

# Planning and Development Reports

**Committee Consideration – 10 September 2013**  
**Council Resolution – 24 September 2013**

## Table of Contents

Item No.		Page No.
PD41.13	No. 148 (Lot 243) Waratah Avenue Dalkeith – Proposed Pool Cabana.....	2
PD42.13	No.78 (Lot 675) Kingsway, Nedlands – Retrospective Additions (Garage) to Single House.....	8
PD43.13	Adoption of Proposed Detailed Area Plan for the Old Swanbourne Hospital for the Insane - Lot 416 Heritage Lane Mt Claremont.....	18

<b>PD41.13</b>	<b>No. 148 (Lot 243) Waratah Avenue Dalkeith – Proposed Pool Cabana</b>
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<b>Committee</b>	10 September 2013
<b>Council</b>	24 September 2013
<b>Applicant</b>	Penny Watson Architects
<b>Owner</b>	J J Finlay-Jones & P H Hart
<b>Officer</b>	Thomas Geddes – Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	M13/22833
<b>Previous Item</b>	Nil

## 1.0 Executive Summary

This application is for a proposed pool cabana to be located at the rear of No. 148 Waratah Avenue, Dalkeith.

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

It is considered that the development satisfies design principles of clause 5.1.3 P3.1 (Lot boundary setback) of the Residential Design Codes of Western Australia (R-Codes) in that:

- The enclosure of the outward facing walls of the cabana limits the impact of the proposed development on the privacy of adjoining residences;
- There is no undue impact upon the access to direct sunlight and ventilation for adjoining properties; and
- The impact of the reduced setback is limited due to the existing shed located between the boundary and the proposed cabana.

## **1.1 Recommendation to Committee**

### **Council:**

- 1. approves an application for a pool cabana at No. 148 (Lot 243) Waratah Avenue, Dalkeith in accordance with the application and the plans received 20 June 2013, subject to the following conditions:**
  - a. all stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development;**
  - b. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building / roof has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building / roof to reduce the reflectivity to a level acceptable to Council; and**
  - c. any additional development, which is not in accordance with the original application or conditions of approval as outlined above, will require further approval by Council.**

### **Advice Notes specific to this approval:**

- 1. 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.**

## **1.2 Strategic Community Plan**

**KFA: Natural and Built Environment**

This application addresses the Key Focus Area of Natural and Built Environment through adherence to the design principles of the Residential Design Codes of Western Australia, contributing to well planned and managed development in the City.

## 2.0 Background

<b>Property address</b>	148 Waratah Avenue Dalkeith
<b>Lot area</b>	1012m <sup>2</sup>
<b>Zoning:</b>	Residential
<b>Metropolitan Region Scheme</b>	Urban
<b>Town Planning Scheme No. 2</b>	Residential R10

### 2.1 Key Relevant Previous Council Decisions

A two (2) storey dwelling and swimming pool was approved at the site on 29 May 1998. Additions to the dwelling were approved in November 2007.

In March 2013, the City received an application for a pool cabana, front fence & gatehouse. The proposed pool cabana was removed from this application and the application was approved in April 2013 under delegation.

In June 2013, the City received a development application for a pool cabana (the same pool cabana which had been removed from the original plans) at No. 148 Waratah Avenue, Dalkeith. The pool cabana is proposed to be located at the rear of the property, adjacent to an existing colour bond shed. Refer to Attachments 1 - 4 to view the location of the property, photographs and plans of the development.

### 2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (TPS2) (Scheme)
- Residential Design Codes of WA 2013 (R-Codes)  
\*the R-Codes were updated on 2 Aug 2013
- Council Policy 6.4 – Neighbour Consultation (Neighbour Consultation policy)

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

Due to the proposed variation from 'deemed-to-comply' R-Codes setback requirements, advertising was undertaken by the City from 27 June to 11 July 2013.

The City received one (1) objection to the proposal.

Required by legislation:

Yes

No

Required by City of Nedlands policy:

Yes

No

The objection to the proposal has been summarised below:

- The visual impact of the proposed cabana;
- The impact upon privacy; and
- The impact of the proposed cabana upon any future improvements or additions.

