



City of Nedlands

Planning and Development Reports

Committee Consideration – 12 March 2019

Council Resolution – 26 March 2019

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Committee	12 March 2018
Council	26 March 2018
Applicant	Addstyle Constructions Pty Ltd
Landowner	R Gharbi
Director	Peter Mickleson – Director Planning & Development
Reference	DA18/32991
Previous Item	Nil
Delegation	In accordance with Clause 6.7.1a) of the City's Instrument of Delegation, Council is required to determine the application due to an objection being received.
Attachments	1. Applicant's justification and photographs of the subject property

1.0 Executive Summary

The purpose of this report is for Council to consider a development application for proposed ancillary accommodation at 71 Louise Street, Nedlands.

Plans received for the application were advertised to adjoining neighbours in accordance with clause 2.1 of Council's Neighbour Consultation Policy due to variations being proposed to the following:

- The rear lot boundary setback requirements.
- The side lot boundary setback requirements.

The application was also advertised due to ancillary accommodation being a use not listed under Town Planning Scheme No. 2 (TPS 2).

Two objections were received during the advertising period, one of which was subsequently withdrawn.

Considering the scale and nature of the work and use the proposal is unlikely to have a significant adverse impact on the local amenity. Accordingly, it is recommended that Council approves the application.

2.0 Recommendation to Committee

Council approves the development application dated 23 November 2018 to construct ancillary accommodation at Lot 117 (No. 71) Louise Street, Nedlands, subject to the following conditions and advice:

- 1. The development shall always comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 2. The proposed carport being constructed within 28 days of the ancillary accommodation's practicable completion to the City's satisfaction.**
- 3. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

4. The ancillary accommodation building shall be occupied only by persons related to the occupiers of the main dwelling.
5. The landowner shall execute and provide to the City a notification pursuant to section 70A of the *Transfer of Land Act 1893*, to be registered on the title to the land as notification to prospective purchasers that the use of the building is subject to the restriction set out in this approval. The full costs of the notification shall be borne by the landowner; and this condition shall be fulfilled prior to the lodgement of a Building Permit application.

Advice Notes specific to this proposal:

1. With regard to condition 4, the landowners are advised that should they want this condition removed once the City's draft Local Planning Scheme No. 3 is gazetted an amended development application will need to be submitted to and approved by the City.
2. With regard to condition 5, the applicant and the landowner are advised that should they want this Notification removed from the property's Title once the City's draft Local Planning Scheme No. 3 is gazetted the necessary forms from Landgate will need to be completed and sent to the City for signing.

A development application will not be required for the removal of the Notification.

If you have any queries regarding the Notification removal process, please contact Landgate on (08) 9273 7373.

3. The applicant is advised that 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. 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.
4. The applicant is advised that 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.
5. The applicant is advised that all street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved under the Nature Strip Works approval.
6. The applicant is advised that 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.

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.

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.

7. The applicant is advised to consult the City's Acoustic 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.

8. The applicant is advised that 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 Background

3.1 Land Details

Lot area	1,136m ²
Local Planning Scheme Zone	Residential R10
Metropolitan Region Scheme Zone	Urban

3.2 Locality Plan



4.0 Application Details

The applicant seeks approval to construct ancillary accommodation and a single carport. Details of which are as follows:

- The ancillary accommodation is proposed to be single storey and constructed where currently a garage and a storeroom are located which will be demolished.
- A single carport is proposed to be constructed behind the street setback area in place of the garage. The carport does not require development approval due to compliance with the R Codes.
- The ancillary accommodation is proposed to have a total floor area of 68sqm.
- The ancillary accommodation is proposed to be setback 1.02m in lieu of 6m from the rear (western) lot boundary.
- The ancillary accommodation is proposed to be setback 1.1m in lieu of 1.8m from the southern (side) lot boundary.

5.0 Consultation

The development application was advertised in accordance with clause 2.1 of Council's Neighbour Consultation Policy. Two objections were received, one of which was subsequently withdrawn.

