



City of Nedlands

Planning and Development Reports

Committee Consideration – 14 June 2016

Council Resolution – 28 June 2016

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Council: 28 June 2016

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|----------------|---|
| PD25.16 | (Lot 384) No. 99 Waratah Avenue, Dalkeith – Proposed Change of Use (From Office to Restaurant) |
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| | |
|---------------------------|---|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | TKO Office Fitouts |
| Owner | J and S Franetovich |
| Officer | Mr A D Bratley – Coordinator Statutory Planning |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | DA2016/84 – WA3/99 |
| Previous Item | Nil |
| Attachments | <ol style="list-style-type: none"> 1. Site Plan (A3) 2. Floor Plan (A3) 3. Waratah Avenue Placemaking Strategy – Concept Plan (Adopted in November 2015) |

1.0 Executive Summary

This application is for a proposed change in use from an office to a restaurant, which will result in an additional shortfall of 11 car bays on site under Town Planning Scheme No. 2 (TPS 2).

The proposal was advertised to nearby landowners for comment and during the advertising period 6 objections and 1 non-objection were received.

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

Due to a significant shortfall in the required amount of car bays it is recommended that the application be refused by Council.

2.0 Recommendation to Committee

Council refuses the application for the proposed change of use (from Office to Restaurant) at (Lot 384) No. 99 Waratah Avenue, Dalkeith, for the following reasons:

- 1. An insufficient number of car bays are provided for the proposed use, thus potentially creating safety issues for pedestrians and other road users.**
- 2. The proposed use does not satisfy the conditions and standards of clause 5.5.1 and clause 6.4.2 of the City of Nedlands Town Planning Scheme No.2, due to insufficient car parking.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

4.0 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Local Planning Policy – Advertising Signs
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk Management

Not applicable.

7.0 Background

| | | |
|--|-------------|---|
| Property address | | (Lot 384) No. 99 Waratah Avenue, Dalkeith |
| Lot area | | 1,012m ² |
| Reserve/ Zoning | MRS | Urban |
| | TPS2 | Retail Shopping |
| Use Class Permissibility under TPS 2 Zoning | | AA |

A commercial building exists on the property containing various office and restaurant uses, such as the Yabba Dabba restaurant and the Cimbalino restaurant. On surrounding properties are single dwellings, an aged persons respite centre and Dalkeith Hall. Genesta Park is on the opposite side of Waratah Avenue as shown on the locality plan below.

No car parking bays exist on site however time restricted on street car parking bays exist in close proximity to the subject property.



In November 2015, Council resolved to adopt the Waratah Avenue Placemaking Strategy, the concept plan for which shows the existing car bays adjacent to the northern side of Genesta Park being replaced with parallel car bays. This will result in fewer on street car bays being available in close proximity to the subject property. Refer to Attachment 3 for the adopted Concept Plan.

8.0 Application Details

Approval is being sought to change the use of the premises from an office to a restaurant, details of which are as follows:

- a) The restaurant is proposed to operate from the premises previously occupied by Giorgi Exclusive Homes.
- b) The restaurant is proposed to operate between Monday and Sundays 7.00am to 6.00pm.
- c) A total of 6 staff will be at the premises at any one time.
- d) No signage details are currently known.
- e) Seating able to accommodate up to 8 persons are proposed to be available based on details provided by the applicant.
- f) Primarily customers will be able to purchase meals (e.g. cooked breakfasts) to consume on the premises and/or purchase prepack foodstuffs and drinks which can be consumed on or off the premises.
- g) Breakfasts will be made to order between 7.00am to 11.30am.
- h) Dine in and take away food will be available at lunch.
- i) Take away food will only be available in the evenings.

Refer to Attachments 1 and 2 for the site plan and floor plan.

9.0 Consultation

The proposal was advertised for 21 days to nearby landowners for comment in April and May 2016, due to variations proposed to the amount of onsite car bays required and due to a restaurant being an 'AA' use in the Retail Shopping zone under TPS 2

During the advertising period 6 objections and 1 non-objection were received. The following is a summary of the concerns raised:

- a) There being not enough car parking bays available.
- b) An inadequate amount of waste bins being available.
- c) Toilets not being easily accessible for patrons.
- d) There already being 2 existing restaurants in the locality.
- e) The proposal resulting in more vehicles parking illegally and obstructing driveways within the locality.
- f) The proposal resulting in further traffic problems.

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

The potential impact the proposal will have on the area's amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of TPS 2 which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.1 Existing Car Parking Demand

| Car Parking Provision | Car Parking Requirement | Car Bays Available Onsite | Existing Car Bay Shortfall |
|--|--|---------------------------|----------------------------|
| <p><i>Office</i> 4.75 bays per every 100sqm of leasable floor area.</p> <p><i>Restaurant</i> 1 bay per each 2.6sqm of restaurant seating area, or 1 bay per 2 persons.</p> | <p><i>Office 1 (Estate Agents)</i> 3 bays minimum</p> <p><i>Office 2 (Travel Agents)</i> 3 bays minimum</p> <p><i>Office 3 (Architects)</i> 3 bays minimum</p> <p><i>Restaurant 1 (Yabba Dabba)</i> 35 bays minimum</p> <p><i>Restaurant 2 (Cimbalino)</i> 52 bays minimum</p> <p>Total = 96 car bays required</p> | Nil | 96 car bay shortfall |

In addition to the above table, one hour on street car parking restrictions exist along Waratah Avenue and Alexander Road, applying between Monday and Friday, 8am to 6pm, and on Saturdays, 8.00am to 1.00pm.

The City frequently receives complaints from residents about vehicles allegedly used by those visiting the commercial premises along Waratah Avenue, parking on verges, obstructing driveways, parking in 'no stopping' areas, and overstaying in time restricted car bays.

10.1.2 Future Car Parking Demand

| Car Parking Provision | Car Parking Requirement | Car Bays Available Onsite | Proposed Car Bay Shortfall |
|--|--|---------------------------|--|
| <p><i>Restaurant</i> 1 bay per each 2.6sqm of restaurant seating area, or 1 bay per 2 persons.</p> | <p><i>Office 1 (Estate Agents)</i> 3 bays minimum</p> <p><i>Office 2 (Travel Agents)</i> 3 bays minimum</p> <p><i>Restaurant 1 (Yabba Dabba)</i> 35 bays minimum</p> <p><i>Restaurant 2 (Cimbalino)</i> 52 bays minimum</p> <p><i>Restaurant (Proposed)</i> 3 14 bays minimum required</p> <p>Total = 107 car bays required</p> | Nil | 107 car bay shortfall (An additional shortfall of 11 car bays). |

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

| Regulations Clause | Assessment Comment | Satisfies |
|---|---|-----------|
| <p>Under Schedule 2 Part 9 Clause 67 (Matters to be Considered by Local Government) of the Regulations, the following provisions are to be taken into consideration:</p> <p>(a) The adequacy of the arrangements for the loading, unloading, manoeuvring and parking of vehicles;</p> <p>(b) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</p> <p>(c) Any submissions received on the application.</p> | <p>The City is aware of car parking difficulties within the vicinity, and the impacts this is having on the amenity of the area as reflected by the number of complaints received from nearby landowners.</p> <p>The impact of a restaurant with an additional 11 car bays required, compared with the existing office, would have a significant impact in terms of car parking given there is already a large shortfall in the area.</p> | No |

11.0 Other Matters

During the advertising period concerns were received with regard to:

- a) An inadequate amount of waste bins being available.
- b) Toilets not being easily accessible for patrons.
- c) There already being 2 existing restaurants in the locality.

If the application was approved by Council, prior to commencing it will be a requirement that adequate staff and public sanitary conveniences be provided in accordance with the Building Code of Australia. Also that the waste bins being provided complied with the applicable environmental health requirements.

No planning requirements exist which restrict the amount of restaurants that can exist within a certain area. If a property's zoning under TPS 2 allows for it, then applications for such uses can be considered within close proximity to another.

12.0 Conclusion

A restaurant use is deemed to be a more intense use of the premises than the current approved use of an 'Office'. It is considered that there is inadequate provision of car parking to meet the predicted demand if the use is approved by Council.

The nature of the proposed use will mean that nearby car bays will be less regularly available for customers visiting the commercial premises.

When the Waratah Avenue Placemaking Strategy is implemented there will be fewer on street car bays available.

For these reasons it is recommended that the application be refused by Council. However, an alternative recommendation has been provided below in case Council resolve to approve the application instead.

12.1 Recommendation if Application is Approved

If Council resolves to approve the application the following wording and conditions are recommended:


Council approves the application for the proposed change of use (from Office to Restaurant) at (Lot 384) No. 99 Waratah Avenue, Dalkeith, in accordance with the application received on 15 March 2016, subject to the following conditions and advice:

1. The development shall at all times comply with the approved plans.
2. The restaurant only being permitted to operate between Monday and Sundays 7.00am to 6.00pm.

Advice Notes specific to this proposal:

1. A separate Planning application is required to be submitted to and approved by the City prior to the erection/installation of any signage on the lot.
2. Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.
3. Prior to commencing development, an Application for Food Premises Alteration / Fit-out shall be submitted to and approved by the City.
4. Prior to commencing the proprietor shall lodge with the City a *Food Business Registration / Notification Form*.
5. Prior to commencing the premises shall receive an inspection from an Environmental Health Officer at the City.
6. The Food Business may commence operation subsequent to the receipt of a *Certificate of Registration of a Food Business*.
7. The applicant is advised to consult with the Water Corporation with respect to the disposal of industrial waste and the provision of a grease trap / grease arrestor where necessary.
8. An enclosure for the storage and cleaning of waste receptacles shall be provided on the premises to the City's satisfaction.
9. Access to any public sanitary convenience shall not be through or pass adjacent to, without complete physical segregation from, any food preparation, storage, packing or handling area.
10. Prior to commencement of operation the applicant shall provide confirmation to the City that all mechanical ventilation (i.e. exhausts) comply with *AS1668.2-2012 The use of ventilation and air conditioning in buildings - Mechanical ventilation in buildings*.
11. 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.

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| PD26.16 | (Lot 2) No. 2A Archdeacon Street, Nedlands – Short Stay Accommodation – Request to Approve its Continuation |
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| | |
|---------------------------|---|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | TPG Town Planning, Urban Design and Heritage |
| Landowner | A and B Giambazi |
| Officer | Mr A D Bratley – Coordinator Statutory Planning |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | DA2016/93 |
| Previous Item | Item PD09.15 – February 2016 |
| Attachments | 1. Strata Plan 2. Floor Plans 3. Management Plan (Approved on 25 May 2015) |

1.0 Executive Summary

In March 2015, Council resolved to approve a retrospective development application for the dwelling on the property to be used as short stay accommodation subject to, amongst others, the following requirement:

“Unless otherwise approved by the City, the short stay accommodation is to cease operation no later than 12 months from the date of this approval, after which point, the building is not to be used for any purpose other than that of a dwelling.”