## **4.0 Budget / Financial Implications**

N/A

## **5.0 Risk management**

N/A

## **6.0 Discussion**

### **6.1 Introduction**

The proposal involves a pool cabana located 3.3 metres from the rear (southern) boundary. The proposed pool cabana extends 6 metres parallel to the eastern (side) boundary and 4.2m parallel to the southern (rear) boundary resulting in a total area of 25.2m<sup>2</sup>, with 11.2m<sup>2</sup> of the structure being located in the rear setback area.

The pool cabana has a wall height of 2.8m and an overall roof height of 4m and is open on two (2) sides facing the existing pool and existing house. The remaining two (2) walls of the pool cabana are fully enclosed. An existing 2.4m high colour bond shed is located between the wall of the proposed pool cabana and the rear (southern) boundary.

### **6.2 Applicant Justification Summary**

The applicant provided the following justification relating to the proposed rear setback variation (for full justification, refer to Attachment 3):

- Adequate direct light and ventilation will be provided;
- Overshadowing is minimal;
- It is set back 3.3m from the rear boundary & 1.25m from the side boundary;
- It has been designed to pick up on the existing architecture of the house;
- The cabana will be built at the Finish Floor Level (FFL) of the pool. At present this area is approximately 400mm above the natural ground level; and
- Screen walls will protect the privacy of adjoining properties.

### **6.3 Design Principle Assessment**

The application proposes a variation to the 'deemed-to-comply' building setback provisions of the R-Codes. The variations are required to be assessed against the relevant design principles. The following design principles are relevant to the proposal:

Clause 5.1.3 - P3.1 Buildings set back from lot boundaries so as to:

- *Reduce the impact of building bulk on adjoining properties*

The proposed pool cabana has been set back 3.3m from the rear boundary and an existing colour bond shed is located between the proposed pool cabana and the rear (southern) lot boundary. In addition, the rear boundary of the site is well vegetated, limiting the impact of building bulk upon neighbours.

An enclosed outbuilding of the same overall height and area would be permitted in this area as of right under the 'deemed-to-comply' provisions of the R-Codes. It is not considered that this proposal would have any additional impact than a structure of this type.

- *Provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties.*

The proposed pool cabana will result in an additional 0.2% (1m<sup>2</sup>) overshadow of the property to the south. The proposal complies with the requirements for sunlight access to adjoining properties, and the setback of 3.3m to the proposed pool cabana will allow for adequate direct sun and ventilation to adjoining properties.

- *Minimise the extent of overlooking and resultant loss of privacy on adjoining properties.*

The proposed pool cabana has not been raised more than 0.5m from natural ground level and the rear wall is completely solid. The proposed structure complies with the 'deemed-to-comply' requirements of the R-Codes which relate to visual privacy (CI 5.4.1 C1.1).

The pool cabana is considered to minimise the extent of overlooking and privacy loss for adjoining properties as the outward facing walls of the structure are enclosed and an existing shed is located between the proposed pool cabana and the rear (southern) boundary.

## **6.4 Conclusion**

It is considered that the proposed pool cabana satisfies all of the listed design principles. Namely, the impact of the proposed setback from the rear boundary is minimised by the existing shed, and the addition of the pool cabana is not considered to unduly impose upon the access to direct sun and ventilation for the adjoining properties and appurtenant open spaces. The enclosed walls to the southern and eastern walls of the pool cabana directly limit overlooking from the proposed structure and these measures are considered to reduce any potential impact upon privacy from the cabana.

As a result, the application is recommended for approval.

## **7.0 Attachments**

1. Locality Plan
2. Proposal Plans
3. Applicant Justification
4. Site Photographs

<b>PD42.13</b>	<b>No.78 (Lot 675) Kingsway, Nedlands – Retrospective Additions (Garage) to Single House</b>
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<b>Committee</b>	10 September 2013
<b>Council</b>	24 September 2013
<b>Applicant</b>	John McKenzie & Associates
<b>Owner</b>	S Buckeridge
<b>Officer</b>	Matt Stuart – Senior Statutory Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	KI3/78-02 : DA2013/239 : M13/23894
<b>Previous Item</b>	Nil

## 1.0 Executive Summary

The purpose of this report is to consider a garage roller door which was constructed after an approval to build a carport was granted. The structure was also built closer to the front boundary than approved.

This application is referred to Council for determination as per Council delegation 6A, as the proposal includes a discretionary variation, which neighbours have objected to.