The following is a summary of the concerns received:

- The visual impact of the building due to the proposed reduced rear setback.
- The proposal potentially resulting in overlooking and noise issues for neighbours.
- Works associated with the construction of the building potentially resulting in damage being caused to nearby retaining walls.

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

Refer to Attachment 1 for the applicant's justification in response to the concerns received.

6.0 Assessment of Statutory Provisions

6.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development's height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

6.2 Metropolitan Region Scheme

The subject site is zoned 'Urban' under the Metropolitan Region Scheme (MRS). The proposal is an urban use and is therefore consistent with the zoning classification under the MRS.

6.3 City of Nedlands Town Planning Scheme No. 2

Ancillary accommodation is a use not listed under TPS 2.

In accordance with clause 5.3.4 the ancillary accommodation is required to be occupied by a person related to those residing in the main dwelling on the same property. The provisions relating to ancillary dwellings under the Residential Design Codes (R-Codes) prevail over the remainder of the requirements under this clause.

In accordance with clause 5.5.6 within the residential zone if a covered car space behind the street setback area is to be removed it is to be replaced by another covered car space behind the street setback area.

6.3.1 Amenity

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."

6.4 Draft Local Planning Scheme No,3

The City is currently making the modifications to draft LPS 3 requested by the Minister for Planning.

Under draft LPS 3 the subject property's zoning nor density coding are proposed to be changed.

Under draft Local Planning Scheme No.3 the use 'ancillary accommodation' will no longer exist, it will be replaced by the use 'ancillary dwelling'.

In accordance with draft LPS 3 and the R-Codes an ancillary dwelling is defined to be the following:

“Self-contained dwelling on the same lot as a single house which may be attached to, integrated with or detached from the single house.”

An ancillary dwelling will not require development approval if it complies with the following deemed-to-comply provisions of the R-Codes:

“Ancillary dwelling associated with a single house and on the same lot where:

- i. the lot is not less than 450m² in area;*
- ii. there is a maximum plot ratio area of 70m²;*
- iii. parking provided in accordance with clause 5.3.3 C3.1; (e.g. no car bay or 1 car bay depending on its distance from high frequency bus routes) and*
- iv. complies with all other R-Code provisions, only as they apply to single houses, with the exception of clauses:*
 - (a) 5.1.1 Site area;*
 - (b) 5.2.3 Street surveillance (except where located on a lot with secondary street or right-of-way access); and*
 - (c) 5.3.1 Outdoor living areas.”*

6.5 Policy Considerations

6.5.1 Residential Design Codes (State Planning Policy 3.1)

Lot boundary setbacks

Deemed-to-Comply Requirement	Proposed	Complies?
Buildings to be setback from lot boundaries in accordance with Table 1, 2A and 2B of the R-Codes.		
Rear setback for ancillary accommodation on R10 coded properties – 6m	1.02m	No
A wall with no major openings, a wall height of up to 4m and a wall length of up to 9m – 1.1m	1m	No

Design Principles

Variations to the deemed-to-comply requirements can be considered subject to satisfying the following Design Principle provisions:

“P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:

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

7.0 Budget / Financial Implications

N/A

8.0 Risk management

N/A

9.0 Administration Comment

Having had regard to the matters stipulated under the Regulations and the submissions received, the following is advised:

- The building is proposed to be setback 10cm closer than what is permitted from the southern lot boundary. This variation is unlikely to be evident when viewed from the adjoining property due to existing solid dividing fencing, and mature vegetation on the adjoining property.
- The building is similar in scale to an outbuilding which could be setback as close as 1m from the rear lot boundary without the need for development approval to be obtained. The property currently does not contain an outbuilding.
- The proposed distances from the nearest lot boundaries are similar to a garage and a storeroom which have existed on site since at least 2009.
- The visual impact of the building as a result of the proposed rear setback is likely to be minimised by the existence of solid dividing fencing and vegetation.
- The proposal complies with the applicable visual privacy, overshadowing, building height and open space requirements.