Subsequently, a development application has been received for the short term accommodation to continue operating without the need to reapply for further approval.

The application was advertised to nearby landowners for comment and 2 objections were received.

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

Whilst various different occupants shall reside in the dwelling the impact this will have on the local amenity in terms of noise and traffic is not anticipated to be different to that of a single dwelling permanently occupied. It is therefore recommended that the application be approved by Council.

2.0 Recommendation to Committee

Council approves the application received on 22 March 2016 for the dwelling at (Lot 2) No. 2a Archdeacon Street, Nedlands, to continue to be used as short term accommodation, subject to the following conditions and advice:

1. The Management Plan approved by the City on 25 May 2015 being complied with at all times by those residing at the property.

Advice Notes specific to this approval:

1. If more than 6 persons are to be accommodated the lodging house requirements stipulated under the *Health Act 1911* are to be complied with.
2. Noise emissions are to comply with the *Environmental Protection (Noise) Regulations 1997*.

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2 and the R Codes.

4.0 Legislation

- *Planning and Development Act 2005 (Act)*.
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)*
- Metropolitan Region Scheme (**MRS**).
- City of Nedlands Town Planning Scheme No. 2 (**TPS2**).
- Residential Design Codes of WA 2013 (**R-Codes**).
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk management

Nil.

7.0 Background

| | |
|--|---------------------|
| Lot area | 443m ² |
| Metropolitan Region Scheme Zoning | Urban |
| Town Planning Scheme No. 2 Zoning | Residential – R12.5 |
| Detailed Area Plan/Outline Development Plan | No |
| Controlled Development Area | No |
| Use Class Permissibility under TPS 2 Zoning | Use not listed |

The subject property contains 2 grouped dwellings both with space to accommodate up to 2 vehicles on site. Refer to the locality plan below. Surrounding properties contain dwellings, and on street car parking restrictions exist along Archdeacon Street being:

- a) On the western side of Archdeacon Street – A maximum of 2 hours, between 8.00am and 5.00pm Monday to Friday; and
- b) No parking being permitted along the eastern side of Archdeacon Street.



8.0 Application Details

Approval is being sought for the short term accommodation to continue operating without the need to reapply for further approval.

No alterations are proposed to be made to the dwelling and/or the site layout compared with what was approved by Council in March 2015, nor the management plan.

Refer to Attachments 1 to 3 for the strata plan, floor plans and the approved Management Plan.

By way of justification in support of the proposal, the applicant has provided the following justification:

“The subject site is particularly well located in terms of public transport and neighbourhood amenities as previously outlined in the original application.”

“The proposed use takes place in a residential dwelling that fits in with the local built form, whilst providing a valuable contribution to the local area and nearby service facilities along Stirling Highway.”

“The building contains two double beds and two single beds, providing for a maximum number of 6 people at any one time. This is considered appropriate to that of the surrounding residential landscape on Archdeacon Street and is consistent with the existing amenity of the locality.”

Note: A full copy of the applicant’s justification received by the City has been given to the Councillors prior to the Council meeting.

9.0 Consultation

The proposal was advertised for 21 days to nearby landowners for comment in April and May 2016 in accordance with Town Planning Scheme No. 2.

During the advertising period 2 objections were received. The following is a summary of the concerns received:

- a) The behaviour (habits) of people if the property continued to be used as short term accommodation.
- b) The number of cars being parked at the property.
- c) The nature of the use being similar to that of a motel.

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

The potential impact the short term accommodation will have on the local amenity is discussed in the following section.

10.0 Statutory Provisions

The relevant provisions of Town Planning Scheme No. 2 (TPS 2), and Residential Design Codes (R-Codes) which are not being met by the proposal are addressed in the following section.

10.1 Planning and Development (Local Planning Schemes) Regulations 2015

10.1.2 Amenity

| Regulations Clause | Assessment Comment | Satisfies |
|---|--|------------|
| <p>Under Schedule 2 Part 9 Clause 67 (Matters to be Considered by Local Government) under the Regulations, the following provisions are to be taken into consideration:</p> <p>(a) The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the appearance of the development.</p> <p>(b) Any submissions received on the application;</p> | <p>Concerns received during the advertising period were in relation to the potential behaviour (habits) of those residing at the property, the number of cars parked on the property, and the use being similar to that of a motel.</p> <p>Anti-social behaviour is a matter which is dealt with by the police.</p> <p>Whilst vehicles appear to occasionally be parked on the property's crossover on some occasions, this also appears to be occurring on other properties based on the photos received as part of a submission.</p> <p>A Management Plan has previously been approved which outlines the conditions which those residing at the property are required to abide by (refer to Attachment 4). According to the City's records no complaints have been received since March 2015 with regard to noise, car parking and/or traffic associated with the property.</p> <p>No alterations are proposed to be made to the application approved by Council previously.</p> <p>Considering the above, the continuation of the short term accommodation on a permanent basis will not have a detrimental impact on the local amenity.</p> | <p>Yes</p> |

11.0 Conclusion


The proposal is to allow for the short term accommodation to continue operating without the need to apply for further approval.

Whilst various different occupants shall reside in the dwelling the impact this will have on the local amenity in terms of noise and traffic is not anticipated to be different to that of a single dwelling permanently occupied by the same occupants.

According to the City's records no complaints have been received since the use was approved in March 2015 with regard to noise, car parking and/or traffic associated with the property.

It is therefore recommended that the application be approved by Council.

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|----------------|---|
| PD27.16 | (Lot 7) No. 32A Jutland Parade, Dalkeith – Additions and Alterations to Single House |
|----------------|---|

| | |
|---------------------------|--|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | Boughton Architecture |
| Landowner | S S Fowell |
| Officer | Kate Bainbridge – Senior Statutory Planning Officer |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | JU2/32A – DA16/55 |
| Previous Item | Nil. |
| Attachments | <ol style="list-style-type: none"> 1. Site Survey Plan (1) 2. Site Survey Plan (2) 3. Site Plan 4. Level 1 5. Level 2 6. Level 3 7. Level 4 8. North Elevation 9. South Elevation 10. East Elevation 11. West Elevation 12. Section 1 13. Section 2 14. Site Photographs 15. Examples of Materials of Construction 16. Applicant justification |

1.0 Executive Summary

The proposal is for additions and alterations to an existing single house. The property is within the Controlled Development Area of the City's Town Planning Scheme No. 2 (TPS2) with the existing dwelling falling within the required 7.5m setback to the rear boundary (to the river).

The non-compliant aspects of the application include alterations to the existing dwelling within the 7.5m rear setback area and also lot boundary setback and visual privacy setback variations.

The application has been referred to Council for determination at the request of the applicant. Administration has delegation to refuse the application because there is no discretion to approve the aspects of the development in the 7.5m rear setback area. However, it is considered appropriate to have Council consider the application so that the applicant has been given every opportunity to be heard for those aspects of the proposal that have discretion.

The development within the 7.5m rear setback cannot be approved by Council as there is no discretion provided by TPS2 to this effect.

Given the lack of discretion available for development in the 7.5m setback area, it is recommended Council instructs Administration to consider these issues in the preparation of the new Local Planning Scheme No. 3.

2.0 Recommendation to Committee

Council resolves the following:

- 1. Refuses the application for Additions and Alterations to the existing Single House at (Lot 7) No. 32A Jutland Parade Dalkeith, in accordance with the application received on 19 February 2016 and amended plans received on 01 April and 06 May 2016, for the following reasons:**
 - a) The proposed alterations are considered to be development which is not permitted within the 7.5m rear setback as per Clause 5.10.3 (b) of the City's Town Planning Scheme No. 2 and the Council does not have the discretion to consider variations.**
- 2. Instructs administration to consider existing development within the 7.5m rear setback area in the Controlled Development Area in the preparation of the City's Local Planning Scheme No. 3.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

4.0 Legislation

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations).*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Fill and Fencing.
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk management

Nil.

7.0 Background

| | |
|--|---------------------|
| Lot area | 810.4m ² |
| Metropolitan Region Scheme Zoning | Urban |
| Town Planning Scheme No. 2 Zoning | Residential R12.5 |
| Detailed Area Plan/Outline Development Plan | No |
| Controlled Development Area | Yes |

The subject property is a battle-axe lot with direct frontage to the river. When the property was originally subdivided (during the 1960’s), the river reserve was ceded with the State government and therefore in comparison to neighbouring properties further west, the rear lot boundary is approximately 10m further from the river foreshore.

The topography of the lot is significant with a 7m slope from the river up to the rear of No. 32 (effective lot area of the subject property). An aerial image showing the location of the property follows.



8.0 Application Details

The application is for alterations to the existing dwelling and additions to the north of the existing dwelling – with the removal of the existing carport and swimming pool to facilitate the extensions. The plans have been provided as attachments to this report (attachment no. 1 – 13) and the details of the application are as follows:

Level 1

- a) Remove the existing west facing window to the proposed lounge
- b) Remove the floor slab between levels 1 and 2 in order to create a high ceiling in the lounge area
- c) Replace all south facing glazing with new double glazed windows
- d) Removal of the existing retaining wall between level 1 and 2 and replacing stairs with compliant stairs
- e) Existing boat store is to be fitted with a new door
- f) Provide privacy blade wall to west elevation

Level 2

- a) Remove east facing window to the proposed bedroom 3
- b) Replace all south facing glazing with new double glazed windows
- c) Remove timber deck to roof over boat store, replace with concrete slab and tile over
- d) Replace handrail to roof terrace over boat store
- e) Internal renovations to provide ensuites and configuration of living areas
- f) Extension underground with new pool area, outdoor living and dining area, guest bedroom and ensuite along with service areas

Level 3

- a) Reduce the size of the east facing window to the proposed kitchen, replace remaining window with new double glazed window
- b) Increase the setback to bedroom 1 window by reducing the built form to that of the existing living room (increase setback by 460mm)
- c) Replace all south facing glazing with new double glazed windows
- d) Remove existing balcony for the extent of bedroom 1
- e) Remove portion of balcony projecting more than 2.4m south of existing window line
- f) Replace existing steel and timber balcony structure with concrete balcony with tile finish
- g) Replace timber balustrade and install new compliant glass balustrade
- h) Replace existing eaves lining and fascia
- i) Internal renovations to the living area configuration and bedroom 1 dressing room/ensuite
- j) New entry area and garage/store to the north of the existing dwelling

Level 4

- a) New roof terrace above garage with drying area and planter with stair access.

Cladding

The existing walls are constructed of concrete and steel frame and therefore have poor thermal performance and do not prevent water entry into the building. The existing building is proposed to be clad in ceramic tiles and copper (tarnished for effect and minimisation of reflectivity) to create thermal insulation and waterproof the building. This cladding reduces the existing building's lot boundary setbacks to the eastern and western side boundaries.

