



City of Nedlands


Planning and Development Reports

Committee Consideration – 14 October 2014
Council Resolution – 28 October 2014

Table of Contents

Item No.		Page No.
PD41.14	(Lot 34) No. 45 Langham Street Nedlands –Proposed Additions (Double Carport, Front Fence, Retaining Walls and Associated Site Works) to Single House.....	2
PD42.14	Proposed Scheme Amendment No. 203 of Town Planning Scheme No. 2 - Re-zone Lot 96 (No. 61) Aberdare Road from R10 to R25.	11

PD41.14	(Lot 34) No. 45 Langham Street Nedlands –Proposed Additions (Double Carport, Front Fence, Retaining Walls and Associated Site Works) to Single House
----------------	---

Committee	14 October 2014
Council	28 October 2014
Applicant	Mr B J Rudd
Landowner	Mr B J Rudd & Ms H Cole
Officer	Andrew Gizariotis – Planning Consultant
Director	Peter Mickleson – Director Planning & Development Services
Director Signature	
File Reference	DA2014/302 – LA3/45

1.0 Executive Summary

The application seeks approval for a double carport, front fence, retaining walls and associated site works. The front fence, retaining walls and associated site works comply with the City's requirements, however, the proposed carport results in side setback and front setback implications under the City's Local Planning Policy.

The application was advertised to surrounding neighbours and one objection was received regarding the side setback.

The front fence, retaining walls and associated site works are recommended for approval, however, the carport is recommended for refusal due to streetscape impacts created by the proposed side and front setback.

1.1 Recommendation to Committee

Council:

1. Approves the application for additions (front fence, retaining walls and associated site works) to a single house at (Lot 34) No. 45 Langham Street Nedlands, in accordance with the application received on 27 May 2014 and amended plans received on 12 August 2014, subject to the following conditions:
 - a. This planning approval only pertains to the following (as marked in red on the plans):
 - i. The front fence; and
 - ii. Retaining walls and associated site works.
 - b. This planning approval does not pertain to the double carport (as marked in red on the plans).

- c. The development shall at all times comply with the approved plans, as modified by any conditions.
- d. Front walls and fences in the primary street setback area, shall be:
 - i. A maximum height of 1.8m above Natural Ground Level at the base of the wall;
 - ii. Visually Permeable above 1.2m in accordance with the Residential Design Codes 2013 and Council Policy; and
 - iii. Truncated or reduced to no higher than 750mm within 1.5m of where walls and fences adjoin vehicle access points, including neighbouring properties.
- e. The crossover is not to be modified without separate approval from the City's Engineering Department.
- f. All footings and structures to retaining walls and fences are to be constructed wholly inside the site boundaries of the Certificate of Title.

Advice Notes specific to this proposal:

- a. The landowner is advised to limit construction noise and hours as per the Environmental Protection (Noise) Regulations 1997.
 - b. 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.
2. Refuses the application for additions (double carport) to a single house at (Lot 34) No. 45 Langham Street Nedlands, in accordance with the application received on 27 May 2014 and amended plans received on 12 August 2014, for the following reasons:
- a. This planning refusal does not pertain to the following (as marked in red on the plans):
 - i. The front fence; and
 - ii. Retaining walls and associated site works.
 - b. This planning refusal only pertains to the double carport (as marked in red on the plans).
 - c. The proposed double carport does not meet the intended purpose of Local Planning Policy 6.23 – Carports and minor structures forward of the primary street setback, as the proposed setback is inconsistent with the established character and setback pattern within Langham Street.

- d. The proposed double carport does not satisfy the amenity considerations of cl. 5.5.1 of Town Planning Scheme No. 2, as the external appearance of the double carport adversely impacts on the streetscape in terms of building bulk.
- e. The proposed double carport does not represent orderly and proper planning, in accordance with cl. 6.5.1 of Town Planning Scheme No. 2.

1.2 Strategic Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through the Town Planning Scheme, Local Planning Policies and the Residential Design Codes of Western Australia – all of which contribute to well-planned and managed development in the City of Nedlands.

2.0 Background

Property address	(Lot 34) No. 45 Langham Street Nedlands (the site)	
Lot area	908m ²	
Zoning / Reserve	MRS	Urban
	TPS2	Residential (R12.5)



Figure 1 – Location Plan



Figure 2 – Detailed Location Plan

2.2 Legislation / Policy

- *Planning & Development Act 2005* (the **Planning Act**).
- City of Nedlands Town Planning Scheme No. 2 (**TPS2** or **Scheme**).
- 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**).
- Council Policy – Neighbour Consultation.

3.0 Consultation Process

3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes No

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

The application was advertised to affected neighbours and the City received one (1) objection, which is summarised as follows:

- a. The carport will block out large amounts of sunlight during winter; and
- b. The carport will be an eyesore at the front of the property.

The applicant provided the following response regarding the neighbour's objection:

- a. The carport will only minimally overshadow their garden area (the house will not be affected at all). We advised the neighbour that any damage to the reticulation or garden would be rectified at our cost; and
- b. The carport will enhance both the look of our property and the streetscape. The carport will have the same gable roof line as the original house, making it a seamless construction.

The matters of sunlight and setbacks are discussed in item 6.1 and 6.2 below.

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 application seeks approval for the following works as depicted in the submitted plans (**Attachment 1**):

- a. Double carport measuring 5.9m in length, 5.58m in width (33sqm in area) with a 2.8m wall height and a 4m ridge height. The carport is setback 3.5m from the front (eastern) boundary and is located on the side (southern) boundary.
- b. Front fence with piers to 1.8m in height, solid fencing to 0.5m in height and visually permeable infill panels to 1.8m in height.
- c. Retaining walls and associated site works within the front setback area of no more than 0.4m.

Variations to the planning requirements are as follows:

- a. Carport front setback of 3.5m in lieu of 9m; and
- b. Carport constructed up to the side (southern) boundary, which is not as-of-right in R12.5 areas.

In addition, community consultation has resulted in one objection being received.

The following assessment relates to the above variations sought:

6.1 Double Carport – Front Setback

Relevant History

Since 2007, the applicant/owner has submitted five applications (including the subject application) seeking planning approval for various additions. Four of these applications proposed a double carport at a setback of between 6m and 9m from the front boundary to replace an existing double carport with a setback of ~12.5m from the

front boundary. In all of these applications, the City has required the applicant to modify the plans to achieve a minimum carport setback of 9m from the front boundary, prior to issuing approval.

In 2011, the City's Building Department issued approval for the additions, including the double carport with a 9m front setback. The additions were completed in 2013, including the demolition of the existing double carport, however, the approved double carport was never constructed.

Requirements

TPS2 generally requires buildings to be setback a minimum of 9m from the front boundary. Clause 5.6.2 of TPS2 permits carports to be constructed between the boundary and the 9m setback line ('front setback area'), provided the Council is satisfied that the height, bulk and use does not adversely affect the amenity of the surrounding area ('TPS2 purpose').

To provide further guidance on the City's position regarding carports within the *front setback area*, the Council adopted *LPP 6.23* in 1999. The policy established circumstances in which the City would support carports within the *front setback area*. These circumstances were generally limited to situations where carports could not be located behind the 9m front setback line.

Variations to the Policy can be supported where the City is of the view that the variation will not adversely impact on the neighbour or the streetscape.

Further to the above, TPS2 provides more general amenity provisions which are required to be met. These provisions are as follows:

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."

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."

Assessment

The applicant has submitted the following justification in support of the application. Note that the justification is summarised for the purpose of this report, but a full copy of the justification is included as an attachment (**Attachment 2**):

- a. The initial proposal sought approval for a 2.5m front setback, however, this has been increased to 3.5m as generally stated in the Carport Policy.
- b. The proposed carport cannot be setback further from the front boundary, as an existing screen wall exists preventing an increased setback.

In response to the applicant's justification and planning requirements, administration considers the following:

- a. The carport is intended to be constructed with materials and colours to match the existing dwelling. This ensures that the carport will complement the main dwelling.
- b. The applicant has indicated that an existing screen wall prevents an increased setback. This screen wall was constructed between late 2013 and early 2014 when the applicant/owner was aware of the setback requirements for a carport (referenced in the 'Relevant History' section above).

The Council Policy generally permits carports to be located within the front setback area, where a minimum of five years has elapsed since the approval of significant additions requiring the carport to be located in this location.

The most recently approved additions occurred within the last five years and were not of a significant scale to require the carport in the proposed location. Accordingly, the existence of the screen wall is not considered a valid reason alone to permit a reduced setback.

It is noted that if the screen wall was removed, the carport could be setback 9m from the front boundary.

- c. Langham Street is characterised by open frontages, with dwellings and parking structures generally setback from the street in a consistent alignment. With exception to two other carports within Langham Street, there are no other structures that significantly disrupt the consistency of the streetscape (**Attachment 3**).

Minor deviations to the setback pattern do not usually impact on a streetscape, however, major deviations to a setback pattern can impact on streetscapes and should be avoided where possible.

The proposed carport setback of 3.5m will introduce a major deviation which will significantly disrupt the regular setback progression throughout the streetscape. Accordingly, the proposed carport is considered to detract from the streetscape.

- d. The carport is located adjacent to the front garden area of the neighbouring property. The neighbouring garden area does not contain any significant vegetation to assist in obscuring visibility of the proposed carport. This protrusion and prominence of the carport creates a focal element within the streetscape and conflicts with orderly and proper planning principles of maintaining a consistent and compatible streetscape.

An approximate sketch of the proposed carport is included in the attachments (**Attachment 4**). Note that the photographs are looking northwards.

Given the above, the front setback of the carport is not recommended for approval as its setback is considered to detrimentally impact on the established streetscape.

6.2 Double Carport – Boundary Wall

Requirements

Design principle P3.2 of the R-Codes requires the following (emphasis added):

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

- *makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;*
- *does not compromise the design principle contained in clause 5.1.3 P3.1 (wall setbacks, see below);*
- *does not have any adverse impact on the amenity of the adjoining property;*
- *ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and*
- *positively contributes to the prevailing development context and streetscape.”*

Further to this, design principle P3.1 (wall setbacks) 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.”*

Assessment

The applicant has submitted the following justification in support of the application. Note that the justification is summarised for the purpose of this report, but a full copy of the justification is included as an attachment (**Attachment 2**):

- a. The location of the existing house prevents a 1m setback being achieved; and
- b. The carport will not impact on sunlight to the neighbouring outdoor living areas.

In response to the applicant’s justification and planning requirements, administration considers the following:

- a. As identified by the applicant, the proposal makes effective use of space due to the site limitations created by the position of the existing dwelling.
- b. The direct effect of building bulk on the neighbouring property will be minimal, as the carport is abutting the front garden area of the neighbouring property.

- c. There is no overlooking or loss of privacy due to the carport, as it is a non-habitable structure and is proposed to be constructed at the same level of the neighbouring property.
- d. It is noted that the carport will overshadow the front garden area of the neighbouring property, however, direct sunlight to major openings and the primary outdoor living area of the neighbouring property will not be affected by the proposed carport.
- e. Adequate sun and ventilation will be available to the site and neighbouring property, as the carport is an open structure that abuts the front garden area of the neighbouring property. Further, the carport is separated from the main dwellings by at least 2m.
- f. Given the above, the amenity of adjoining neighbours and the surrounding area is not adversely affected by the reduced side setback.

Given the above, the boundary wall of the carport is recommended for approval as its setback is not considered to detrimentally impact on the neighbouring property. Accordingly, the boundary wall is considered to meet the relevant Design Principles.

