-Lease and the restrictions that this places on NYC as to how they can allocate and spend the said funds.

The Minister for Lands, as owner of the land has granted in-principal consent to the proposed Sub-Lease and therefore consents to the proposed annual rental that is to be charged to YWA.

The Head Lease between the City and NYC has priority over the proposed Sub-Lease and will not impact upon NYC's obligations under their lease.

Discussion

NYC was formed in 1952 and the club has occupied the current site since 1955. The club serves a diverse membership drawn from the local community as well as the wider metropolitan area. The club has a strong family orientation with an abiding commitment to sail training for juniors.

The current lease between the City and NYC provides the club with the ability to sub-let the premise or a part of the premise providing consent is granted by the City and the Minister for Lands.

Clause 25.3 of the Lease states that:

"the City may not unreasonably withhold its consent to the assignment or subletting of the leasehold estate providing

- a) the proposed assignee is a respectable & responsible person of good financial standing;*
- b) all Amounts Payable due & payable have been paid & there is no existing unremedied breach; and*
- c) the lessee procures the execution by the proposed Sub-Lessee of a deed of Sub-Lease to which the City is a party and which deed is prepared and completed by the City's solicitors."*

YWA was formed in 1950 and represents and serves the yachting community of WA. It is a not-for-profit organisation and is the peak body for all forms of sailing and boating in WA. The key aim of the organisation is to facilitate the management and development of boating in the state. The existence of Yachting WA is pivotal to current and future health and development of the sport in WA. The growth in boating resulted in the need for YWA to establish a suitable building to accommodate its greater responsibilities for training and coordination.

YWA operates five (5) days per week, Monday - Friday between the hours of 8.00 am to 4.30 pm. There are 4.2 full time staff employed on site.

YWA has sited its headquarters under a Sub-Lease with NYC on the leased premises since 29 January 1981. The City and Minister for Lands has never signed and ratified such a document. The City has been in formal Sub-lease negotiations with NYC and YWA since November 2011.

The proposed tenant is compatible with NYC and occupies a building and two (2) boat sheds that most likely would lay vacant or be used infrequently without YWA's continued presence on site. Both entities have worked in unison since 1981 on the current site and there is no reason to think that such a long term harmonic relationship would deteriorate or change over the proposed five year duration of the Sub-Lease.

Both NYC and YWA have written to the City in January 2012 agreeing to the terms of the draft Sub-Lease.

The Sub-Lease is presented as per attachment 1.

In accordance with the City's Strategic plan, the proposed Sub-Lease will ensure that the local community will be able to continue to have access and participate in yachting and boating activities.

Conclusion

It is recommended that Council approves and endorses the proposed one (1) year Sub-Lease commencing on 1 January 2012 with the option of a further two, two (2) year terms between the City, NYC and YWA for the use of an office administration facility and two dry boat storage sheds located within NYC's leased premises as per attachment 1.

The Sub-Lease tenure will run in conjunction and within the long term tenure of the NYC lease.

A legal document will clarify both organisations and the City's responsibilities under the terms of the proposed Sub-Lease for the future management of that part of Reserve 17391. This will provide YWA with security of tenure and ensure that the administrative and governance requirements of the sport and yachting fraternity in WA will be maintained.

City Administration is satisfied that there is no existing breaches of the current lease by NYC and considers the proposed Sub-Lessee to be a respectable and responsible organisation of good financial standing.

The provisions of the Lease between the City and NYC continue unchanged. As a consequence, the grant of the proposed Sub-Lease will have a negligible impact upon the City. The Head Lease between the City and NYC has priority and precedence over the Sub-Lease. Therefore, the proposed Sublease will not impact upon the NYC's obligations under their long term Lease tenure.

The inclusion of Clause 6.22 into the proposed Sub-lease ensures that NYC is only able to utilise their proposed rental income for not-for-profit services and activities. City Administration is therefore satisfied from a policy perspective that the level of rent proposed to be charged to YWA is justifiable considering that NYC is only paying a peppercorn rent on its Lease.

Attachments

1. Draft Sub-Lease inclusive of Sketch