Roofing

Additionally the existing metal roof which has a low pitch of 1 degree is proposed to be replaced with a pitched roof to facilitate the concealment of services, allow more effective water run-off and better heating/cooling opportunities for the dwelling.

By way of justification in support of the development application the applicant has provided additional information (see attachment 16).

9.0 Consultation

The development application was referred to the Department of Parks and Wildlife – Rivers and Estuaries Division (DPAW – formerly Swan River Trust) for comment. DPAW has advised they have no objections to the proposed development subject to various conditions and advice notes (see alternate recommendation).

The development application was also advertised to affected occupiers and landowners for comment due to the development proposed within the Controlled Development Area 7.5m rear setback, lot boundary setback and visual privacy setback variations. Two submissions were received – one providing no comment on the proposal and the other provided no-objection.

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

The development application is not compliant with the requirements discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of Town Planning Scheme No. 2 (TPS 2) and Residential Design Codes (R-Codes) which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.1 Amenity

| TPS 2 Provision | Assessment/Comment | Complies? |
|--|--|-----------|
| Under clause 5.5.1 Council may refuse to approve any development if in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any other factor inconsistent with the use for which the lot is zoned. | The development is for alterations and additions to the existing dwelling. The single dwelling residential land use of the land is not proposed to be altered with the appearance of the development consistent with a single residential land use. | Yes |
| <p><u>Clause 5.5.2</u></p> <p>Unless otherwise approved by the Council, no person shall erect or add to any building unless the external walls are constructed of brick, stone or concrete, other than in the case of:</p> <p>a) outbuilding complying with the R-Codes and not exceeding 37m² in floor area;</p> <p>b) the upper floor of a dwelling of which the external walls of the ground floor are to be, or have been, constructed of brick, stone or concrete;</p> <p>c) an historic building.</p> | The proposal seeks to use ceramic tiles and copper as cladding to the existing dwelling to improve the energy efficiency of the dwelling and better waterproof the dwelling. The materials will better blend into the river environment with the ceramic tiles to be a medium-dark grey and the copper slightly tarnished/weathered. The proposed materials of construction were advertised to neighbouring landowners and residents for comment with no comment or objections received in relation to the proposed materials of construction. | Yes |

10.1.2 Controlled Development Area

| TPS 2 Provision | Assessment/Comment | Complies? |
|---|--|-----------|
| <p><u>Clause 5.10.2 (a)</u></p> <p>The Council shall consider the effect of development on the amenity of the surrounding area, the visual effect of the development as perceived from the Swan River and the effect on</p> | The scale and height of the development is consistent with other developments within the locality. The development will not appear substantially different as viewed from the river with the exception of the increased roof pitch. Additionally, the dwelling's setback to the river is consistent with what is | Yes |

| | | |
|---|---|-----------|
| <p>the amenity of the parks and recreation reserves in that area in accordance with Council policy from times to time determined for each Controlled Development Area.</p> | <p>proposed/permitted within the locality further west.</p> <p>The appearance of the development (with improved balustrading and materials complementary to the river landscape) is likely to be greatly improved when comparing to the existing concrete and timber construction materials.</p> | |
| <p><u>Clause 5.10.3 (b)</u></p> <p>For the purpose of this clause the rear boundaries of certain lots shall be as delineated in Appendix I and the rear setback applicable to boundaries of lots so delineated shall be 7.5m.</p> | <p>The existing dwelling is already within the 7.5m rear setback. The proposal seeks to alter the existing dwelling which is within the 7.5m rear setback. This rear setback requirement was introduced after the dwelling was built. The majority of works (as listed above) are considered to be 'development' and therefore not permitted within the 7.5m rear setback. The scheme is silent on the circumstances for alterations to buildings which do not comply with this 7.5m setback requirement and the scheme does not provide discretion to approve 'development' within the 7.5m rear setback.</p> <p>It should be noted that development on lots to the west of the subject property along Jutland Parade have not ceded land as river reservation and hence their 7.5m rear setback is much closer to the river. Therefore if this development was proposed on any of these lots, it would be compliant with this clause.</p> <p>Should the building be removed and re-build proposed with a 7.5m setback to the rear boundary, the lot would be left with approximately 520m² of lot area to build on. Given the need to provide vehicle access in forward gear and lot boundary setbacks in line with the current standards within the R-Codes, this leaves an even smaller footprint for a dwelling to be built.</p> <p>The impacted neighbouring landowners/residents provided no comment in relation to the works within the controlled development area.</p> | <p>No</p> |

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

| Regulations Clause | Assessment Comment | Satisfies |
|---|--|------------|
| <p>Clause 67 under Schedule 2 (Deemed Provisions) of the Regulations stipulates that in considering a development application due regard is to be given to the following matters, amongst others:</p> <p><i>(m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development</i></p> <p><i>(n) the amenity of the locality including the following:</i></p> <ul style="list-style-type: none"> <i>i. environmental impact of the development;</i> <i>ii. the character of the locality;</i> <i>iii. social impacts of the development</i> <p><i>(o) the likely effect of the development on the natural environmental or water resources and any means that area proposed to protect or to mitigate impacts on the natural environment or the water resource.</i></p> <p><i>(q) the suitability of the land for development taking into account the possible risk of flooding, tidal inundation, subsidence, landslip, bush fire, soil erosion, land degradation or any other risk;</i></p> <p><i>(y) any submissions received on the application;</i></p> <p><i>(za) the comments or submission received from any authority consulted under clause 66.</i></p> | <p>The dwelling is ideally located with the property to the north being some 6m or so higher than the subject property making the dwelling largely not visible from their dwelling and the property to the west has a large vacant rear yard area adjacent to the subject property.</p> <p>The property to the east can be considered the most impacted by the proposal given the similar lot configuration. The extensions to the dwelling are over 6m away from the lot boundary and the alterations only marginally reduce the existing lot boundary setback, however the proposed relocation of the building services (air conditioning units and hot water systems) from the eastern side of the dwelling into the new roof area will improve the appearance of the dwelling as seen from the neighbouring property.</p> <p>In terms of the environmental impact and the impact of the development on the river due to the proximity of the river reserve and slope of the land – the proposal was referred to DPAW for comment with no objections received to the development subject to conditions and advice provided as part of an approval.</p> <p>In terms of the character of the locality – the dwelling is considered to be of a suitable scale, height and location in relation to neighbouring properties and the river location when comparing to existing and proposed approved developments within the area.</p> <p>The submissions on the proposal stated no objections or comments in relation to the suitability of the development or the impact the development may have on amenity.</p> | <p>Yes</p> |

10.3 State Planning Policy 3.1 – Residential Design Codes

10.3.1 Lot boundary setbacks

| Deemed-to-Comply Requirement | Proposed | Complies? |
|---|--------------------|-----------|
| North Level 3 Garage – 1.5m | 0m – boundary wall | No |
| West Level 1 lounge – 1m | 0.82m | No |
| West Level 2 void to family – 1.6m | 0.82m | No |
| West Level 3 store – 1m | 0m – boundary wall | No |
| West Level 3 bed 1 to ensuite – 2.3m | 0.82m | No |
| East Level 2 bed 3 to ensuite – 1m | 0.82m | No |
| East Level 3 terrace to living – 3.3m | 0.7m | No |
| East Level 3 terrace to scullery – 2.3m | 0.82m | No |

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

| Design Principles | Assessment/Comment | Satisfies? |
|--|--|------------|
| Reduce impacts of building bulk on adjoining properties. | <p><u>North and West boundary walls</u> The boundary wall to the northern side boundary has a retaining wall close to the lot boundary on the adjoining lot with the neighbouring dwelling some 3-4m above the level at the lot boundary. The boundary wall to the western side boundary has a maximum height of 3m and an average height of 2.5m above natural ground level. The wall is also adjacent to vacant rear yard area which is landscaped directly adjacent to the lot boundary. These factors ensure that the impact of building bulk is minimised as viewed from neighbouring properties.</p> <p><u>Eastern lot boundary setbacks</u> The level 3 terrace is proposed to be slightly extended around the eastern side of the dwelling. This is not permitted under the CDA provisions of the TPS2.</p> <p>The remaining variations to the eastern side boundary are due to the cladding of the existing dwelling with only a small reduction of the lot boundary setback (currently 0.9m). This small reduction is considered to not have an adverse impact in terms of building bulk on the adjoining property, however the re-cladding of the building is</p> | Yes |

| | | |
|---|---|-----|
| | <p>considered development and therefore not permitted under the CDA provisions of the TPS2.</p> <p><u>Western lot boundary setbacks</u> The variations to the western side boundary are due to the cladding of the existing dwelling with only a small reduction of the lot boundary setback (currently 0.9m). This small reduction is considered to not have an adverse impact in terms of building bulk on the adjoining property, however the re-cladding of the building is considered development and therefore not permitted under the CDA provisions of the TPS2.</p> | |
| Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties. | <p><u>North and West boundary walls</u> The location of the boundary walls to the northern and western lot boundaries is away from habitable areas of the neighbouring dwellings and outdoor living areas. Additionally the major openings and outdoor living areas of the dwelling are not considered to have less access to sunlight and ventilation as a result of the walls' location on the boundary.</p> <p><u>East and West Boundaries</u> The minor decrease in setbacks are a result of cladding and will not result in less sunlight and ventilation to neighbouring properties, however this cladding cannot be considered under the CDA provisions of the TPS2.</p> | Yes |
| Minimise the extent of overlooking and resultant loss of privacy on adjoining properties. | <p><u>North and West boundary walls</u> The boundary walls will have no impact on privacy of neighbouring dwellings or the subject property and are likely to improve privacy for all properties impacted.</p> <p><u>East and West boundaries</u> The minor decrease in setbacks are a result of cladding and will not result in any loss of existing levels of privacy for the subject property or neighbouring properties, however this cladding cannot be considered under the CDA provisions of the TPS2.</p> | Yes |
| Makes effective use of space for enhances privacy for the occupants or outdoor living areas | <p><u>North and West boundary walls</u> The north and west boundary walls are located at the highest point of the lot behind a retaining wall on the northern neighbour's lot and adjacent to vacant rear yard area to the west. The site's topography makes access around the dwelling difficult and therefore building up to the boundary makes effective use of space in a location where there will be negligible impact on neighbouring landowners.</p> | Yes |
| Ensures direct sun to major openings to habitable rooms and | <p><u>North and West boundary walls</u> The orientation of the lot being to the south of one neighbouring landowner and the western</p> | Yes |

| | | |
|---|--|-----|
| outdoor living areas for adjoining properties is not restricted | neighbouring landowner having their dwelling and main outdoor living areas located further north on their lot ensures that the boundary walls will not impact habitable rooms and outdoor living areas of the neighbouring properties. | |
| Positively contributes to the prevailing development context and streetscape. | <u>North and West boundary walls</u> The walls are concealed from the street and given the age and variance in architectural types of dwellings within the area, there is little prevailing development context. Given the favourable location of the boundary walls as detailed above, the boundary walls permit a greater use of masonry division between properties than less aesthetically pleasing dividing fence materials. | Yes |

With regard to the above, it should also be noted that the impacted neighbouring landowners were consulted by the City and applicant for over 21 days. No comment or objection were received from the impacted neighbouring landowners with regard to the lot boundary setbacks. The northern neighbouring landowners were not contactable and hence the applicants was unable to obtain specific non-objections in relation to the proposed boundary wall and the western neighbouring landowner declined to provide comment – instead providing a no comment, objection or non-objection response.