7.0 Conclusion

The proposal is for a double carport, front fence, retaining walls and associated site works at 45 Langham Street, Nedlands.

The front fence, retaining walls and associated site works comply with the planning requirements, however, the double carport proposes the following variations:

- a. Carport front setback of 3.5m in lieu of 9m; and
- b. Carport constructed up to the side (southern) boundary, which is not as-of-right in R12.5 areas.

Whilst the side (southern) setback is considered capable of approval, the front setback variation is not recommended for approval due to the impact of the carport on the streetscape.

Accordingly, the front fence, retaining walls and associated site works are recommended for approval, however, the proposed double carport is recommended for refusal.

8.0 Attachments

- 1. Plans (existing and proposed site plans, floor plans and elevations)
- 2. Applicant's submission
- 3. Streetscape Consistency
- 4. Carport Setback Sketch

NOTE: All Sewer details plotted from information supplied by Water Corporation.

NOTE / BEWARE:

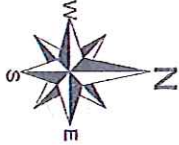
DUE TO LACK OF SURVEY MARKS/ PEGS ALL BUILDING OFFSET DIMENSIONS & FEATURES ARE APPROX ONLY AND POSITIONED FROM EXISTING PEGS/ FENCES AND WALLS WHICH MAY NOT BE ON THE CORRECT ALIGNMENT AND ARE TO BE VERIFIED WHEN REPEGGED. ANY DESIGN THAT INVOLVES ADDITIONS TO ANY STRUCTURES SHOWN OR PORTION OF STRUCTURES REMAINING AFTER ANY DEMOLITION HAS TAKEN PLACE, BOUNDARIES MUST BE REPEGGED AND EXACT OFFSETS PROVIDED TO YOUR DESIGNER /ARCHITECT BEFORE ANY PLANS ARE PRODUCED AND BEFORE ANY WORK IS STARTED ON SITE.

SOIL DESCRIPTION
 Sand
 Light Grass Cover

NOTE:
 LOT MISCLOSE
 (0.000 m)

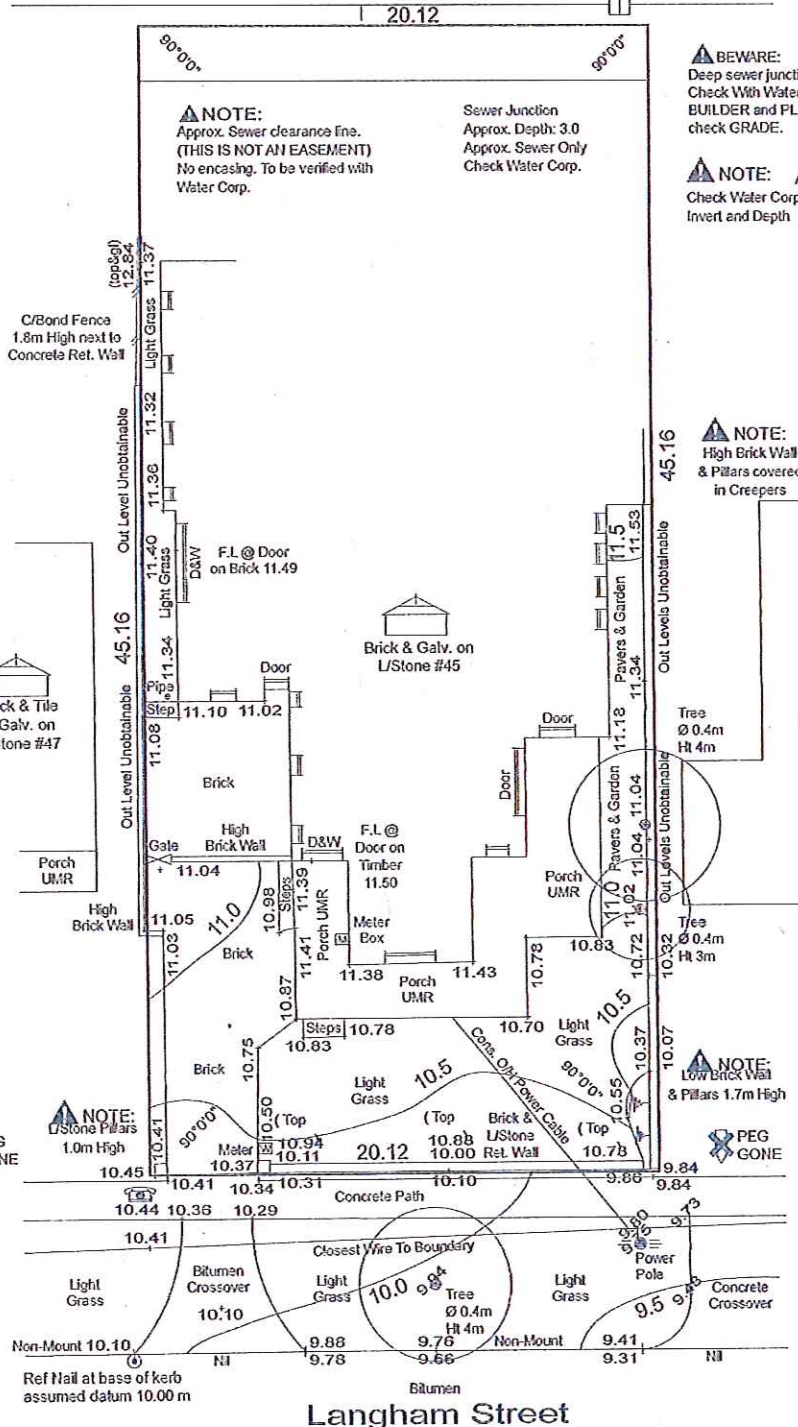
NOTE: Unable to Calculate Sewer Junction Invert Due to Lack of Information on Water Corporation E-Plan. Verify Junction Invert, Depth & Details With Water Corporation.
BUILDER and PLUMBER check GRADE

Sewer M/H (700) Located in Field. Plotted From Water Corp. Sheet Only)



NOTE - BATHROOMS, SET-OUT DIMENSIONS MAY VARY ON SITE AS BUILDERS DISCRETION. REVIEW / DRAINAGE MAY VARY FROM CLIMATIC PRESENTATION / CHECK MINIMUM CLEARANCES. RETAINING NOT INCLUDED IN CONTRACT - REMAINS OWNER'S RESPONSIBILITY. THIS SURVEY DOES NOT GUARANTEE THE LOCATION OF BOUNDARY PEGS OR FENCES. CHECK TITLE FOR EASEMENTS / COVENANTS ETC.

NOTE COTTAGE & ENGINEERING SURVEYS ACCEPT NO RESPONSIBILITY FOR ANY PHYSICAL ON SITE CHANGES TO THE PARCEL OR PORTION OF THE PARCEL OF LAND SHOWN ON THIS SURVEY INCLUDING ANY ADJOINING NEIGHBOURS LEVELS AND FEATURES THAT HAVE OCCURRED AFTER THE DATE ON THIS SURVEY.



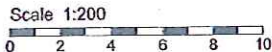
BEWARE: Deep sewer junction. Check With Water Corp BUILDER and PLUMBER check GRADE.

NOTE: Approximate Sewer Only Check Water Corporation For Junction Invert and Depth

NOTE: High Brick Wall & Pillars covered in Creepers

NOTE: Low Brick Wall & Pillars 1.7m High

Existing Plan



EXISTING SITE PLAN
 SCALE 1:200

RECEIVED
 12 AUG 2014
 CITY OF NEDLANDS



DISCLAIMER NOTE
PLEASE NOTE THAT WHILE ALL CARE WAS TAKEN IN PREPARING THIS SET OF PLANS & ELEVATIONS ANY CONSTRUCTION WORK, ALTERATIONS OR RENOVATIONS SHOULD BE RE-CHECKED BEFORE COMMENCING ANY WORK TO ENSURE ACCURACY

Brick & Tile
& Galv. on
L/Stone #47

Porch
UMR

2

3

45.16M

45.16M

20.12M

Existing Plan

EXISTING FLOOR PLAN

SCALE 1:100

LANGHAM STREET

CITY OF NEDLANDS
12 AUG 2014
RECEIVED
AMENDED PLANNING

Buildmark
the benchmark in building

MARKO ALUJEVIC
PH: 0447 943 301
EMAIL: marko@buildmark.net.au

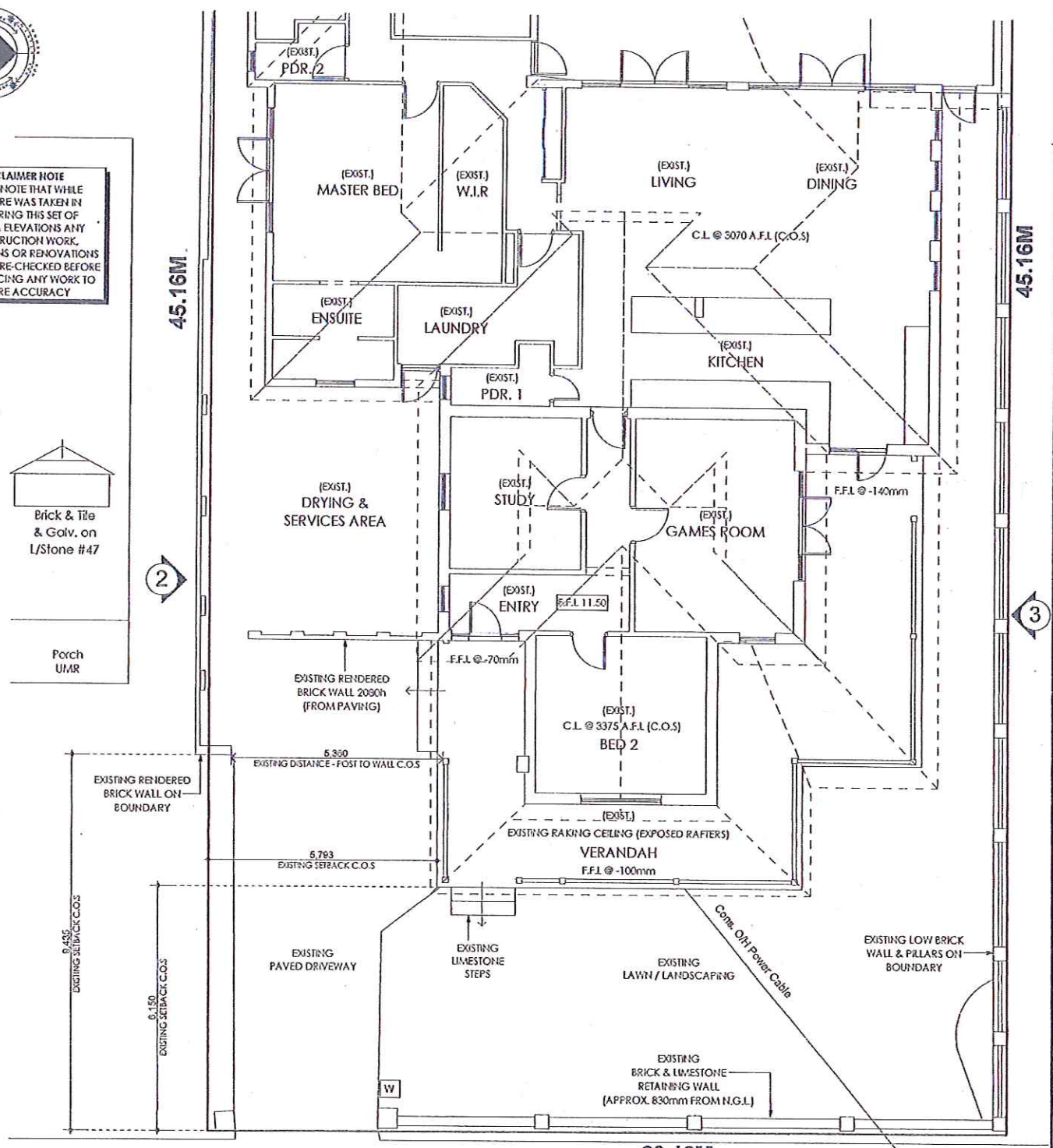
DESIGN & DOCUMENTATION BY:

PARALLEL 26
BUILDING DESIGN

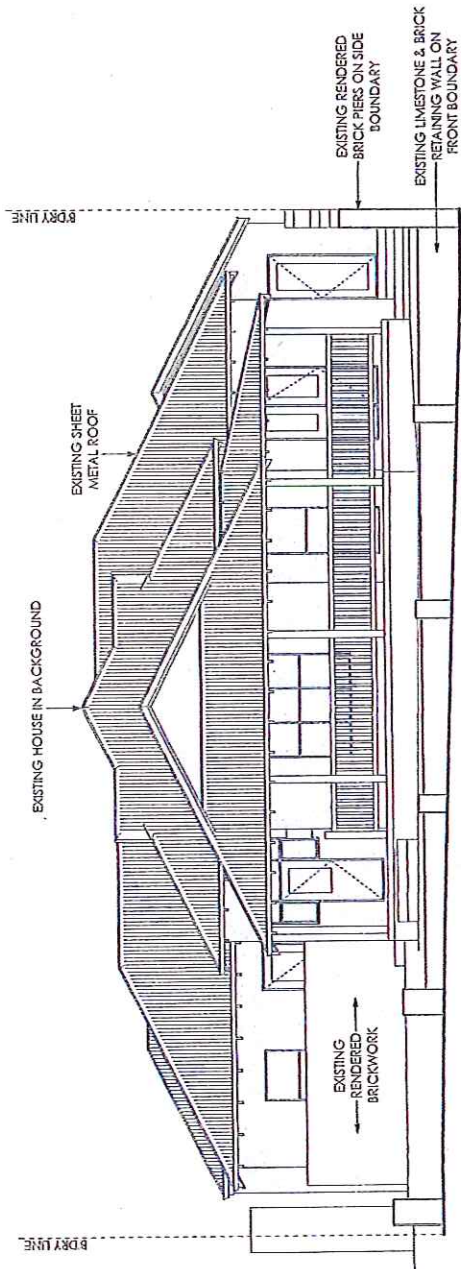
PH: 0437 780 571
EMAIL: keaton@parallel26.com.au

PROPOSED CARPORT ADDITIONS
FOR: MR B. RUDD & MRS H. COLE
AT: LOT 34 (#45) LANGHAM STREET, NEDLANDS

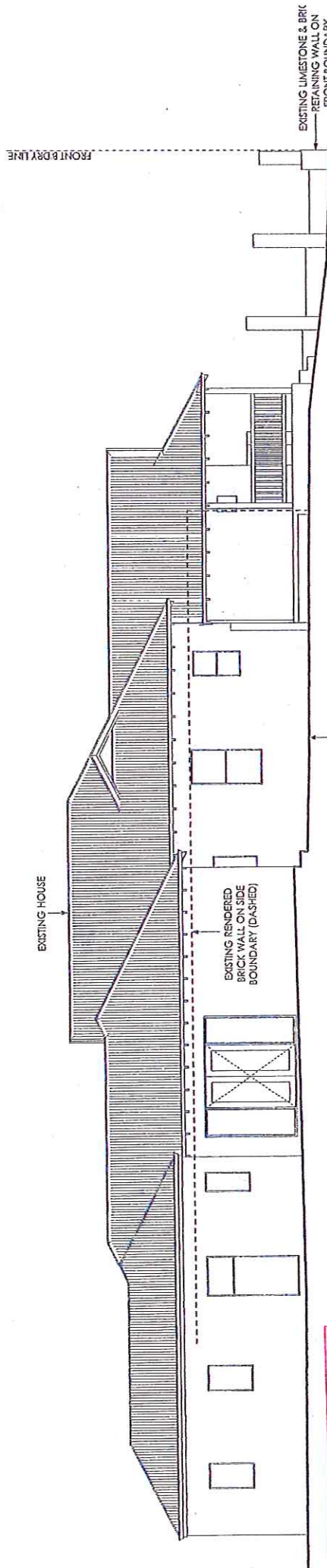
START DATE: APR. 2014 DRAWN: KM
ISSUE DATE: 27/9/2013 JOB No: 103-14
SCALE: AS SHOWN SHEET: 2 of 8



**Existing
Plan**



EXISTING ELEVATION 1 - EAST
SCALE 1:100



EXISTING ELEVATION 2 - SOUTH
SCALE 1:100

**12 AUG 2014
EXISTING RECEIVED**

CITY OF NEDLANDS

Buildmark The benchmark in building EMAIL: marko@buildmark.net.au PH: 0457 946 301	MARKO ALUJEVIC PH: 0437 700 671 EMAIL: keaton@parallel26.com.au	PARALLEL 26 BUILDING DESIGN	PROPOSED CARPORT ADDITIONS FOR: MR B. RUDD & MRS H. COLE AT: LOT 34 (#45) LANGHAM STREET, NEDLANDS	AMENDED PLANNING START DATE: APR. 2014 DRAWN: KM ISSUE DATE: 27/9/2013 JOB No: 103-14 AS SHOWN SHEET: 3 of 8
	DESIGN & DOCUMENTATION BY:			

Proposed Plan

Details plotted from information supplied by Water Corporation.

NOTES:
 ALL BUILDING OFFSET DIMENSIONS & FEATURES DERIVED FROM EXISTING PEGS/ FENCES AND WALLS WHICH MAY NOT BE ON THE CORRECT ALIGNMENT AND ARE TO BE VERIFIED WHEN REPEGGED. ANY DESIGN THAT INVOLVES ADDITIONS TO ANY STRUCTURES SHOWN OR PORTION OF STRUCTURES REMAINING AFTER ANY DEMOLITION HAS TAKEN PLACE, BOUNDARIES MUST BE REPEGGED AND EXACT OFFSETS PROVIDED TO YOUR DESIGNER /ARCHITECT BEFORE ANY PLANS ARE PRODUCED AND BEFORE ANY WORK IS STARTED ON SITE.

SOIL DESCRIPTION
 Sand
 Light Grass Cover

NOTE:
 LOT MISCLOSE (0.000 m)

NOTE: Unable to Calculate Sewer Junction Invert Due to Lack of Information on Water Corporation E-Plan. Verify Junction Invert, Depth & Details With Water Corporation. BUILDER and PLUMBER check GRADE

Sewer MH (Plot Located in Field, Plotted From Water Corp. Sheet Only)

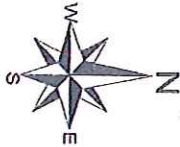
BEWARE: Deep sewer junction. Check With Water Corp BUILDER and PLUMBER check GRADE.

NOTE: Approximate Sewer Only Check Water Corporation For Junction Invert and Depth

NOTE: High Brick Wall & Pillars covered in Creepers

NOTE: Low Brick Wall & Pillars 1.7m High

DISCLAIMER NOTE
 PLEASE NOTE THAT WHILE ALL CARE WAS TAKEN IN PREPARING THIS SET OF PLANS & ELEVATIONS ANY CONSTRUCTION WORK, ALTERATIONS OR RENOVATIONS SHOULD BE RE-CHECKED BEFORE COMMENCING ANY WORK TO ENSURE ACCURACY



I / WE HAVE VIEWED THE PLANS AND HAVE NO OBJECTIONS REGARDING: CARPORT AND FENCE ON BOUNDARY LINE

X
 X
 NEIGHBOURING OWNER(S)

Areas

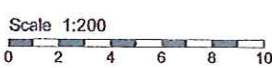
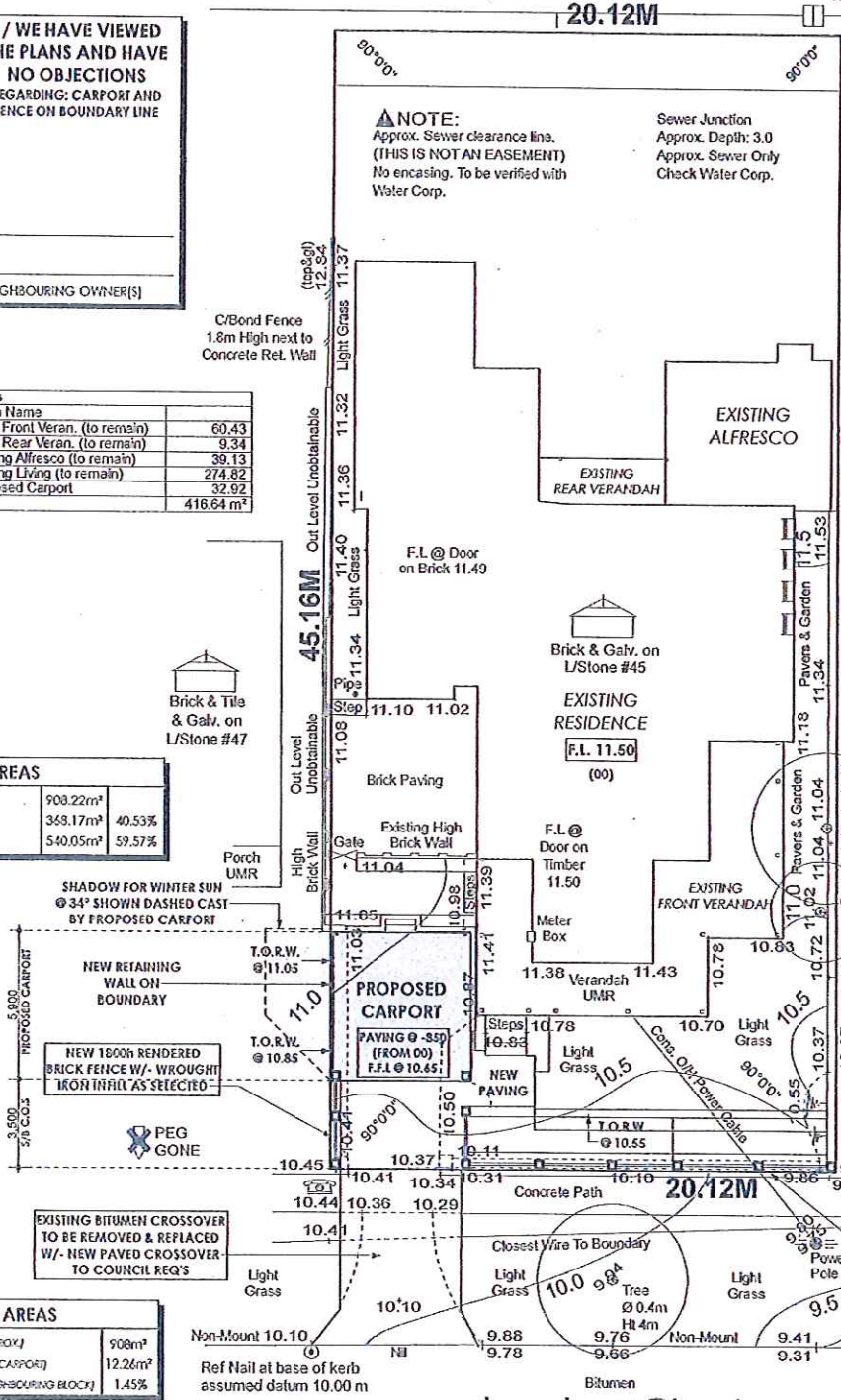
Room Name	Area
Exist. Front Veran. (to remain)	60.43
Exist. Rear Veran. (to remain)	9.34
Existing Alfresco (to remain)	99.13
Existing Living (to remain)	274.82
Proposed Carport	32.92
Total	416.64 m²