The existing streetscape supports variations of front setbacks in lieu of the TPS2 and R-Codes requirements, but not for a garage set back at 1.17m. However, a less bulky structure such as a carport is considered suitable. Accordingly the application is recommended for approval, subject to suitable modifications.

## **1.1 Recommendation to Committee**

### **Council:**

- 1. approves an application for Retrospective Additions (Garage) to a Single House at No. 78 (Lot 675) Kingsway, Nedlands, in accordance with the application and plans dated 19 June 2013, with the following conditions:**
  - a. the portion of the roller door above 1.8m in height from Ground Level, shall be replaced with visually permeable materials;**
  - b. other than the roller door, all other sides of the carport shall remain open, including the side facing the street, in accordance with the City of Nedlands Policy 6.23 Carports and Minor Structures Forward of the Primary Street Setback;**
  - c. without limiting Condition No. 2, the roller door mechanism shall be modified to be screened from view from the street;**
  - d. the vegetation in the front setback area shall be reticulated and maintained, and if in the opinion of the City it does not provide adequate screening of the carport, then replacement remedial landscaping shall be required to the satisfaction of the City;**
  - e. all street trees in the nature-strip / verge are to be retained and shall not be removed without prior written approval from the Manager Parks Services;**
  - f. all stormwater from the development, which includes permeable and non-permeable areas, shall be contained onsite by draining to soak-wells of adequate capacity to contain runoff from a 20 year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m<sup>3</sup> for every 80m<sup>2</sup> of calculated surface area of the development;**
  - g. works required to bring all unauthorised structures into conformity with this planning approval (the roller door and screening of the mechanism), shall be completed within 30 days from the date of this approval; and**
  - h. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.**

## **1.2 Strategic Plan**

KFA: Natural and Built Environment

## 2.0 Background

<b>Property address (Site)</b>	No. 78 (Lot 675) Kingsway, Nedlands	
<b>Lot area</b>	911m <sup>2</sup>	
<b>Zoning / Reserve</b>	<b>MRS</b>	Urban
	<b>TPS2</b>	Residential at R12.5

The site has history with the Council and State Administrative Tribunal (SAT), in relation to proposals to develop forward of the front setback line (9.0m). Through these matters, it has been established that Council has the discretion to vary the setback requirement.

In January 2013, the City received an application for a patio forward of the front setback line. As early advice was provided to the applicant that the City would be unlikely to approve this design, the proposal was changed to a carport in the same location, which did have the potential to be approved via the Carports Policy.

After assessing the modified proposal, and completing neighbour consultation, the carport was considered capable of approval with a front setback variation, and approved under delegated authority.

Soon after construction, the City received a complaint regarding the structure, and it was discovered that the carport was built with a garage door, and located closer to the street. Consequently, a retrospective planning application was lodged, which is the subject of this report.

The site has frontage to Kingsway (a road reserve) to the northwest, and located adjacent to Ingle Houses on all other sides, as seen in the location plan below.



Figure 1 - Location Plan

The site currently features a Single House, as depicted in site photographs (Attachment 2), as well as the relationship of the site with the surrounding built environment.

## 2.2 Legislation / Policy

- City of Nedlands Town Planning Scheme No. 2 (TPS2) (Scheme)
- Residential Design Codes of WA 2013 (R-Codes)
- Local Planning Policy 6.18 - Reduction of Front Setbacks (Front Setbacks Policy)
- Local Planning Policy 6.23 - Carports and Minor Structures Forward of the Primary Street Setback (Carports Policy)
- Council Policy – Neighbour Consultation

### 3.0 Consultation

#### 3.1 What consultation process was undertaken?

Required by legislation (Scheme / R-Codes): Yes  No   
Required by City of Nedlands policy (Neighbour Consultation): Yes  No

#### 3.2 How and when was the community consulted?

Community consultation:	02 July – 23 July 2013	3 objections
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### 4.0 Budget / Financial Implications

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

### 5.0 Risk Management

N/A

### 6.0 Discussion

The proposal involves retrospective additions of a carport with a garage door as depicted in the submitted plans (Attachment 1). The structure is within the front setback, and is a variation from that normally required.

#### 6.1 Controlled Development Area

The site is within the TPS2 cl. 5.10 Controlled Development Area (CDA). The main feature of the CDA is to prevent construction of buildings within a nominated setback area. For this site, that nominated area is the rear yard within 7.5m of the rear boundary, which is not relevant to this application. Notwithstanding this, special consideration is required, including extensive neighbour consultation.