10.3.2 Visual Privacy

The proposal is not compliant with the following Deemed-to-Comply provisions of the R Codes:

| Deemed-to-Comply Requirement | Proposed | Complies? |
|------------------------------|----------|----------------|
| West Level 3 terrace – 7.5m | 7m | No |
| East Level 3 terrace – 7.5m | 0.7m | No |
| East Level 3 kitchen – 6m | 0.82m | Yes – existing |

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

| Design Principles | Assessment/Comment | Satisfies? |
|--|---|------------|
| <p>Minimal direct overlooking of active habitable spaces and outdoor living areas if adjacent dwellings achieved through</p> <ul style="list-style-type: none"> • building layout and location • design of major openings • landscape screening of outdoor active habitable spaces; and/or • location of screening devices. <p>Maximum visual privacy to side and rear boundaries through measures such as:</p> <ul style="list-style-type: none"> • offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; • building to the boundary where appropriate; • setting back the first floor from the side boundary; • providing higher or opaque fixed windows; and/or • screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters). | <p>The western level 3 terrace setback of 7m in lieu of 7.5m is an improvement from the previous setback of 0.9m.</p> <p>The eastern level 3 kitchen setback is existing, the size of the major opening is proposed to be reduced.</p> <p>The eastern level 3 terrace setback of 0.7m is a reduction of the existing setback of 0.9m. The extension of the terrace is considered development and therefore not permitted within the CDA under the provisions of the City's TPS2.</p> <p>The impacted eastern neighbouring landowner has provided no objection to the visual privacy variations.</p> | <p>Yes</p> |

11.0 Conclusion

The proposal is for alterations and additions to the existing dwelling which is partially located within the Controlled Development Area's 7.5m rear setback. The existing building was constructed in the 1960's and is of concrete and steel frame construction. According to the applicant, the existing building's construction has poor thermal qualities and is not waterproof with the alterations seeking to improve the function of the existing building with cladding and a new pitched roof which will also permit the concealment of the services currently located on the side of the building. The additions to the dwelling are to the north of the existing dwelling outside of the Controlled Development Area and are of rendered brick/concrete construction with a portion of the extensions underground.

The proposed alterations and renovations within the Controlled Development Area rear setback area are considered to be development and hence not permitted under the City's TPS2. The development application is therefore recommended for refusal as there is no discretion within TPS2 to consider development within the 7.5m rear setback area within the Controlled Development Area.

12.1 Recommended Conditions if Application is Approved

If Council resolves to approve the application, conditions limiting the approval to the proportion of the additions and alterations outside of the 7.5m rear setback have been recommended. If approved, the following wording and conditions are recommended:

Council approves the development application for Additions and Alterations to the existing Single House at (Lot 7) No. 32A Jutland Parade, Dalkeith, in accordance with the application received 19 February 2016 and amended plans received on 01 April and 06 May 2016, subject to the following conditions and advice notes:

Conditions:

1. This development approval only applies to the development outside of the 7.5m Controlled Development Area rear setback area.
2. The development shall at all times comply with the approved plans which exclude any development within the 7.5m Controlled Development Area rear setback area.
3. Following a referral to the Swan River Trust, the following conditions are included:
 - a) Prior to commencement of the development, the applicant shall submit and have approved plans detailing the modification of the existing boat store so that the structures are located wholly within Lot 7 on Diagram 21411 (32A) Jutland Parade, Dalkeith, to the satisfaction of the City of Nedlands and the specification of the Department of Parks and Wildlife.
 - b) The development shall be implemented in accordance with the details approved under Condition 3 a).
 - c) Should dewatering be required, the proponent shall prepare and submit a dewatering management plan to the Department of Parks and Wildlife. No works shall commence prior to the approval of the dewatering management plan by the Department of Parks and Wildlife.
 - d) Stormwater drainage shall be contained on site, or connected to the local government stormwater drainage system.
 - e) The development shall be connected to the reticulated sewerage system prior to first occupation.
 - f) The applicant shall decommission, and backfill with clean material, any existing on-site effluent disposal systems.
 - g) No wastewater/backwash from the swimming pool is to be discharged onto the land, into the river or the local government drainage system.
 - h) No building materials, soil, rubbish or any other deleterious matter shall be placed on the Parks and Recreation reservation or be allowed to enter the river as a result of the works.

4. All fencing, visual privacy screens and obscure glass panels to Major Openings and/or Active Habitable Spaces, shown on the approved drawings and/or required as per planning condition(s), shall be fixed in place and be made to prevent overlooking in accordance with the visual privacy requirements of the Residential Design Codes 2015 (R-Codes). The structure(s) shall be installed and remain in place permanently, unless otherwise approved by the City.
5. All footings and structures to boundary walls, fences and retaining walls shall be constructed wholly inside the site boundaries of the Certificate of Title.
6. This approval does not pertain to any works within the nature-strip/verge. Any works in the nature-strip/verge (including footpaths) will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Engineering section, prior to the commencement of any works on site or within the nature-strip/verge.
7. All internal driveways (including circulation ramps) are to be designed to meet Australian Standards AS2890.1:2004.
8. The void area is not permitted to be converted for use other than storage and/or plant and equipment storage in order to comply with Clause 5.11 i) of the City's Town Planning Scheme No. 2.


Advice Notes

1. Prior to any construction, the applicant is required to obtain a building approval from the City of Nedlands.
2. Proposed dividing fences which comply with the City's Town Planning Scheme No. 2 (no more than 1.8m above natural ground level) are compliant and do not require further planning approval.
3. This approval does not authorise any works to the existing retaining walls or stairs located within the adjacent Crown Reserve 24959.
4. The applicant is advised that it is an offence under the Swan and Canning Rivers Management Regulations 2007 to destroy, pull up, cut back or injure any tree, shrub, aquatic plant or other perennial plant that is in the Riverpark or the Swan Canning Development Control Area.
5. All swimming pool waste water shall be disposed of into an adequately sized, dedicated soak-well located on the same lot.
6. All swimming pools, whether being removed, retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.
7. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well

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

8. The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated.
9. The landowner is advised to limit construction noise and hours as per the *Environmental Protection (Noise) Regulations 1997*.
10. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a Workplace*, and any Department of Commerce Worksafe requirements.
11. 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.

| | |
|----------------|--|
| PD28.16 | (Lot 100) No. 5 Bellevue Avenue, Dalkeith – Retrospective Air Conditioning Unit |
|----------------|--|

| | |
|---------------------------|---|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | A Mughal |
| Landowner | A and N Mughal |
| Officer | Andrew Bratley – Coordinator Statutory Planning |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | DA2016/101 |
| Previous Item | Item PD03.16 – February 2016 |
| Attachments | <ol style="list-style-type: none"> 1. Site Plan 2. Elevation 3. Photograph taken on 3 Bellevue Avenue of the air conditioning unit 4. Photograph of 3 Bellevue Avenue taken from the air conditioning unit's location 5. Photograph of the air conditioning unit as seen from the street |

1.0 Executive Summary

In February 2016, Council resolved to approve a retrospective development application to retain an air conditioning unit (unit) attached to the eastern façade of a garage on the property. It is a condition of this approval that the unit be screened or lowered below the fence line within 28 days from the date of this decision. Refer to Attachments 1 to 3 for the site plan, elevation and a photograph showing the unit.

Subsequently a request has been received from the applicant for Council to amend its approval decision, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, by removing the condition for the unit to be screened.

The previous application was advertised to the impacted neighbours and an objection was received in relation to its visual appearance and noise emitted by the unit.

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

The applicant has advised in their justification that the screening should not be required for the following reasons:

- a) Screening of the unit being non-compliant with the unit manufacturer's guidelines which require fans to be kept clear.
- b) Encasing the unit having a negative impact on the visual amenity of the surroundings.
- c) Screening the unit resulting in side access along the property's eastern boundary being obstructed.
- d) Lowering of the unit below the height of the dividing fence creating a potential trip hazard.

Having regard to the above, the following should be noted:

- a) Various suppliers exist which can install screening devices for units.
- b) It is considered that having the unit unscreened will have more of a negative impact on the neighbours' amenity compared to if it was screened. Whilst the unit is sufficiently screened when viewed directly in front of the property it is fully visible from the street setback area on the neighbouring property.
- c) Based on the plans provided the unit is setback 1.35m from the eastern boundary. It is not uncommon for garages to be setback only 1m from a side boundary and still allow for access to the rear of a property. Considering this, the installation of screening would still allow for side access. In addition to this, access to the rear of the property is also possible through the garage, the dwelling and along the western boundary.

It is therefore recommended that Council refuses the request from the applicant, and the unit still be required to be screened in order to comply with the relevant design principles of the R-Codes.

2.0 Recommendation to Committee

Council refuses the request received on 30 March 2015 to retain the air conditioning unit at Lot 100 (5) Bellevue Avenue, Dalkeith, without the requirement to screen or lower below the fence line, for the following reason:

- 1. The air conditioning unit not satisfying the design principles stipulated under Clause 5.4.4 (External Fixtures) of the Residential Design Codes by virtue of its visual impact on the neighbours' amenity.**

Advice Notes specific to this refusal:

- 1. The applicant is advised that the conditions and advice contained in Council's decision made on 23 February 2016 still apply.**
- 2. The applicant is advised that if the air conditioning unit is not screened within 28 days from the date of this decision, or by an alternative date agreed to in writing by the City, using a method(s) acceptable to the City, they will be issued with a Planning Infringement Notice. This carries an initial penalty of \$500.00 and can be issued on multiple occasions by the City prior to taking legal action.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2 and the R Codes.

4.0 Legislation

- *Planning and Development Act 2005 (Act).*
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations)*
- Metropolitan Region Scheme (MRS).
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Residential Design Codes of WA 2015 (R-Codes).
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk management

Nil.