SITE AREAS

Area	Area	Percentage
TOTAL LOT AREA	908.22m ²	
BUILDING AREA (SITE COVER)	368.17m ²	40.53%
OPEN SPACE	540.05m ²	59.57%

SHADOW AREAS

NEIGHBOURS LOT AREA (APPROX)	908m ²
SHADOW CAST (BY PROPOSED CARPORT)	12.26m ²
TOTAL SHADED AREA (OF NEIGHBOURING BLOCK)	1.45%



PROPOSED SITE PLAN
 SCALE 1:200

CITY OF NEDLANDS
 RECEIVED
 12 AUG 2016



Proposed Plan

DISCLAIMER NOTE
PLEASE NOTE THAT WHILE ALL CARE WAS TAKEN IN PREPARING THIS SET OF PLANS & ELEVATIONS ANY CONSTRUCTION WORK, ALTERATIONS OR RENOVATIONS SHOULD BE RE-CHECKED BEFORE COMMENCING ANY WORK TO ENSURE ACCURACY

Brick & Tile & Galv. on L/Stone #47

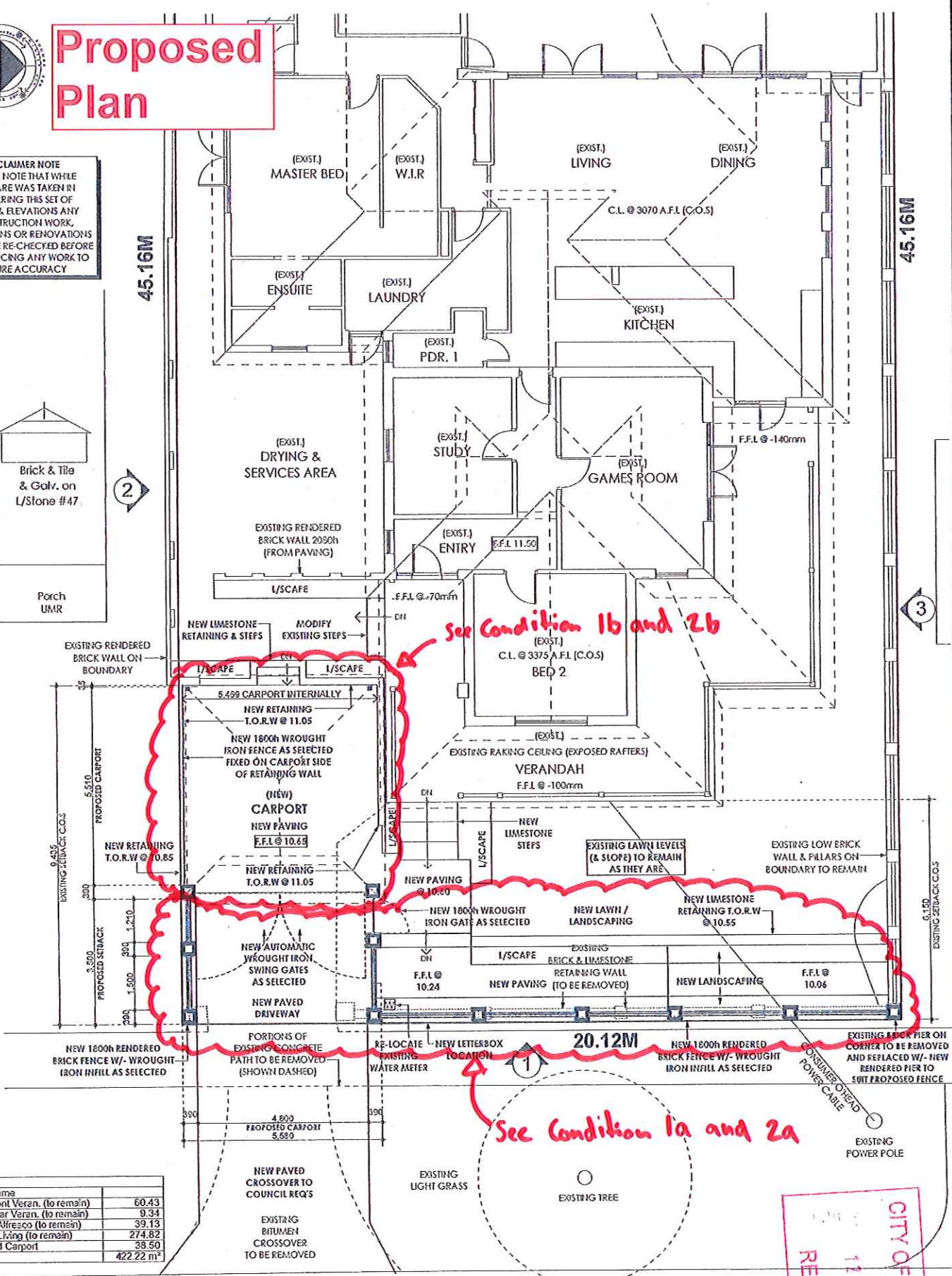
Porch UMR

45.16M

45.16M

2

3



Areas	
Room Name	
Exist. Front Veran. (to remain)	60.43
Exist. Rear Veran. (to remain)	9.34
Existing Alfresco (to remain)	39.13
Existing Living (to remain)	274.82
Proposed Carport	38.50
	422.22 m ²

PROPOSED CARPORT & FENCE PLAN

SCALE 1:100

LANGHAM STREET

CITY OF NEDLANDS
RECEIVED
12 APR 2014

AMENDED PLANNING

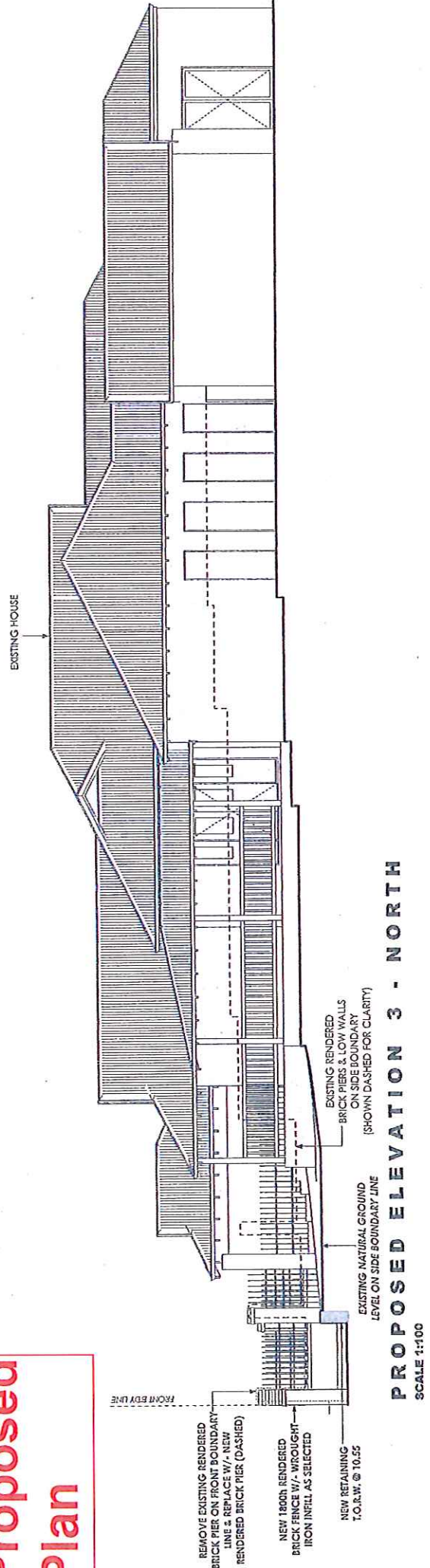
MARKO ALUJEVIC
PH: 0447 946 301
EMAIL: marko@buildmark.net.au

DESIGN & DOCUMENTATION BY:
PARALLEL 26 BUILDING DESIGN
PH: 0437 790 571
EMAIL: keston@parallel26.com.au

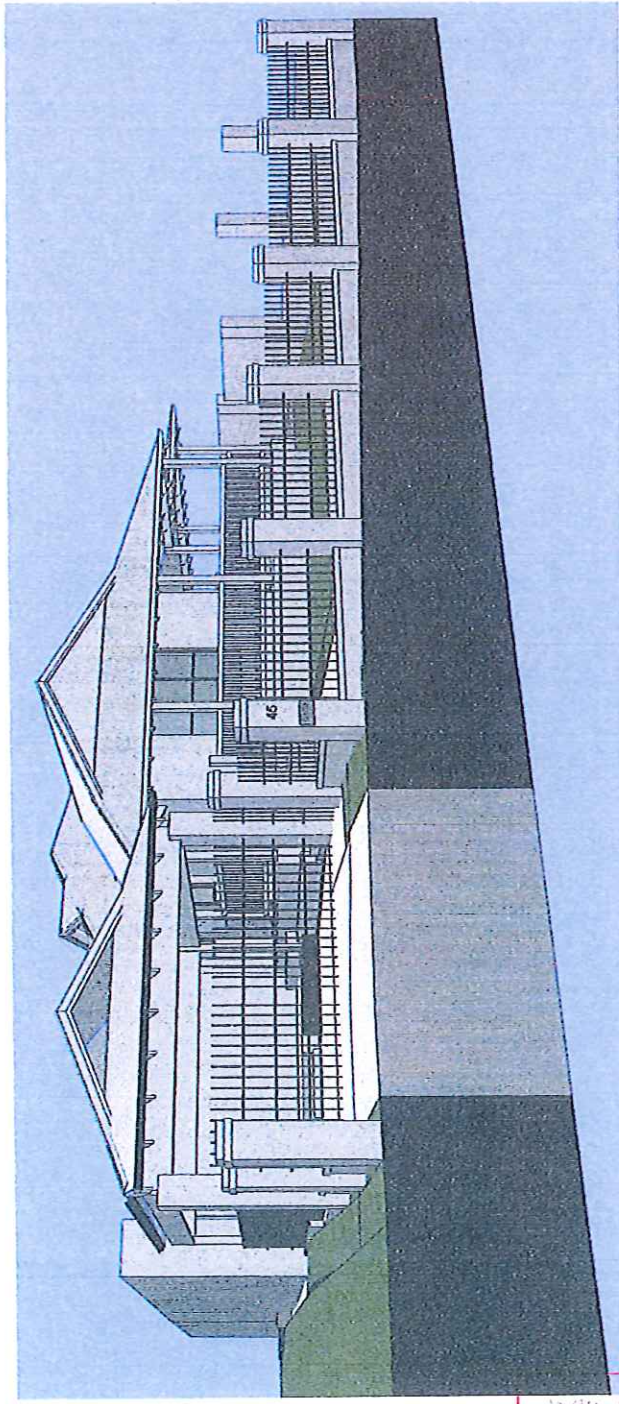
PROPOSED CARPORT ADDITIONS
FOR: MR B. RUDD & MRS H. COLE
AT: LOT 34 (#45) LANGHAM STREET, NEDLANDS