Considering the above, the development is unlikely to have a significant impact on the local amenity and is deemed to satisfy the applicable design principles of the R-Codes. Therefore, it is recommended to be approved by Council.

Matters relating to the stability of the ground and whether further retaining is necessary shall be dealt with at the building permit application stage.



2/511 Wanneroo Road, Balcatta (Head Office) Phone: (08) 9345 2333
 1/328 Stirling Highway, Claremont (Branch Office) Facsimile: (08) 9345 3029
 PO Box 543, Balcatta WA 6914 (Postal Address) Email: drafting@addstyle.net



Development Application – Response to Neighbour’s Comments

To: **Development Approvals**
City of Nedlands
 PO Box 9
 Nedlands WA 6909

Date: Thursday 7th February 2019

Re: Submission from neighbour regarding Proposed Ancillary Accommodation – 71 Louise Street, Nedlands.

Attn: Andrew Bratley, Coordinator Statutory Planning

Dear Mr Bratley,

Thank you for your email on 5 February 2019 summarising the concerns of an adjoining owner regarding the proposed works at 71 Louise Street. We would like to take the opportunity to respond to the concerns, as follows:

- *The visual impact of the building due to the proposed reduced rear setback.*

The proposed west-facing wall is 7.91m long and a maximum of 3.5m high above natural ground level. As is evident in the supplied photographs the ground level of Lot 114 (the adjacent lot to the rear) is retained to a similar level as the rear lawn area in Lot 117, resulting in an effective wall height of approximately 2.8m as viewed from Lot 114. These dimensions are acceptable for a 1m side boundary setback suggesting that this level of building bulk generally has a low impact on adjoining properties; this logic can also be applied to the rear boundary.

The relative positioning of the building minimises visual impact as much as possible by maintaining a large contiguous length of the rear boundary unobstructed. Lots 116 & 4118 have pool-houses in their rear corners which would already have some level of visual impact on Lot 114 so it is not as though the proposed building is sited out of context. The design principles of R-Codes 5.1.3 P3.1 are generally met by the proposal; building bulk is somewhat more objective to measure but given that the scale of the addition is proportionate to the existing residence and surrounding buildings we feel that a reduction of the rear setback is acceptable in this case. It certainly seems to be the most appropriate available space with the least detriment to the amenity of surrounding properties.

- *The proposal potentially resulting in overlooking and noise issues for neighbours.*

As you have acknowledged, the proposal complies with overlooking requirements. As far as noise is concerned, the day-to-day habitation of an enclosed building would not create any more noise than use of a pool and outdoor living area such as what Lot 114 has within its own rear setback area. It is also likely to be better insulated than the Garage / Workshop that currently exists in the proposed location. While the R-Codes do not go into much detail regarding noise separation, the use of a private residence would be subject to the Environmental Protection (Noise) Regulations 1997 regardless of its proximity to a lot boundary.

- *Works associated with the construction of the building potentially resulting in damage being caused to nearby retaining walls that exist.*

All our construction work is subject to the approval of a structural engineer therefore it would be both a technical requirement as well as best practice to ensure that our new building does not undermine or damage the structural integrity of the existing retaining walls. Maintaining a high construction standard is a core value of Addstyle's operations so it would be imperative that the neighbour's concerns are addressed in this regard.

Please see the attached site photographs as requested (refer index below) and do not hesitate to contact this office should you require any additional information. Thanking you in advance.

Regards,



Joe Stawarz
Design Manager

Addstyle Master Builders
Western Australia's most awarded home renovation builder

IMG_3430: Looking south towards the existing Workshop, the proposed location of the ancillary accommodation.
IMG_5367: Looking west towards the rear lot boundary, showing lawn and tall vegetation along rear boundary.
IMG_5378: Looking west from the existing Workshop, showing the limestone retaining wall on the rear boundary.
IMG_5388: Taken earlier than IMG_3430, prior to pruning of bushes. Looking south-east towards existing dwelling.