7.0 Background

| | |
|--|-------------------|
| Lot area | 865m ² |
| Metropolitan Region Scheme Zoning | Urban |
| Town Planning Scheme No. 2 Zoning | Residential – R10 |
| Detailed Area Plan/Outline Development Plan | No |
| Controlled Development Area | No |

The subject property contains a two storey single dwelling with a street setback area containing fencing and landscaping. The garage to which the unit is attached is setback 10m from the street boundary and setback 1.5m from the eastern boundary. The dwelling on 3 Bellevue Avenue is setback 19m from the street boundary. Refer to the locality plan below.



8.0 Application Details

A request has been received from the applicant for Council to amend its approval decision, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*, by removing the condition for the unit to be screened.

The applicant seeks approval to retain the unit attached to the eastern façade of a garage on the property, without the requirement to either screen or lower below the fence line.

When viewed from directly in front of the property the unit is partially screened by landscaping and fencing within the street setback area.

The unit directly faces the street setback area of 3 Bellevue Avenue.

Refer to Attachments 3 to 5 for photographs of the unit.

The unit is setback 1.35m from the eastern boundary and is setback 12.15m from the street boundary.

The existing dividing fencing is proposed to be retained, which is approximately 1.6m in height above natural ground level on the applicant's property. No additional screening is proposed as part of the application.

The applicant has advised in their justification that the screening should not be required for the following reasons:

- e) Screening of the unit being non-compliant with the unit manufacturer's guidelines which require fans to be kept clear.
- f) Encasing the unit having a negative impact on the visual amenity of the surroundings.
- g) Screening the unit resulting in side access along the property's eastern boundary being obstructed.
- h) Lowering of the unit below the height of the dividing fence creating a potential trip hazard.

Note: A full copy of the applicant's justification received by the City has been given to the Councillors prior to the Council meeting.

9.0 Consultation

The request for Council to amend its approval decision by removing the condition for the unit to be screened was not advertised due to no alterations being proposed to the unit compared to the application previously approved by Council.

An objection was received when the previous application was advertised. Concerns received were in relation to the visual impact the unit has on the neighbour's amenity and the noise emitted by the unit.

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

The impact the unit has on the neighbours' amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of Town Planning Scheme No. 2 (TPS 2), the Residential Design Codes (R-Codes) and the *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations) which are not being met by the proposal are addressed in the following sections.

10.1 Planning and Development (Local Planning Schemes) Regulations 2015

10.1.1 Amending Development Approvals

Schedule 2 Part 9 Clause 77 of the Regulations prescribes the provisions relating to amending development approvals.

10.1.2 Amenity

| Regulations Clause | Assessment Comment | Satisfies |
|---|---|-----------|
| <p>Under Schedule 2 Part 9 Clause 67 (Matters to be Considered by Local Government) under the Regulations, the following provisions are to be taken into consideration:</p> <p>a) The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the appearance of the development.</p> <p>b) Any submissions received on the application;</p> | <p>Concerns received during the advertising period were in relation to the visual impact the unit has on the neighbour’s amenity.</p> <p>When viewed from directly in front of the property the unit’s visual impact from a streetscape perspective is considered minimal due to the existence of landscaping and fencing within the street setback area, and due to being setback 12.15m from the street boundary.</p> <p>The unit is however having an impact on the adjoining neighbours at 3 Bellevue Avenue due to being located above the dividing fence and therefore being visible from the front of the neighbours’ dwelling and their street setback area.</p> <p>No additional screening is proposed as part of the application, this is despite various suppliers existing which can install screening devices for units.</p> <p>Based on the plans provided the unit is setback 1.35m from the east boundary. It is not uncommon for garages to be setback only 1m from a side boundary and still allow for access to the rear of a property. Considering this, the installation of screening would still allow for side access at the subject property. In addition to this, access to the rear of the property is also possible through the garage, the dwelling and along the western boundary.</p> | <p>No</p> |

10.2 State Planning Policy 3.1 – Residential Design Codes

| Deemed-to-comply Requirement | Proposed | Complies |
|--|---|-----------|
| <p><i>“C4.3 Other external fixtures provided they are:</i> <i>i. not visible from the primary street;</i> <i>ii. are designed to integrate with the building;</i> <i>or</i> <i>iii. are located so as not to be visually obtrusive.</i></p> <p><i>C4.4 Antennas, satellite dishes and the like not visible from any primary and secondary street.”</i></p> | <p>The unit is visible from the street setback area of the adjoining property and is partially visible from the primary street.</p> | <p>No</p> |

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following design principle provisions:

| Design principles | Assessment/Comment | Satisfies |
|---|---|-----------|
| <p><i>“Solar collectors, aerials, antennas, satellite dishes, pipes and external fixtures integrated into the design of the building to not be visually obtrusive when viewed from the street and to protect the visual amenity of surrounding properties.”</i></p> | <p>When viewed from directly in front of the property the unit’s visual impact from a streetscape perspective is considered minimal due to the existence of landscaping and fencing within the street setback area, and due to being setback 12.15m from the street boundary.</p> <p>The unit is however having an impact on the adjoining neighbours at 3 Bellevue Avenue due to being located above the dividing fence and therefore being visible from the front of the neighbours’ dwelling and their street setback area.</p> <p>No additional screening is proposed as part of the application.</p> | <p>No</p> |

11.0 Other Matters of Concern


During the advertising period concerns were also received with regard to noise being emitted from the unit. Based on the noise emission details available on the unit concerned they are deemed to be compliant with the *Environmental Protection (Noise) Regulations 1997*.

12.0 Conclusion

The proposal is to retain an air conditioning unit attached to the eastern façade of a garage on the property without being screened or lowered below the fence line.

The proposal involves a variation to the deemed-to-comply provision of the R-Codes being that it is fully visible from the neighbours’ street setback area. The variation would only be considered to be compliant with the relevant design principles of the R-Codes if additional screening was to be installed. Accordingly, it is recommended that the request for Council to amend its previous decision relating to the unit be refused.

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| PD29.16 (Lot 46) No. 2A (Unit 3) Loch Street, Nedlands – Proposed Change of Use (From Light Industry to Shop) |
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|---------------------------|---|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | Robertson House Hair and Beauty |
| Owner | G J Johnson Group and Co Pty Ltd |
| Officer | Mr A D Bratley – Coordinator Statutory Planning |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | DA2016/52 – LO2/2A |
| Previous Item | Nil |
| Attachments | <ol style="list-style-type: none"> 1. Site Plan (A3) 2. Floor Plan (A4) 3. Proposed Signage (A4) 4. Photograph of 2A Loch Street (A4) |

1.0 Executive Summary

This application is for a proposed change in use from light industry to a shop (hairdressers and beauty salon), which will result in a shortfall of 9 car bays on site under Town Planning Scheme No. 2 (TPS 2).

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

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

The application is recommended for approval despite not complying with the car parking requirements, as it is considered the nature and scale of the proposed use, and the differing peak hours of operation compared with other uses on the property, means that an adequate amount of car parking bays will be available for the use.

2.0 Recommendation to Committee

Council approves the application for the proposed change of use (from Light Industry to a Shop) at (Lot 46) No. 2A Loch Street, Nedlands, in accordance with the application received on 26 February 2016, subject to the following conditions and advice:

1. The development shall at all times comply with the approved plans.
2. The operation complying with definition for the use 'Shop' stipulated under Town Planning Scheme No. 2 (refer to Advice Note 1).
3. The shop only being permitted to operate at the following times:

Monday – Closed
Tuesday – 10.00am to 6.00pm
Wednesday – 10.00am to 6.00pm
Thursday – 11.00am to 8.00pm
Friday – 10.00am to 6.00pm
Saturday – 9.00am to 5.00pm
Sunday - Closed

Advice Notes specific to this proposal:

1. The applicant/landowner is advised that the use 'Shop' is defined as being the following under Town Planning Scheme No. 2:

“Means any building wherein goods or services are exposed or offered for sale by retail and without limiting the generality of the foregoing shall include:

shops for the sale of foodstuffs generally, clothing, drapery, furniture and furnishings, footwear, hardware, electrical goods, sporting goods, toys and secondhand goods; jewellers, chemists, stationers, newsagents, variety stores, photographic studios and supplies, florists, dry-cleaning agencies, barbers and hairdressers; and liquor stores;

but shall not include a service office, a general office, a professional office or a market.”

2. A separate Planning application is required to be lodged and approved prior to the erection/installation of any signage on the lot which does not form part of this application.
3. Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.

4. **Prior to commencing an Application for the Establishment of Hairdressing is to be submitted to and approved by the City. The application form and information sheets can be obtained from the City's website: <http://www.nedlands.wa.gov.au/skin-penetration-hairdressing-and-beauty-therapy>**
5. **Prior to commencing the premises shall receive an inspection from an Environmental Health Officer at the City and be approved by the City's Environmental Health Section, prior to the business operating to determine compliance with *Hairdressing Establishment Regulations 1972*;**
6. **All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, lobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.**
7. **Adequate staff and public sanitary conveniences shall be provided in accordance with the Building Code of Australia.**
8. **This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

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

4.0 Legislation / Policy

- *Planning and Development Act 2005* (the Planning Act).
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Local Planning Policy – Advertising Signs
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk Management

Not applicable.

7.0 Background

| | | |
|--|-------------|---------------------------------------|
| Property address | | (Lot 46) No. 2A Loch Street, Nedlands |
| Lot area | | 627m ² |
| Reserve/ Zoning | MRS | Urban |
| | TPS2 | Light Industrial |
| Use Class Permissibility under TPS 2 Zoning | | AA |

The subject site currently contains various light industrial uses such as ‘Joel Irrigation Supplies’ and ‘Hydro Soil’. In the centre of the property are car parking bays, access to which is obtained from Government Road. On the opposite side of Loch Street are residential properties which fall within the Town of Claremont. Refer to the locality plan below.



8.0 Application Details

The application seeks approval to change the use of the premises from Light Industry to a shop, details of which are as follows:

- a) The proposed shop will operate as a hairdressers and beauty salon.
- b) The only alteration to the external appearance of the building is a non-illuminated projecting sign attached to the fascia of an existing verandah structure. The sign is proposed to be 4.8m in length and 1.2m in height.
- c) A maximum of 1 member of staff and 2 clients, by prior appointment only, will be on site at any one time.
- d) The proposed hours of operation are:
 - Monday – Closed
 - Tuesday – 10.00am to 6.00pm
 - Wednesday – 10.00am to 6.00pm
 - Thursday – 11.00am to 8.00pm
 - Friday – 10.00am to 6.00pm
 - Saturday – 9.00am to 5.00pm
 - Sunday - Closed

Refer to Attachments 1 and 2 for the site plan and the floor plan of the premises.

9.0 Consultation

The proposal was advertised for 21 days to nearby landowners for comment in April 2016 due to:

- a) Variations proposed to the amount of onsite car bays required under TPS 2;
- b) A non-illuminated sign attached to an existing verandah structure having a vertical dimension of 1.2m in height in lieu of 0.6m; and
- c) A shop being an 'AA' use in the Light Industrial zone.