START DATE: APR. 2014	DRAWN: KM
ISSUE DATE: 27/9/2013	JOB No: 103-14
SCALE: AS SHOWN	SHEET: 6 of 8

Proposed Plan

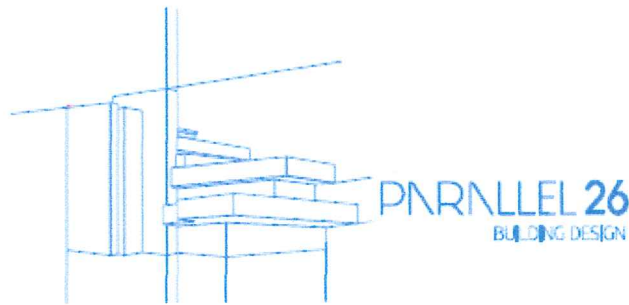


Proposed 3D View



RECEIVED
12 AUG 2014
CITY OF NEDLANDS

Buildmark <small>The Benchmark in Building</small>	MARKO ALUJEVIC PH: 0447 946 301 EMAIL: marko@buildmark.net.au	PARALLEL 26 BUILDING DESIGN	PH: 0437 790 671 EMAIL: keaton@parallel26.com.au	PROPOSED CARPORT ADDITIONS FOR: MR B. RUDD & MRS H. COLE AT: LOT 34 (#45) LANGHAM STREET, NEDLANDS	AMENDED PLANNING
	DESIGN & DOCUMENTATION BY:	START DATE: APR 2014	DRAWN: KM	JOB No: 103-14	SHEET: 8 of 8
	SCALE:	ISSUE DATE: 27/9/2013	AS SHOWN	AS SHOWN	



Ph: 0437 790 571

A: 280 Harborne Street, Glandalough

E: keaton@parallel26.com.au

SUPPORTING INFORMATION

RE: Proposed Carport & Front Fence at Lot 34 (#45) Langham Street, Nedlands

Proposed R-codes variations using Design principles & Deemed to comply

1. Carport setback 3.5m in lieu of 9m

With regards to the conditions outlined in the R-codes and the local planning policy 6.23 deemed to comply section **Carport Setbacks**, we are proposing an exception for the carport setback to be allowed to be reduced to a minimum of 3.5m front the front boundary. Our initial proposed carport setback was 2.5m however, we have reduced it to the 3.5m setback and left the carport entrance open as stated it should be in the policy 6.23.

Due to an existing wall to the services yard the farthest setback we could achieve for a **single** carbay would be 6.95m, as the existing wall is setback 12.35m.

I am aware that a minimum of two carbays is to be provided and so a tandem carbay would have to be included behind this single carport if council deemed that it was what we had to do to meet their policy requirements.

However, having a tandem carbay layout now leaves the owner having to park one of their cars potentially without security and also well within the setback area. I understand that a carbay has no setback requirements but in terms of addressing the streetscape I think it would be more detrimental to have a tandem layout than

to have a double carbay with the cars placed side by side and to set it back 3.5m at all times.

To achieve a double carport layout with the cars side by side, the farthest we can go back is 3.5m from the front setback due to another existing brick nib wall on the southern boundary of the property. With the carport in this location (and layout) we strongly suggest that this will be the best option.

Lastly, due the location of the existing house, it has forced us to push the carport right up to the boundary on the southern side in order to meet a minimum width of 5.4m internally with no obstructions. We have removed the proposed piers and reduced the size of the retaining to these areas so that we meet the second condition outlined in the initial assessment of the proposed carport by Andrew Gizariotis.

This being the case, the proposed carport being situated on the boundary will not be detrimental to the amount of sunlight received to the neighbouring outdoor living areas, as our overshadowing calculation demonstrates compliance. We strongly believe that this carport could not *reasonably* have an adverse effect on the amenity of the neighbouring lot or streetscape if it is to be located at the minimum 3.5m setback and suggest that it be re-assessed.

SUMMARY

We ask the City of Nedlands to support our arguments regarding the carport setback and carport location, and issue a Development Approval for the proposed carport at Lot 34, #45 Langham Street, Nedlands

Please advise if any further information is required to determine this application

Keaton McRobb

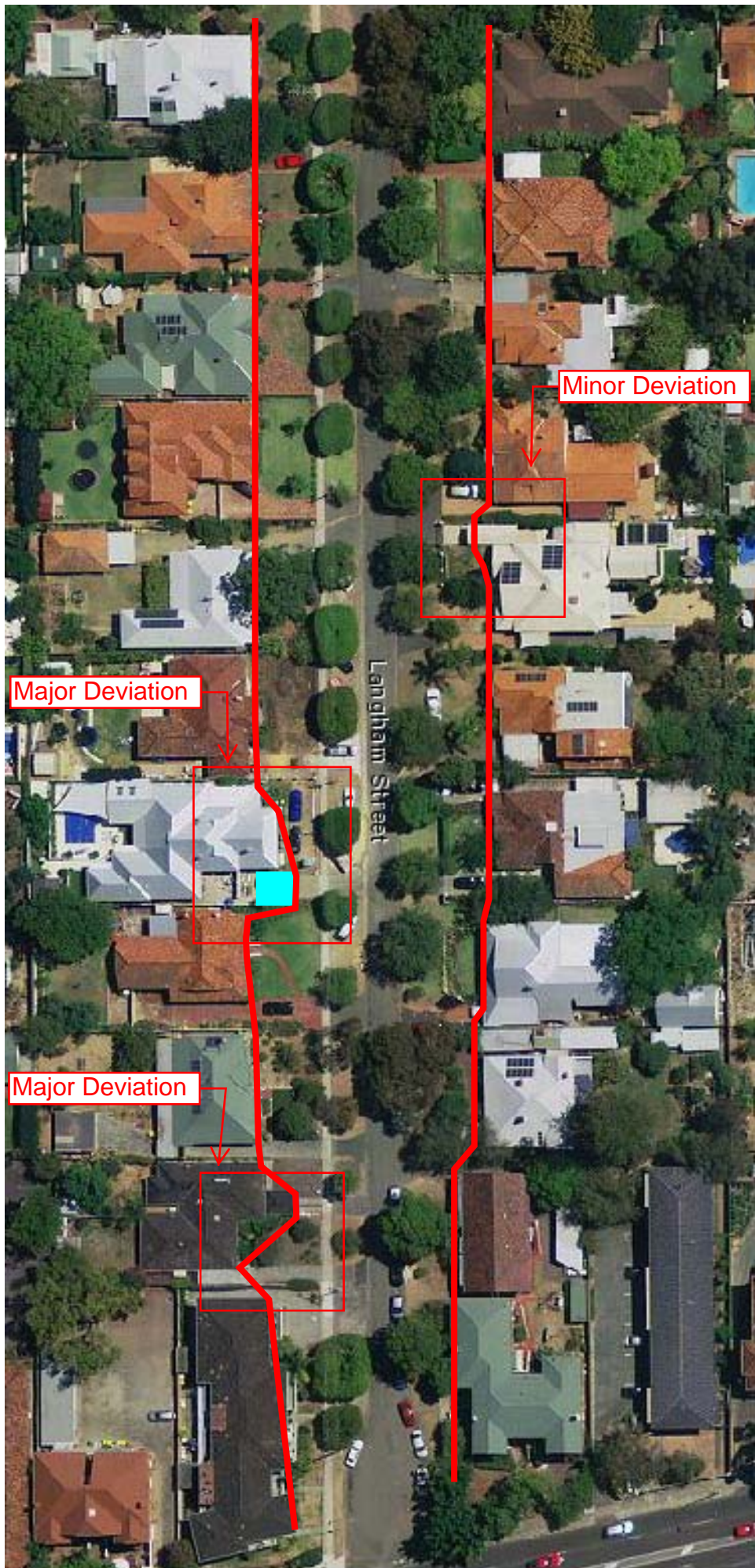
Building Designer

8th August, 2014

Attachment 3 - Streetscape Consistency (Existing)




Attachment 3 - Streetscape Consistency (Proposed)



Attachment 4 – Carport Setback Sketch



PD42.14 Proposed Scheme Amendment No. 203 of Town Planning Scheme No. 2 - Re-zone Lot 96 (No. 61) Aberdare Road from R10 to R25.

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

1.0 Executive Summary

The purpose of this report is to recommend to Council to initiate 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.

If council resolves to initiate the amendment it will then be referred to relevant agencies and public advertisement will commence.

1.1 Recommendation to Committee

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.

1.2 Strategic Community Plan

KFA: Natural and Built Environment

KFA: Transport

KFA: Governance and Civic Leadership

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 a land 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, owners are required to enter into a deed of agreement with the City which sets out the specifics for each party. One of the specifics in the deed which affects this Council item is that, prior to the City initiating a scheme amendment to rezone the property, a caveat is to be lodged against that property to the benefit of the City. This enables the City to enter into a new agreement with any new owner ensuring that the five metre portion is in fact ceded despite any change in ownership of the land. Please refer to section **6.0 Discussion** of this report for further detail.

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.

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

3.0 Consultation Process

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

If Council initiates this proposed amendment to Town Planning Scheme No. 2 and a favourable response is received from the Environmental Protection Agency, it will be advertised for 42 days in accordance with legislative requirements.

Consultation of the affected property owners will be undertaken as part of the amendment process once initiated by Council. The responses will be recorded as part of this process.

4.0 Budget / Financial Implications

Scheme amendments have no financial implications as the City has created the Notice of Motion to initiate this scheme amendment.

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

5.0 Risk management

The risk to the City if Council decides not to initiate this scheme amendment proposal is that the Council can be instructed by the Minister of Planning under s76 of the *Planning and Development Act 2005*, to progress the proposed amendment.

In the event that Council refuses to proceed, consent to advertise is not granted 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. Please refer to **Attachment 1** 'Scheme Amendment No. 203 Report', which contains the legal agreement.

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 McLeods which is to be signed by the owners and the City and then returned to McLeods in order to be executed. 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. McLeods has advised that this caveat should be lodged against the title prior to Council initiating the scheme amendment.

6.1 Conclusion

The proposed scheme amendment to rezone Lot 96 (No. 61) Aberdare Road, Nedlands from "Residential R10" to "Residential R25" will allow two dwellings on the property as per Councils resolution from its meeting on 10 December 2013.

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 Attachment

1. Scheme Amendment No. 203 Report

City of Nedlands
Scheme Amendment No.203

September 2014

PLANNING AND DEVELOPMENT ACT 2005 (AS AMENDED)

RESOLUTION DECIDING TO AMEND A LOCAL PLANNING SCHEME

CITY OF NEDLANDS

TOWN PLANNING SCHEME NO. 2

AMENDMENT NO. 203

Resolved that the Council, pursuant to Section 75 of the Planning and Development Act 2005, amend the above Town Planning Scheme by:

Changing the zoning of Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25”.

Dated this day of 2014

.....
CHIEF EXECUTIVE OFFICER

SCHEME AMENDMENT REPORT

Local Authority:	City of Nedlands
Description of Local Planning Scheme:	Town Planning Scheme No. 2
Type of Scheme:	Local Planning Scheme
Amendment No.:	203
Proposal:	To change the zoning of Lot 96 (No. 61) Aberdare Road, Nedlands from "Residential R10" to "Residential R25".