During the advertising period 1 objection and 1 non-objection were received. The following is a summary of the concerns received:

- a) Car parking being an issue if the shop is approved.
- b) Cars parking in bays belonging to other businesses.

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

The potential impact the proposal will have on the area's amenity is discussed in the following sections.

10.0 Statutory Provisions

The relevant provisions of TPS 2 which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.1 Existing Car Parking Demand

| Car Parking Provision | Car Parking Requirement | Car Bays Available Onsite | Existing Car Bay Shortfall |
|---|--|---------------------------|----------------------------|
| <i>Light Industry</i> 2.2 bays per 100sqm of gross leasable floor area | <i>Light Industry</i> 14 bays minimum | 9 car bays | 5 car bay shortfall |

In addition to the above table, vehicles are not permitted to stop on the portion of Loch Street or the on the verge adjacent to the property. No other on street car parking restrictions exist.

Space is available within the immediate vicinity of the property for up to 25 vehicles to park along Government Road.

10.1.2 Future Car Parking Demand

| Car Parking Provision | Car Parking Requirement | Car Bays Available Onsite | Proposed Car Bay Shortfall |
|---|---|---------------------------|--|
| <i>Light Industry</i> 2.2 bays per 100sqm of gross leasable floor area <i>Shop</i> 8.3 bays per 100sqm of leasable floor area. | <i>Light Industry</i> 11 bays minimum <i>Shop</i> 7 bays minimum Total = 18 car bays required | 9 car bays | 9 car bay shortfall. An additional 4 car bay shortfall. |

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

| Regulations Clause | Assessment Comment | Satisfies |
|---|--|------------|
| <p>Under Schedule 2 Part 9 Clause 67 (Matters to be Considered by Local Government) of the Regulations, the following provisions are to be taken into consideration:</p> <p>a) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.</p> <p>b) The adequacy of — (i) the proposed means of access to and egress from the site; and (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles;</p> <p>c) The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety;</p> <p>d) Any submissions received on the application;</p> | <p>If approved, the use will result in an additional shortfall of 4 car bays, a total shortfall of 9 car bays.</p> <p>The nature and scale of the proposed use means that local residents are more likely to visit the premises and therefore not require use of private vehicles. Those who do use a private vehicle to get to the shop will only occupy a car bay for a short amount of time.</p> <p>A maximum of 1 member of staff and 2 clients, by prior appointment only, will be on site at any one time.</p> <p>Considering the above, the proposed use is considered to not have a significant impact on the amenity of the local area.</p> <p>The only external alteration proposed to be made to the building is a projecting sign which is to be attached to an existing verandah structure. The sign shall be 4.8m in length in lieu of 2m, and 1.2m in height in lieu of 0.5m. This is considered acceptable as it will be non-illuminated, partially screened by an existing street tree, will be the only sign associated with the business, and shall be setback approximately 5m from the street boundary. No concerns were raised regarding the sign during the advertising period.</p> | <p>Yes</p> |

10.3 Advertising Signs Local Planning Policy

The following provision of the Advertising Signs Local Planning Policy (Signs LPP) apply to such proposals:

| Signs LPP Requirement | Proposed |
|--|--|
| <p>Projecting Signs</p> <ul style="list-style-type: none"> a) A maximum of one projecting sign per tenancy. b) Have a minimum clearance of 2.75m above natural ground level. c) Not exceed a vertical dimension of 0.6m. d) Not project beyond the outer frame or surround of the fascia. | <ul style="list-style-type: none"> a) One projecting sign. b) Will have a minimum clearance of 2.75m above natural ground level. c) Will have a vertical dimension of 1.2m. d) Will not project above the verandah to which it will be attached. |

The proposal complies with the Signs LPP with the exception of the sign having a vertical dimension of 1.2m in lieu of 0.6m. The Signs LPP stipulates that if it is established to the satisfaction of the City that a particular standard or provision is unreasonable or undesirable in the particular circumstances of the case, the City may vary the standard or provision.

The location, size and the fact the sign will be non-illuminated means that it will not have a detrimental impact on the local amenity. No concerns were raised regarding the sign during the advertising period. The proposed variation is therefore considered to be acceptable.

11.0 Conclusion


The proposal is compliant with the City's TPS 2 and Policy requirements with the exception of car parking and the proposed sign's vertical dimension.

If the application was approved by Council there will be a shortfall increase of 4 bays compared with what currently exists. This is considered acceptable for the following reasons:

- a) The size of the shop only being approximately 75sqm, that there will only be 1 staff member and 2 clients on site at any one time, and that customers will be prior appointment only, means that traffic volumes and/or noise emissions are not anticipated to be an issue.
- b) The only external alteration proposed to be made to the building is a projecting sign. The location, size and the fact the sign will be non-illuminated means that it will not have a detrimental impact on the local amenity
- c) Those who do use a private vehicle to get to the shop are expected to only occupy a car bay for a short amount of time.

Considering the above, it is recommended that the application be approved by Council.

| | |
|----------------|--|
| PD30.16 | (Lot 50) No. 13 Hobbs Avenue, Dalkeith – Proposed Increase to Height of Fencing to Laneways |
|----------------|--|

| | |
|---------------------------|--|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | Mr G and Mrs N Knights |
| Owner | Mr G and Mrs N Knights |
| Officer | Kate Bainbridge – Senior Statutory Planning Officer |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | DA16/61 and DA15/196 |
| Previous Item | Nil. |
| Attachments | <ol style="list-style-type: none"> 1. Site Plan 2. Elevations 3. Applicant Justification 4. Applicant's Site Photographs 5. Applicant's 3D View of Proposed Fencing |

1.0 Executive Summary

The proposal is for fencing to be erected along the southern side and western rear boundaries adjacent to Ringneck and Tern Lanes. The applicant previously obtained approval for fencing along these boundaries which was 1.8m in height (with 2.1m high piers) in October 2015. The application is an amendment to this approval to increase the height of the fencing along these boundaries to have a 3.6m high solid wall behind a 1.8m veneer of a pier and in-fill fence at 1.8m in height. The proposal therefore does not comply with the City's Fill and Fencing Council Policy which permits solid fencing up to 1.8m in height to 'secondary streets'.

Three (3) objections were received during the consultation period. Where an objection has been received, administration does not have the delegation to determine the application and therefore the application is referred to Council for determination.

A solid 3.6m high fence will have a negative impact on the amenity of the locality with the height and bulk of the fencing giving a 'fortress' type appearance to the property. There are no other examples of fencing to the laneways of this height and length within the locality. A 1.8m high solid fence will afford an appropriate level of privacy to the property and additional privacy can be obtained with landscaping (as used currently) and privacy screening for the upper floor of the dwelling. The application is therefore recommended for refusal due to non-compliance with the City's Town Planning Scheme No. 2 (TPS2) and the City's Fill and Fencing Council Policy.

2.0 Recommendation to Committee

Council refuses the development application to construct 3.6m high fencing along the southern side and western rear boundaries at (Lot 50) No. 13 Hobbs Avenue, Dalkeith, for the following reasons:

- 1. The height of the fencing is considered to adversely affect the amenity of the surrounding area and therefore does not comply with Clause 5.5.1 of the City's Town Planning Scheme No. 3; and**
- 2. The height of the fencing exceeds the permitted height of 1.8m specified within the City's Fill and Fencing Policy and will therefore have a negative impact upon the laneway streetscapes and the amenity of neighbouring properties.**
- 3. The height of the fencing setting an undesirable precedent for the locality.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS 2, contributing to well-planned and managed development in the City of Nedlands.

4.0 Legislation

- *Planning and Development Act 2005 (Act).*
- Metropolitan Region Scheme (MRS).
- *Planning and Development (Local Planning Schemes) Regulations 2015 (Regulations).*
- City of Nedlands Town Planning Scheme No. 2 (TPS2).
- Council Policy – Fill and Fencing.
- Council Policy – Neighbour Consultation.

5.0 Budget / Financial Implications

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

6.0 Risk management

Nil.

7.0 Background

| | |
|--|----------------------|
| Lot area | 2091.7m ² |
| Metropolitan Region Scheme Zoning | Urban |
| Town Planning Scheme No. 2 Zoning | Residential – R10 |
| Detailed Area Plan/Outline Development Plan | No |
| Controlled Development Area | No |

In October 2015, the City approved extensions and renovations to the property under delegated authority. The proposal included fencing to the laneways designed to comply with the City’s Fill and Fencing Policy. The property has a 2.5m slope from the south east corner down to the north-western rear corner and the property contains a single dwelling (currently undergoing renovations and extensions) and associated incidental buildings.

An aerial image showing the location of the property follows.



8.0 Application Details

The application seeks approval to erect a 3.6m high solid wall behind a veneer of pier and in-fill fencing at 1.8m in height along the Ringneck and Tern Lane boundaries.

By way of justification in support of the development application the applicant has provided justification (attachment 3).

Administration has addressed this justification in the discussions sections of this report.

9.0 Consultation

The development application was advertised to affected landowners for comment due to the fencing exceeding the permitted 1.8m in height above natural ground level. The following is a summary of the concerns raised:

- a) The existing fence is already substantially higher than 1.8m between 2.3m and 2.55m with a tall hedge behind reaching a total height of 3.95m;
- b) The increase in height will blight the outlook from the rear of my property;
- c) The proposed increase in height of fencing at 13 Hobbs Avenue cannot be construed as being necessary for privacy since it is already 2.3m at the minimum height and the land falls away from the fencing with my property being lower than the subject property;
- d) I contend that it is impossible for anyone passing down Ringneck Lane to look over the fence of 13 Hobbs Avenue;
- e) I fear a plain wall 3.6m high would present a tempting blank canvas for graffiti;
- f) The increases height is totally inappropriate in a residential area;
- g) The height is not in keeping with the existing look and scale of surrounding homes;
- h) A fence 3.6m in height is double the height of a standard wall;
- i) The height is fortress like and very imposing;
- j) The structure creates an unattractive appearance, and will be very visible from our outdoor area;
- k) We could not find a wall which matches the proposed height of 3.6m in the area – all being significantly lower in the surrounding area; and
- l) The proposed fence would have an every-day lasting impression on us, looking onto a fortress with a 3.6m high wall spanning the majority of the length of the laneway.

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

The potential impact the fence will have on the local amenity is discussed in the following sections.