EXECUTIVE SUMMARY

This scheme amendment proposes the:

1. Rezoning of Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25”.

The purpose of the amendment is to rezone Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25”, to allow the property to be subdivided and require the front portion of the lot to be ceded to the City free of charge in accordance with Council resolution from Ordinary Council Meeting held 10 December 2013.

CONTENTS

1.	Background	
1.1	Council Resolution	6
1.2	Proposal Description	6
1.3	Historical Information	6
1.4	Design Guidelines	7
1.5	Council Decision	7
1.6	Deed	7
2.	Lot Details	
2.1	Affected Lot	9
2.2	Location	9
2.3	Swan River Trust, Bush Forever, Heritage	9
3.	Justification for Scheme Amendment	
3.1	Planning Context	10
3.2	Aberdare Road, Nedlands	11
3.3	Development Consistency	11
3.4	Existing Neighbourhood	11
4.	Scheme Amendment Consultation Process	
4.1	Consultation Outcome	12
5.	Conclusion	13
6.	Attachments	14

1. BACKGROUND

1.1 Council Resolution

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 on 26 November 2013 has not 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 gazetted 20 October 1978, to allow two dwellings;
3. Invites any owner wishing to accept the City's offer to enter into an agreement at a 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.

CARRIED 10/2
(Against: Crs. James & Smyth)

1.2 Proposal Description

This proposal involves a request to initiate an amendment to the City of Nedlands Town Planning Scheme No. 2 (TPS2) and proposes:

1. Rezoning Lot 96 (No. 61) Aberdare Road, Nedlands from "Residential R10" to "Residential R25" to allow the property to be subdivided and require the front portion of the Lot of the ceded to the City free of charge.

Rezoning the lot will allow the property to be subdivided and require the front portion of the lot to be ceded to the City free of charge.

At the time of subdivision/redevelopment or land sale or within two years (which ever is sooner), the land area designated as road reserve, as set out in Schedule 1 of the Deed (see **Attachment 1**), will be ceded to the City free of charge.

1.3 Historical Information

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. In October 1978, Council adopted City of

Nedlands By-Law No. 27 entitled 'By-laws relating to new street alignment' which reflected the MRS requirements.

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.

The new four metre MRS road widening requirement is non-negotiable, however the City's nine metre requirement under By-Law No. 27 has been questioned by the remaining property owners which has prompted action from Council.

1.4 Design Guidelines

Adopted in 2005 the Aberdare Road Design Guidelines were an outcome of the City's Local Housing Strategy (adopted by Council in 2001). The intent of the guidelines was to increase the housing diversity within the area. The Design Guidelines maintain the nine metre Local Law setback and require a further three metre setback to dwellings.

The design guidelines will not need amending should this scheme amendment proceed.

1.5 Council Decision

Council passed a resolution on 10 December 2013, which had the effect of maintaining the consistency of the original nine metre road widening requirement, with an incentive to the land owners being that the City would initiate rezoning of their property to allow two dwellings, given the five metre portion is ceded to the City free of charge.

Please refer to the above Council decision on 10 December 2013.

1.6 Deed

Following the resolution, McLeods were engaged to draft a Deed which is to be given to the property owners wishing to be involved in the rezoning.

The agreement sets out all responsibilities for the owner and the City, including, but not limited to:

1. The owners requirement to cede land to the City;

2. The City's requirement to initiate a Scheme Amendment over the subject site;
3. A caveat being lodged against the title of the subject site;
4. Restrictions placed on the owner as a result of selling the land;
5. Agreement for when and procedures for how the withdrawal of the caveat is to occur;
6. Understand of no assurance that the Scheme Amendment will be approved and/or gazetted;
7. Process around the termination of the Deed; and
8. Provisions that the City will bear specific costs.

The caveat to be lodged against the subject site ensures that the City maintains an interest in the property. This protects the City in the event of the property being sold, transferred, mortgaged, leased or otherwise and requires the City's written consent prior to any of the above and ensures any other party involved in the purchase or otherwise, of the property also enters into a deed requiring the same responsibilities.

Lot 96 (No. 61) Aberdare Road, Nedlands was the only party who showed interest in the rezoning, therefore a specific Deed has been drafted and executed by both parties. This has been returned to McLeods in order to be lodged with Landgate for the caveat to be placed on the title.

Please refer to **Attachment 1**, 'Agreement for Initiation of Scheme Amendment' for a blank copy of the Deed.

2. LOT DETAILS

2.1 Affected Lot

The proposed scheme amendment will affect the following property:

Property description	Existing Size	Potential site yield at R25
Lot 96 (No. 61) Aberdare Road, Nedlands	1045.0m ²	1 additional dwelling

2.2 Location

The property in question is located along the southern side of Aberdare Road within the North Hollywood area. Please refer to **Attachment 2** 'Map of Lot 96 (No. 61) Aberdare Road, Nedlands.'

The property is affected by the following surrounding land uses:

- a) Hollywood Design Guideline area borders the subject site to the west. This area has residential zonings R60, R50, R30 and R15.
- b) South of the subject site is the Hollywood Private Hospital.
- c) South-west of the subject site is the Queen Elizabeth II Medical Centre.

2.2 Swan River Trust, Bush Forever, Heritage

The subject property affected by the proposed amendment is not adjacent or within the Swan River Trust area, Bush Forever site or designated greenways corridors or included in the Municipal Heritage Inventory/State Register of Heritage Places.

3. JUSTIFICATION FOR SCHEME AMENDMENT

3.1 Planning Context

3.1.1 Metropolitan Region Scheme

Aberdare Road is reserved as an “Other Regional Roads” pursuant to the MRS. Lot 96 (No. 61) is zoned “Urban” under the MRS. The road reserve was reduced on 1 December 1995 from a nine metres to four metres.

3.1.2 Directions 2031 and beyond

Directions 2031 was released by the Western Australian Planning Commission in August 2010 as a spatial framework and strategic plan to guide future growth of the Perth and Peel metropolitan region. Directions 2031 seeks a 50 per cent improvement on current infill residential development trends and sets a target of 47 per cent of new dwellings as infill development, in particular, in areas like the subject locality that are close to public transport and activity centres or corridors.

The capacity for additional residential development on the site will assist in meeting these demands, therefore contributing to Directions 2031 outcomes.

3.1.3 The City of Nedlands Strategic Community Plan

The City of Nedlands Strategic Community Plan outlines planning specific outcomes, such as:

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

The amendment will achieve the above outcomes by creating attractive and liveable neighbourhoods and the development of the residential area in line with surrounding housing stock.

3.1.4 City of Nedlands Town Planning Scheme No. 2

Under Town Planning Scheme No. 2 (TPS2) the subject site is currently zoned “Residential R10”. Surrounding properties along Aberdare Road are either “Residential R10” or “Residential R25”.

This amendment will continue to work towards implementing a uniform zoning and density along Aberdare Road which will aid in creating a consistent streetscape.

3.1.5 *Hollywood Design Guidelines 2006*

The Hollywood Design Guidelines provide background information and set the design 'performance standard' for Hollywood. The aim of the guidelines is to create a development that exists in harmony with the environment at Hollywood and the surrounding areas. This is therefore relevant to Aberdare Road and all considerations in regards to streetscape and setbacks. Areas within the Hollywood area include zonings from "Residential R60" to 'Residential R15".

3.2 Aberdare Road, Nedlands

The subject site is one of four properties along Aberdare Road between Kitchener and Burwood Streets. None of these four properties have ceded the front portion of their land. Properties further down Aberdare Road (outside of this street block) have ceded land, therefore leading to an uneven streetscape. Further, some of these properties have also subdivided their properties leading to in-consistent housing stocks.

This scheme amendment will allow Lot 96 (No. 61) Aberdare Road, Nedlands to fall into line with other properties in the wider Aberdare Road area and potentially set the trend for adjoining land owners to take advantage of rezoning potential, thus continuing the aim of a consistent streetscape.

3.3 Development Consistency

The proposed scheme amendment will create a welcome consistency in streetscape along Aberdare Road. This consistency will allow for future works on Aberdare Road to be undertaken without the issue of land resumption at that time.

The proposed rezoning will create consistency in streetscape and housing stock along Aberdare Road, and accordingly promote the above mentioned objectives of the Strategic Community Plan.

3.4 Existing Neighbourhood

In addition to the area's proximity to the University of Western Australia and Queen Elizabeth II Medical Centre, a R25 zoning in this area will serve to integrate the entire street. The rezoning and resultant redevelopment of the subject site will allow the property to fit the higher density residential area of Shenton Park to the north, the medium density residential re-development of the Hollywood High School to its west and the low density residential areas to the south of the subject site in North Hollywood.

4. SCHEME AMENDMENT CONSULTATION PROCESS

4.1 Consultation Outcome

Consultation of the affected property owners will be undertaken as part of the amendment process. The responses will be recorded as part of this process.

5. CONCLUSION

This report recommends Council to initiate Town Planning Scheme No. 2 Amendment No. 203.

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.

The deed drafted by McLeods has been signed by all parties and returned to McLeods so the caveat can be lodged on Lot 96 (No. 61) Aberdare Road, Nedlands which allows this amendment to be initiated.

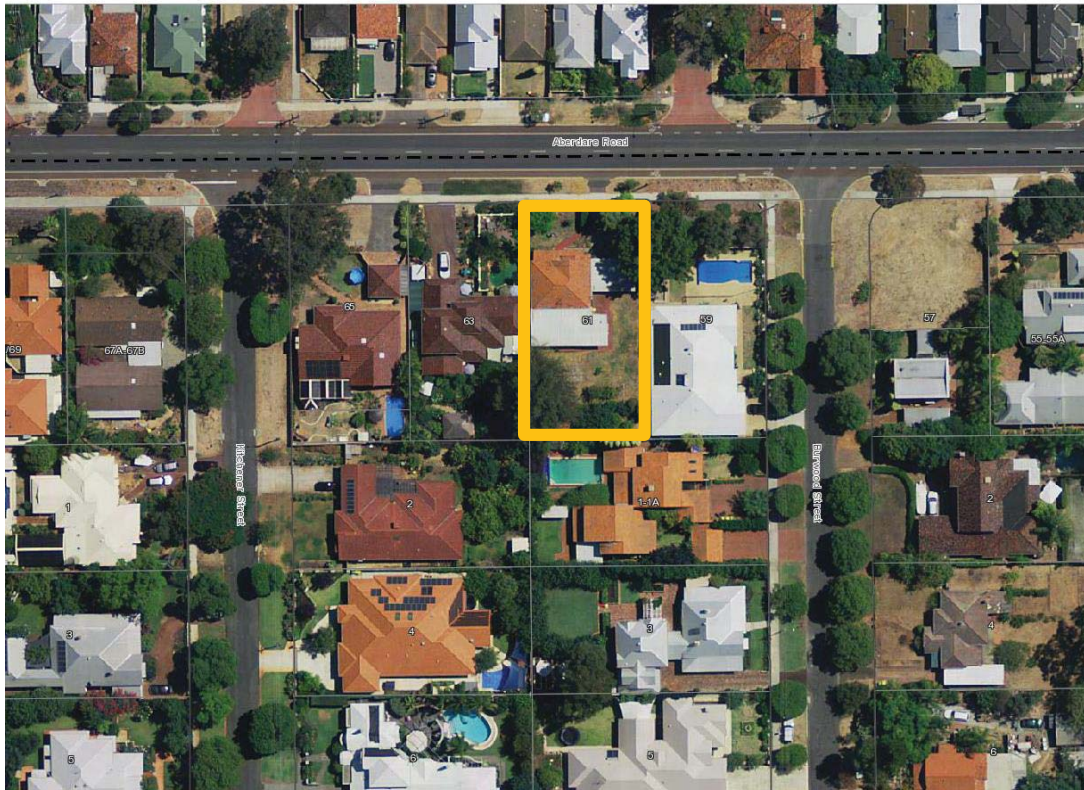
As a result of the Scheme Amendment and subdivision of the site to allow two dwellings, the City will be ceded the front portion of the land in accordance with its By-Law No. 27. This will create consistency in streetscape and housing stock along Aberdare Road, align the majority of the street to provide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


ATTACHMENT 1

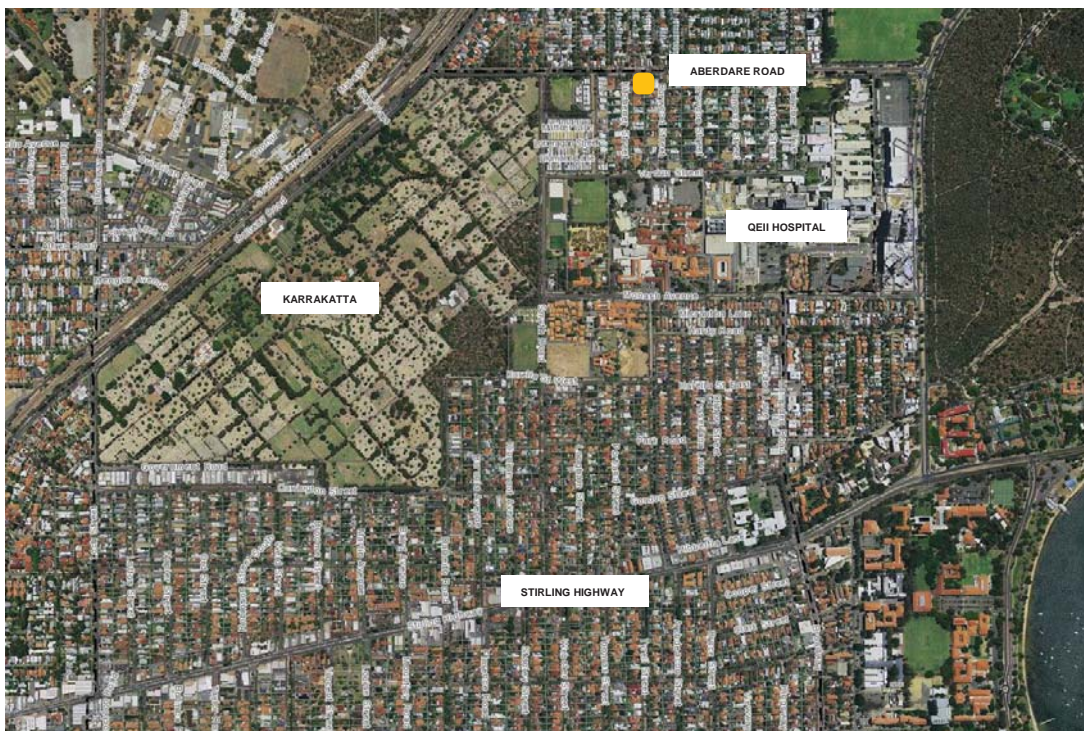
Agreement for Initiation of Scheme Amendment

ATTACHMENT 2

Map of Lot 96 (No. 61) Aberdare Road, Nedlands



 Lot 96 (No. 61) Aberdare Road, Nedlands



PLANNING AND DEVELOPMENT ACT 2005 (AS AMENDMENT)

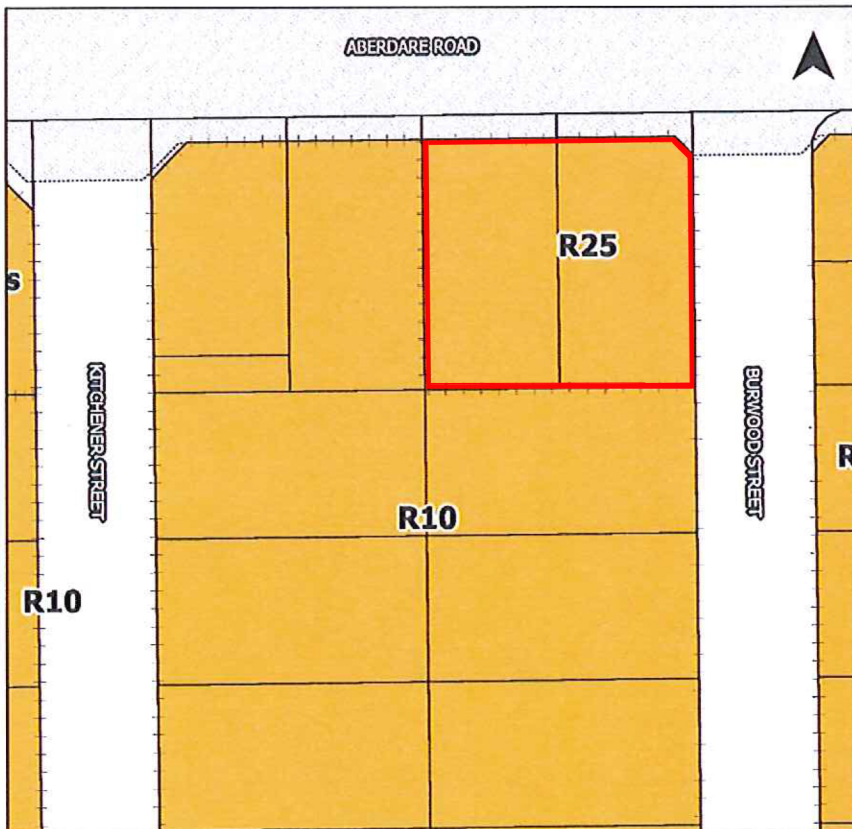
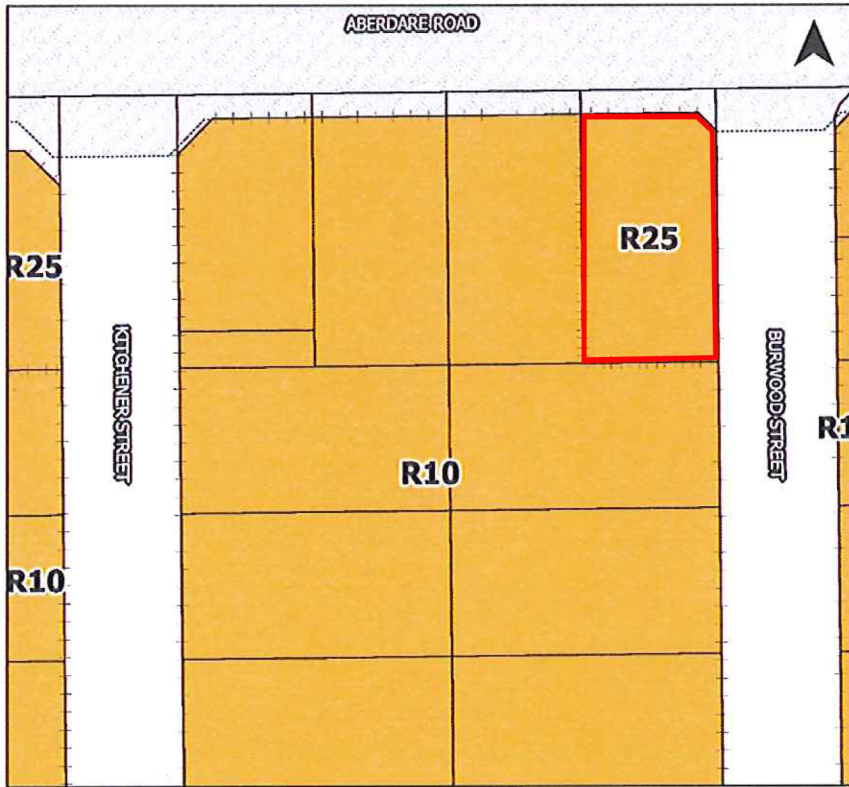
CITY OF NEDLANDS

TOWN PLANNING SCHEME NO. 2 – AMENDMENT NO. 203

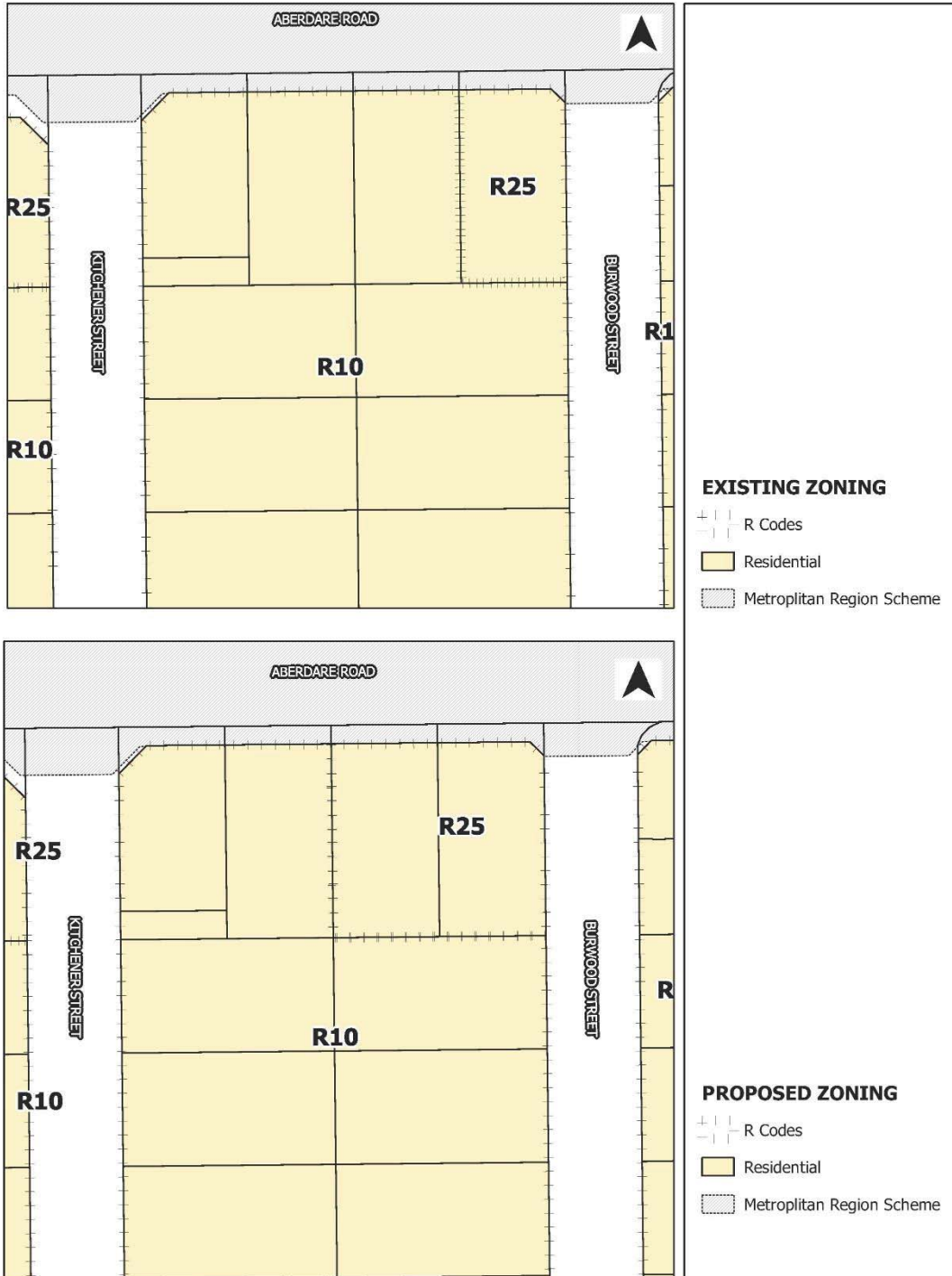
The Council of the City of Nedlands, under and by virtue of the powers conferred upon it in that behalf by the Planning and Development Act 2005 (as amended), hereby amends the above Local Planning Scheme by:

Changing the zoning of Lot 96 (No. 61) Aberdare Road, Nedlands from “Residential R10” to “Residential R25”.