10.0 Statutory Provisions

The provisions of TPS2 and the provisions of the City's Fill and Fencing Council Policy which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.1 Amenity

| TPS 2 Provision | Assessment/Comment | Complies? |
|--|---|-----------|
| Under clause 5.5.1: <i>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.</i> | The height of the fencing is greater than the plate height of a standard single storey dwelling and therefore the location on the southern and rear boundaries to publicly accessible laneways is considered to have a negative impact of the amenity of the locality in terms of bulk and scale. The height of these walls is considered to be a fortressing of the property which is inconsistent with the residential appearance of the property and the locality. | No |

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

| Regulations Clause | Assessment Comment | Satisfies |
|---|--|-----------|
| Clause 67 under Schedule 2 (Deemed Provisions) of the Regulations stipulates that in considering a development application due regard is to be given to the following matters, amongst others: m) <i>The compatibility of the development with its setting including the relationship of the development to the development on adjoining land or on other land in the locality including but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development;</i> n) <i>The amenity of the locality including the character of the locality; and</i> y) <i>Any submission received on the application.</i> | The height of the fencing is disproportionate to the residential development within the locality. In response to the applicant's justification for the additional height, to provide additional privacy to the dwelling and neighbouring properties – there is always a factor of overlooking when constructing a two storey house with major openings on the upper floor, even if the visual privacy setbacks provided are in excess of what is required under the deemed-to-comply provisions of the R-Codes. The use of a 3.6m high fence is an inappropriate measure to protect privacy. The design principles of the R-Codes encourage the use of landscaping and privacy screening should visual privacy setback distances not be achieved. It should be noted that there are no visual privacy setback variations approved as part of the 2015 additions and alterations and therefore under the deemed to comply provisions of the R-Codes, screening is not required. | No |

| | | |
|--|--|--|
| | <p>The applicant is seeking to replace existing fencing to the laneways and mentions the height of the landscaping behind the wall as justification to replace the existing fence to a height of 3.6m. It should be noted that the City does not have record of previous planning approval for fencing over 1.8m in height to the laneway boundaries of the property and landscaping is not considered development and therefore should not be included as part of the existing fencing height.</p> <p>The applicant has advised the proposal will permit the fencing to the laneway to be of a consistent colour and material of construction with the existing fencing using a variety of fencing styles. The use of consistent fencing is not a planning requirement but can improve the appearance of the fencing from the laneway (depending on the material used), however this is not adequate justification to support a fence 3.6m in height in lieu of the permitted 1.8m.</p> <p>With regards to submissions received during the consultation, administration concurs that the proposed height of the fencing is unacceptable and will result in a negative impact upon the laneway streetscape and neighbouring properties and therefore recommends refusal.</p> | |
|--|--|--|

10.5 Council Policy – Fill and Fencing

The proposal is not compliant with the following provisions of Fill and Fencing Council Policy as follows:

| Policy Provision | Proposed | Assessment/Comment | Complies? |
|---|---|--|-----------|
| Secondary street fencing shall not exceed 1.8m in height. | The fencing to Ringneck and Tern lane is proposed to have a maximum height of 3.6m in lieu of the permitted 1.8m. | The laneways are gazetted roads and therefore are considered fencing to a secondary street. A 1.8m high fence is considered to be sufficient to meet privacy and security needs of the property. Additional height above 1.8m is not supported due to the negative impact from the bulk and scale of the additional height of the fencing to the laneways. | No |

11.0 Other Matters of Concern

During the advertising period concerns were also received with regard to the potential impact the proposed development may have on the value of surrounding properties. This is not a planning matter and as such is not considered in this assessment.

12.0 Conclusion

The application is an amendment to the previous approval in October 2015 to increase the height of the fencing along these boundaries to have a 3.6m high solid wall behind a 1.8m veneer of a pier and in-fill fence at 1.8m in height. The applicant's main justification for the additional height is to provide privacy to the dwelling and outdoor living areas of the property. There are no walls of this height and dimension within the locality adjacent to the laneways and additional privacy to the dwelling and outdoor living areas can be obtained through the use of landscaping and privacy screening to raised outdoor living areas and major openings.

It is not appropriate for two storey dwellings to construct 3.6m high fencing to provide privacy. By their very nature, two storey dwellings in a suburban environment will always have some element of viewing of neighbouring properties. If all two storey dwellings chose to construct 3.6m high fencing on their boundaries, the character of the area would significantly change.

The wall will appear to have excessive bulk and height as viewed from the laneway and neighbouring property. Therefore, the proposal is considered not to comply with the amenity provisions of the City's TPS2, the Regulations and the City's Fill and Fencing Council Policy. Accordingly, the application is recommended to Council for refusal.

12.1 Recommended Conditions if Application is Approved

If Council resolves to approve the application, it is recommended that the fencing be approved at a height of no more than 2.4m, rather than the proposed 3.6m. This 2.4m height is consistent with a couple of examples of fencing/garages adjacent to laneways within the locality, and this height is also consistent with the standard plate height of an outbuilding, garage or single storey dwelling – ensuring that the bulk and scale is consistent with other residential developments within the locality.

If approved, the following wording and conditions are recommended:

Council approves the development application for over height fencing to the southern side and western rear boundaries at No. 13 (lot 50) Hobbs Avenue, Dalkeith, in accordance with the application received 24 February 2016 and amended plans dated 09 May 2016 subject to the following conditions and advice notes:


Conditions:

1. The approval only relates to the proposed fencing along the Ringneck and Tern Lane boundaries.
2. The fencing is reduced to a maximum 2.4m in height above natural ground level.
3. The fencing and all associated footings and site works are contained wholly within the lot boundaries and maintained by the landowner to the City's Satisfaction.
4. The fencing is finished to a professional standard within 14 days of practical completion and maintained by the landowner, to the City's satisfaction.

Advice Notes:

1. 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.

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| PD31.16 | Draft Landscaping Plans Local Planning Policy (LPP) |
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|---------------------------|---|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | City of Nedlands |
| Officer | Andrew Bratley – Coordinator Statutory Planning |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | PLAN-LPP-00003 |
| Previous Item | Item PD06.16 – February 2016 |
| Attachments | 1. Draft Landscaping Plans Local Planning Policy |

1.0 Executive Summary

The purpose of this report is for Council to consider whether to adopt the draft Landscaping Plans Local Planning Policy (draft LPP).

In February 2016, Council resolved (En Bloc Resolution 10/-) to approve the draft LPP for the purpose of public consultation. During the advertising period no submissions were received.

As a consequence of the *Planning and Development (Local Planning Schemes) Regulations 2015* being introduced amendments have been made to the draft LPP, which are highlighted in Attachment 1.

The objectives of the draft LPP are the following:

- a) To provide guidance on Council's expectations in terms of the type and minimum standard of landscape plans.
- b) To encourage development that incorporates creative landscaping with the use of interesting plant selection and design ideas.
- c) To encourage the retention of trees and vegetation of environmental, aesthetic and cultural significance through integration as part of a landscape design.

It is recommended that Council adopts the draft LPP with the inclusion of the highlighted amendments.

2.0 Recommendation to Committee

Council adopts the draft Landscaping Plans Local Planning Policy with amendments.

3.0 Strategic Community Plan

KFA: Governance and Civic Leadership

Regular review of the City's policies ensures that they remain relevant and meaningful to the local community.

4.0 Legislation

- *Planning and Development Act 2005 (Act).*
- *Planning and Development (Local Planning Schemes) Regulations 2015*
- City of Nedlands Town Planning Scheme No. 2 (TPS 2).

5.0 Budget / Financial Implications

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

The creation of a local planning policy does not have a financial implication for the City. Advertising of the Policy is within the City's approved budget.

6.0 Risk management

If Council resolves not to adopt the draft LPP it will result in uncertainty for the community over what is considered acceptable by Council in relation to landscaping and may result in inconsistent decision making on applications for development which require areas to be landscaped.

7.0 Background

The City currently has no specific requirements with regard to the standard of landscaping plans, landscaping type(s) or quality.

Town Planning Scheme No. 2 only stipulates the requirement for non-residential properties to be landscaped within their street setback area, and within the lot boundary setback area if it adjoins a residential property. Whereas State planning-related documents such as the Residential Design Codes and the Designing Out Crime Planning Guidelines include general provisions related to using landscaping to enhance the security, privacy and safety for residents and the general public.

In order to provide specific assessment criteria and to assist with guiding decision making, the City is recommending that the draft LPP be adopted.

8.0 Statutory Provisions

Schedule 2 clause 4 of the *Planning and Development (Local Planning Schemes) Regulations 2015* prescribes the provisions relating to making local planning policies.

9.0 Consultation

The draft LPP was advertised in accordance with the process outlined in Schedule 2 clause 4 of the Regulations which involved a notice of the draft LPP being published in a newspaper circulating in the district, and in addition to this a notice was published on the City's website.

During the advertising period no submissions were received.

10.0 Proposed Amendment to Draft Policy

Having further reviewed the draft LPP, the following table outlines the amendment proposed to be made (highlighted in Attachment 1):


| Proposed Amendments | Reason for Amendment |
|--|--|
| Reference to the draft Policy being prepared in accordance with the <i>Planning and Development (Local Planning Schemes) Regulations 2015</i> , not TPS 2. | <p>The process for amending a local planning policy under the recently introduced Regulations compared to TPS 2 does not differ. There is therefore no need to re-advertise the amended policy as a result of this alteration.</p> <p>This minor alteration has been made to ensure that the correct legislation was adhered to when preparing the policy.</p> |

11.0 Conclusion

The draft LPP will ensure the City has an appropriate local planning framework in place by which to assess applications for development which require areas to be landscaped. It will also ensure that the standard of landscaping plans received by the City is acceptable.

As such, it is recommended that the draft LPP be adopted by Council.

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| PD32.16 | (Lot 114) No. 8 Jacaranda Avenue, Mount Claremont –Two Grouped Dwellings (Two Storey) |
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|---------------------------|--|
| Committee | 14 June 2016 |
| Council | 28 June 2016 |
| Applicant | Tascone Design Team |
| Owner | CKB Developments Pty Ltd |
| Officer | Kate Bainbridge – Senior Statutory Planning Officer |
| Director | Peter Mickleson – Director Planning & Development Services |
| Director Signature |  |
| File Reference | JA1/8 DA15/441 |
| Previous Item | Nil. |
| Attachments | <ol style="list-style-type: none"> 1. Site Survey Plan 2. Allotment Plan 3. Site Plan 4. Ground Floor Plan 5. Upper Floor Plan 6. Elevations 1, 2 and 5 7. Elevations 3,4 and 6 8. 3D Perspectives 9. Site Photographs 10. Applicant Justification 11. Applicant's Overshadowing cross sections 12. Applicant's Overshadowing plan 25% |

1.0 Executive Summary

A development application has been received to construct two grouped dwellings at the subject property. The grouped dwellings do not comply with the deemed-to-comply provisions of the Residential Design Codes (R-Codes) for 'street setbacks' and 'solar access for adjoining sites' (overshadowing). The application was therefore advertised to the effected neighbouring landowners for comment with two objections received.

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

The variations are considered to comply with the design principle provisions of the R-Codes and therefore it is recommended that the application be approved by Council.