**TOWN PLANNING SCHEME MAP
FOR ILLUSTRATION PURPOSES ONLY**



TOWN PLANNING SCHEME MAP



Agreement for Initiation of Scheme Amendment: [Insert address]

City of Nedlands

[Insert name of owner/s]



McLEODS

Barristers & Solicitors

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

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

Email: mcleods@mcleods.com.au

Ref: MR:NEDL-35326 (Precedent Deed)

Copyright notice

McLeods owns the copyright in this document and commercial use of the document without the permission of McLeods is prohibited.

Table of Contents

Copyright notice	i
Details	1
Agreed terms	2
1. Defined terms and interpretation	2
1.1 Defined terms	2
1.2 Interpretation	2
1.3 Headings	3
1.4 Schedules etc	3
2. Condition Precedent	3
3. Owner's Covenant	3
4. City's Covenants	4
5. Charge and Caveat	4
6. Disposal Restrictions	4
7. Withdrawal of Caveat	5
8. Owner's acknowledgements	5
9. No fetter	5
10. Termination of Deed	5
10.1 No Scheme Amendment	5
10.2 Termination by Owner	6
11. Costs	6
12. Governing law	6
Schedule	7
Signing page	8
Annexure 1 - Sketch	9

Details

Parties

City of Nedlands

of PO Box 9, Nedlands, Western Australia, 6909
(City)

[Insert name of owner/s]

of **[insert address]**
(Owner)

Background

- A The Owner is registered as the proprietor of an estate in fee simple in the land specified in **Item 1** of the Schedule (**Land**).
- B The Land is situated in the district of the City. The current zoning of the Land only allows one dwelling to be constructed on the Land.
- C The City has agreed to initiate an amendment to the City's Town Planning Scheme No. 2 to enable the Land to be rezoned to allow two dwellings to be constructed on the Land (**Scheme Amendment**) on the condition that the Owner cedes the land specified in **Item 2** of the Schedule (**Road Land**) to the City free of cost and without payment of compensation by the Crown or the City.
- D The parties enter into this Deed to set out the terms of their agreement.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Deed -

Council means the council of the City;

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

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

Minister has the same meaning as in the *Planning and Development Act 2005* (WA);

Road Land means the land described in **Item 2** of the Schedule;

Schedule means the Schedule to this Deed; and

Scheme Amendment has the meaning given to that term in **Recital C**.

1.2 Interpretation

In this Deed -

- (a) words denoting -
 - (i) the singular includes the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority;
 - (ii) a person includes their legal personal representatives, successors and assigns;
 - (iii) a statute, regulation, local law or any other written law, code or policy includes subsidiary legislation or an instrument made under it, and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation, and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this Deed, or another document, agreement, understanding or arrangement, include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Perth, Western Australia;

- (viii) \$ or dollars is a reference to the lawful currency of Australia;
 - (ix) this Deed or any other document includes this Deed or other document as amended or replaced and despite any change in the identity of the parties;
 - (x) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions;
 - (xi) any thing (including any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
 - (xii) a clause, paragraph, Schedule or Annexure is a reference to a clause or paragraph of or Schedule or Annexure to this Deed; and
- (d) the meaning of general words or phrases is not limited by specific examples introduced by ‘including’, ‘for example’ or similar expressions.

1.3 Headings

Headings do not affect the interpretation of this Deed.

1.4 Schedules etc

Each Schedule (and an Annexure or document incorporated by reference, if any) forms part of this Deed. In the event of any conflict or inconsistency between any part of –

- (a) the terms and conditions contained in the clauses of this Deed;
- (b) a Schedule;
- (c) an Annexure, if any; and
- (d) a document incorporated by reference, if any,

the material mentioned in any one of paragraph (a)-(d) of this **clause 1.4** has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. Condition Precedent

The City and the Owner COVENANT AND AGREE that the Owner’s obligations described in **clause 3** are conditional on the approval of the Scheme Amendment by the Minister.

3. Owner’s Covenant

- (1) The Owner COVENANTS AND AGREES with the City that within two (2) years of the approval of the Scheme Amendment by the Minister the Owner must:
- (a) cede the Road Land in accordance with the specifications of and to the satisfaction of the City free of charge and without payment of compensation by the Crown or the City for the purpose of road widening; 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 Land, unless the Road Land has already been ceded in accordance with **clause 3(2)**. The Owner shall be responsible for all costs associated with the subdivision of the Land.

- (2) In the event that:
- (a) the Owner applies to the City for development approval to construct a second dwelling on the Land (**Development**) prior to the Owner subdividing the Land in accordance with **clause 3(1)(b)**; and
 - (b) the City approves the Development (**Development Approval**),

the Owner ACKNOWLEDGES AND AGREES that the City is entitled to require that the Road Land be ceded to the City free of charge and without payment of compensation by the Crown or the City as a condition of the Development Approval. The Owner shall be responsible for all costs associated with the Development.

4. City's Covenants

Subject always to **clause 9** of this Deed, the City COVENANTS AND AGREES:

- (a) upon completion of the Scheme Amendment documents to the satisfaction of the City, to submit to its Council the Scheme Amendment for a decision on whether to proceed with the Scheme Amendment;
- (b) in the event that the Council resolves to proceed with the Scheme Amendment, the City will submit the Scheme Amendment to the Minister for approval to advertise;
- (c) in the event approval is given by the Minister, the City will advertise the Scheme Amendment in accordance with the requirements of the *Town Planning Regulations 1967*;
- (d) following advertising of the Scheme Amendment, the Council will consider all submissions received and make a decision on whether to adopt the Scheme Amendment;
- (e) in the event that the Council makes a decision to adopt the Scheme Amendment, the City will submit the Scheme Amendment to the Minister for approval; and
- (f) the City shall be responsible for the costs of the initiation of the Scheme Amendment and the preparation of the Scheme Amendment documents.

5. Charge and Caveat

The Owner CHARGES its interests in the Land in favour of the City with its performance of its obligations pursuant to this Deed and with the payment of all moneys owing to the City or which may become payable to the City pursuant to this Deed and authorises the City to lodge an absolute caveat at Landgate against the certificate of title to the Land or any parts thereof for the purpose of securing such obligations.

6. Disposal Restrictions

Until the Owner has ceded the Road Land to the City, the Owner shall not sell, transfer, mortgage, lease, charge, assign or otherwise dispose of or encumber the Land without the prior written consent of the City, which consent shall not be withheld if:

- (a) the Owner is not in default of any of its obligations under this Deed; and
- (b) the person to whom any such right or interest in the Land is to be granted has first executed a deed of covenant to be prepared by the City's solicitors at the cost of the Owner whereby that person covenants to observe and perform such of the covenants conditions and stipulations herein contained as the City shall require as if that person had

been a party to this Deed (or in the case of a mortgagee the mortgagee has first executed an undertaking satisfactory to the City).

7. Withdrawal of Caveat

Subject to there being no existing or unremedied breach of any condition of this Deed and subject to:

- (a) the Owner complying with **clause 6** of this Deed, the City will at the request of the Owner and at the Owner's cost provide to the Owner a withdrawal of any caveat lodged by the City pursuant to this Deed to enable registration of any transfer, lease, mortgage or charge of the Land provided that the City is entitled to re-lodge its absolute caveat following such registration; and
- (b) the Owner having ceded the Road Land to the City, the City shall provide to the Owner on receipt of a written request from the Owner and at the City's cost a permanent withdrawal of any caveat lodged by the City pursuant to this Deed.

8. Owner's acknowledgements

The Owner ACKNOWLEDGES AND AGREES that no warranty or assurance has been given that the Scheme Amendment will be approved and published in the government gazette.

9. No fetter

The Owner ACKNOWLEDGES AND AGREES with the City that the entry of the City into this Deed shall not fetter:

- (a) the City's consideration of any submissions received in connection with the advertising of the Scheme Amendment nor its determination as to whether or not to proceed with the Scheme Amendment; and
- (b) the City's consideration of any application for development approval to construct a second dwelling on the Land nor its determination as to whether or not to approve such development application.

10. Termination of Deed

10.1 No Scheme Amendment

The City and the Owner AGREE that in the event:

- (a) the Council refuses to proceed with the Scheme Amendment;
- (b) the Minister refuses to consent to the advertisement of the Scheme Amendment;
- (c) the Council after consideration of submissions received in relation to the Scheme Amendment resolves not to proceed with the Scheme Amendment;
- (d) the Minister refuses to approve the Scheme Amendment,

this Deed shall be at an end and the Owner shall be entitled to receive at the City's cost a withdrawal of any caveat lodged pursuant to this Deed upon written request by the Owner to the City.

10.2 Termination by Owner

- (1) Notwithstanding any other provision of this Deed, the parties AGREE that the Owner may terminate this Deed for any reason upon written notice to the City, provided that the City receives such written notice at least 24 hours prior to the Council meeting at which Council is to consider the final adoption of the Scheme Amendment.
- (2) If this Deed is terminated in accordance with this **clause 10.2**, the Owner shall be entitled to receive at its cost a withdrawal of any caveat lodged pursuant to this Deed upon written request by the Owner to the City.

11. Costs

The City shall pay the City's solicitors' costs of and incidental to the preparation (including all preliminary drafts), execution and stamping of this Deed and all duties hereon as well as the costs of the preparation and lodgement of any caveat pursuant to **clause 5**.

12. Governing law

This Deed shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

Schedule

Item 1 Land

Lot [X] on Deposited Plan [X] being the whole of the land comprised in Certificate of Title Volume [X] Folio [X].

Item 2 Road Land

Subject to a formal survey being undertaken, that portion of the Land shown delineated and marked on the sketch annexed hereto as **Annexure 1** and having an area of approximately [X]m².

Signing page

EXECUTED

2014

The Common Seal of the **City of Nedlands** was hereto affixed by authority of Council in the presence of:

Signature of Mayor

Full name of Mayor

Signature of Chief Executive Officer

Full name of Chief Executive Officer

Executed by [Insert name of Owner 1] in the presence of:

Signature of [Insert name of Owner 1]

Witness Sign

Name of Witness

Address

Occupation

Executed by [Insert name of Owner 2] in the presence of:

Signature of [Insert name of Owner 2]

Witness Sign

Name of Witness

Address

Occupation

Annexure 1 - Sketch