2.0 Recommendation to Committee

Council approves the development application to construct two grouped dwellings (two storey) at (Lot 114) No. 8 Jacaranda Avenue, Mount Claremont, in accordance with the application received on 03 December 2015 and amended plans received 13 May 2016 subject to the following conditions and advice notes:

Conditions

- 1. The development shall at all times comply with the approved plans.**
- 2. All footings and structures to retaining walls shall be constructed wholly inside the site boundaries of the Certificate of Title.**
- 3. The existing redundant crossover to shall be removed and the verge reinstated to the City's satisfaction**
- 4. Any construction in the verge will require a Nature-Strip Development Application (NSDA) to be lodged with, and approved by, the City's Technical Services, prior to construction. The following is to be demonstrated as part of the NSDA:**
 - a) All crossovers being constructed and drained to the City's specifications;**
 - b) All street trees in the verge being retained and/or not being removed without prior written approval from the Manager Parks Services; and**
 - c) All development in the verge complying with the Council's Nature Strip / Verge Development Policy.**
- 5. All existing and proposed fencing, visual privacy screens and obscure glass panels to Major Openings and/or Active Habitable Spaces, shown on the approved drawings, shall prevent overlooking in accordance with the visual privacy requirements of the *Residential Design Codes 2015* (R-Codes). The structure(s) shall be installed and remain in place permanently, unless otherwise approved by the City.**
- 6. All privacy screening devices being installed within 14 days of the development's practicable completion and maintained thereafter by the landowner to the City's satisfaction.**
- 7. All stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite.**

Advice notes

1. Prior to any construction, the applicant is required to obtain a building approval from the City of Nedlands.
2. Fencing within the front setback area (including along the side boundaries) which is compliant with the deemed to comply provisions of the R-Codes and dividing fencing not more than 1.8m above the existing natural ground level does not require planning approval.
3. A grated channel strip-drain should be constructed across the driveway, aligned with and wholly contained within the property boundary, and the discharge from this drain to run to a soak-well situated within the property.
4. All stormwater from the development, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m³ for every 80m² of calculated surface area of the development. All downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block.
5. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
6. The applicant is advised to consult the City's *Visual and Acoustic Privacy Advisory Information* in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours.

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

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

7. Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.

- i. **Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a Workplace*, and any Department of Commerce Worksafe requirements.**
 - ii. **Where there is over 10m² of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.**
- 8. This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two year period, the approval shall lapse and be of no further effect.**

3.0 Strategic Community Plan

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design requirements of TPS2, contributing to well-planned and managed development in the City of Nedlands.

4.0 Legislation

- *Planning and Development Act 2005* (Act)
- Metropolitan Region Scheme (MRS)
- *Planning and Development (Local Planning Schemes) Regulations 2015* (Regulations)
- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes of Western Australian 2015 (R-Codes)
- Local Planning Policy 6.18 – Reduction of Front Setbacks
- Council Policy – Fill and Fencing
- Council Policy – Neighbour Consultation

5.0 Budget / Financial Implications

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

6.0 Risk management

Nil.

7.0 Background

| | |
|--|-------------------|
| Lot area | 835m ² |
| Metropolitan Region Scheme Zoning | Urban |
| Town Planning Scheme No. 2 Zoning | Residential R25 |
| Detailed Area Plan/Outline Development Plan | No |
| Controlled Development Area | No |

The subject property currently contains a single dwelling which is to be demolished. The adjacent properties to the north and south of the subject property have been previously subdivided in a 'battle-axe' configuration with the access legs being on the opposing side of the properties to the subject property. The subject property is to be subdivided into two freehold lots with the Western Australian Planning Commission recently granting conditional approval, consistent with the allotment plan (attachment 2).

The subject property is within the Mount Claremont redevelopment Area and therefore in accordance with Local Planning Policy 6.18 – Reduction of Front Setbacks, the primary street setback is as per the R-Codes. The topography slopes up from the front boundary approximately 2.5m to the rear of the property (see attachment 9) and the property is located across the road from Mount Claremont Primary School.

An aerial image showing the location of the property follows.



8.0 Application Details

The application seeks approval to construct two grouped dwellings (two storey) in a side by side configuration with two storey parapet wall along with dividing boundary between the recently approved lots (see attachments 3-8).

The applicant has provided justification in support of the development application which has been provided as an attachment to this report (attachment 10-12).

9.0 Consultation

The development application was advertised to impacted residents and landowners for comment due to the land use being discretionary within the Residential zone as well as variations being proposed to the deemed-to-comply requirements of the R-Codes for the 'street setback' of the upper floors and 'solar access to adjoining lots'.

During the advertising period, two objections were received. The following is a summary of the concerns raised:

- a) The overshadowing area from the proposed development is over the centrally located north-facing outdoor living area of the impacted southern neighbouring property;
- b) The overshadowing area impacts the north facing major openings of the southern neighbouring dwelling;
- c) The variation to the 'solar access for adjoining sites' deemed to comply provision permitting 25% overshadowing is considered to not be compliant with the design principles of the R-Codes.

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

The applicants have subsequently amended the plans to reduce the amount of overshadowing proposed, however the proposal still will overshadow the front neighbouring property 34% in lieu of 25%. The applicant has subsequently contacted the impacted neighbouring landowner and resident and as a result of the amendments to the plans, one submitter has rescinded their objection to the proposal.

The above comments are also addressed within the following section of this report.

10.0 Statutory Provisions

The relevant provisions of TPS 2 and the R-Codes which are not being met by the proposal are addressed in the following sections.

10.1 Town Planning Scheme No. 2

10.1.1 Amenity

| TPS 2 Provision | Assessment/Comment | Complies? |
|--|--|------------------|
| Under clause 5.5.1 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. | Once the lots are subdivided, the dwellings will be single dwellings which are a permitted land use within the Residential zone. The built form is consistent with other developments within the locality – even on Jacaranda Avenue, closer to Alfred Road, ensuring the appearance of the development will not be out of context for the locality. | Yes |

10.2 Planning and Development (Local Planning Schemes) Regulations 2015

| Regulations Clause | Assessment Comment | Satisfies |
|--|---|------------------|
| Clause 67 under Schedule 2 (Deemed Provisions) of the Regulations stipulates that in considering a development application due regard is to be given to the following matters, amongst others: m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including but not limited to, the likely effect of height, bulk scale, orientation and appearance of the development. | The appearance of the development is not outside of the development context of the locality with other side-by-side developments on Jacaranda Avenue closer to Alfred Road and also on Rochdale Road. The bulk of the dwelling has been reduced adjacent to the outdoor living area of the neighbouring property to the south to reduce the impact of building bulk and also ensure the neighbouring dwelling will receive sunlight in the winter months. | Yes |

10.3 State Planning Policy 3.1 – Residential Design Codes**10.3.1 Street Setback**

| Deemed-to-Comply Requirement | Proposed | Complies? |
|---|---|------------------|
| Primary street – Minimum 3m, Average 6m | Upper floors have average of 5.98m in lieu of 6m. | No |

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

| Design Principles | Assessment/Comment | Satisfies? |
|---|--|------------|
| <p>Buildings setback from the street boundaries an appropriate distance to ensure they:</p> <ul style="list-style-type: none"> • Contribute to, and are consistent with, an established streetscape; • Provide adequate privacy and open space for dwellings; • Accommodate site planning requirements such as parking, landscape and utilities; and • Allow safety clearances for easements for essential service corridors. <p>Building mass and form that:</p> <ul style="list-style-type: none"> • Uses design features to affect the size and scale of the building; • Uses appropriate minor projections that do not detract from the character of the streetscape; • Minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, serving infrastructure access and metres and the like; and • Positively contributes to the prevailing development context and streetscape. | <p>The street setback variation is considered to be minor in nature as a 0.02m variation will not appear different from a compliant average of 6m. Therefore the variation is considered to have negligible impact on the streetscape.</p> <p>Neighbouring landowners and residents were consulted on the variation with no comment or objection provided.</p> <p>This average is considered to be consistent with other developments within the locality of similar scale (i.e. the side-by-side developments closer to Alfred Road).</p> | <p>Yes</p> |

10.3.2 Solar Access for Adjoining Sites

The proposal is not compliant with the following Deemed-to-Comply provisions of the R Codes:

| Deemed-to-Comply Requirement | Proposed | Complies? |
|---|---|-----------|
| <p>25% overshadowing to neighbouring lot.</p> | <p>34% overshadowing to No. 10 and 25% overshadowing to No. 12.</p> | <p>No</p> |

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

| Design Principles | Assessment/Comment | Satisfies? |
|--|--|------------|
| <p>Effective solar access for the proposed development and protection of the solar access.</p> | <p>The proposed development will have access to northern sun, particularly for the rear outdoor living areas and through the design of an internal courtyard for the southern grouped dwelling.</p> | <p>Yes</p> |
| <p>Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:</p> <ul style="list-style-type: none"> • Outdoor living areas; • North facing major openings to habitable rooms, within 15 degrees of north in each direction; or • Roof mounted solar collectors. | <p>The lot design being side-by-side is prejudiced by the neighbouring lot to the south being a battle-axe subdivision, green titled lot and being topographically lower than the subject property by 0.62m.</p> <p>The overshadowing assessment is required to be to each lot to the south rather than the parent lot due to the land tenure of the southern lots being green title. Should the land tenure have been survey strata with common property, the proposed amount of overshadowing would be compliant with the deemed-to-comply requirement of 25% as the overshadowing would be assessed based on the parent lot.</p> <p>The property most impacted – no. 10 Jacaranda Avenue – has been previously excavated on the higher (northern) side of the lot, is single storey and has a north facing outdoor living area centrally located to the lot.</p> <p>These factors have created a situation where even a single storey development on the subject property No. 8, would be close to the permitted 25% overshadowing permitted on the subject property.</p> <p>Increasing the setback of the upper floor of the southern grouped dwelling would have a detrimental streetscape impact through differing appearance of the grouped dwellings and also reduced passive surveillance to the street. The applicants have also advised that a battle-axe lot configuration is undesirable for them.</p> <p>The design of the dwellings was modified after neighbour consultation was conducted to increase the upper floor setback adjacent to the centrally located outdoor living area and north facing major openings of no. 10 and reduce the FFL of the dwelling. This has reduced the amount of overshadowing to the impacted area and permits during the winter solstice (June 21) that the major openings and outdoor living area right next to the dwelling will still have access to sunlight. The rest of the year these areas will still have more than adequate access to sunlight.</p> | <p>Yes</p> |

11.0 Conclusion

The proposal is to construct two grouped dwellings at the subject property. The proposal involves variations to the deemed-to-comply provisions of the R-Codes being the street setback for the upper floors, and solar access for adjoining sites (overshadowing). The variations are considered to satisfy the relevant design principles of the R-Codes and therefore the application is recommended to Council for approval.