#### 6.2 Front Setback of a Garage

TPS2 requires that garages be set back from the front boundary by a minimum of 9.0m; whereas the Carports Policy allows carports at 3.5m in certain circumstances. The City approved a carport to be constructed at 1.8m, as the site has particular features that supported a variation (as discussed elsewhere).

However, the City's Carports Policy is clear in that by definition, a garage door will exclude the structure from being a carport:

*'Carport means a roof structure designed to accommodate a motor vehicle and shall be open on all sides unless constructed adjoining a boundary fence or wall of a building.'* [Emphasis added]

It should be noted that the structure does not adjoin a boundary fence or wall of a building.

TPS2 cl. 5.3.3(b) allows variations where the majority of structures in the street are forward of the 9.0m requirement (emphasis added):

*‘On lots on one side of a section of a street which runs between two cross streets where more than half of the lots have dwellings thereon which are set back less than 9m, the Council may permit the erection or extension of a dwelling to be closer than 9m to the street boundary.’ [Emphasis added]*

An analysis of this street has established that a majority of the properties do have structures forward of the 9.0m line.

Address	Approved Setback	Closer than 9.0m?
No. 64	9.0m (garage)	No
No. 66	~10.0m (dwelling)	No
No. 68	~6.2m (carport)	Yes
No. 70	~10.2m (carport)	No
No. 72	~6.6m (dwelling)	Yes
No. 74	~10.0m (dwelling)	No
No. 76	<b>3.0m (carport)</b>	Yes
<b>No. 78 (the Site)</b>	<b>1.8m (carport)</b>	Yes
No. 80	<b>2.44m (store / carport)</b>	Yes
No. 82	<b>3.4m (carport)</b>	Yes
No. 84	Vacant lot without planning approval	No
No. 86	~7.3m (carport)	Yes
No. 88	15.3m (dwelling)	No
No. 90	10.0m (dwelling / carport)	No
No. 92	7.6m (dwelling)	Yes
No. 94	~10.5m (dwelling / carport)	No
No. 96	<b>3.5m (carport)</b>	Yes
<b>Total</b>		<b>9/17 (53%)</b>

At this point, the City’s Front Setbacks Policy provides guidance on how to assess applications meeting the aforementioned clause:

*‘Where more than half the lots on the same side of the street block have a setback less than 9m in accordance with this policy, the Council shall permit a reduced minimum front setback in accordance with the provisions of the Residential Design Codes – Acceptable Development Criteria.’ [Emphasis added]*

The ‘deemed-to-comply’ standard (previously known as ‘acceptable development’) for setbacks in this area is an average of 7.5m, and a minimum of 3.75m. Although the site has a complying average front setback of 10.5m, the structure has a complying minimum of 1.18m.

The relevant Design Principles (previously known as the Performance Criteria) are:

*5.1.2 Street setback*

*P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:*

- *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.*

*5.2.1 Setback of garages and carports*

*P1 The setting back of carports and garages to maintain clear sight lines along the street and not to detract from the streetscape or appearance of dwellings; or obstruct views of dwellings from the street and vice versa.'*

An assessment of the relevant considerations is as follows:

### **Streetscape**

The established streetscape is typified by dwellings set well back, with garages and carports structures in front. However, there are no examples of such structures closer than 2.44m (the southern neighbour), whereas this structure is at 1.17m.

Although on face value it may seem an insignificant variation (~1.2m), it is half of the neighbour's setback. If approved, a further variation of half (1.2m) should be allowed, potentially resulting in nil front setbacks throughout the whole street.

Clearly this is not a desirable built-form outcome for the street to have solid structures (or permeable ones for that matter) built on the front boundary. It is considered that this action incrementally degrades the value of the streetscape, which is not orderly and proper planning.

### **Visual Aspects**

With a solid garage door, the dwelling behind is not visible (albeit a small portion). Therefore, the proposal degrades the views and appearance of the dwelling, and views from the dwelling to the street.

### **Landscaping**

There is significant existing vegetation on the site, which acts as a screen (in part), however it does not screen the garage door.

### **Other Matters**

Open space, parking, and sightlines all comply. Visual privacy, utilities, and easements are not applicable to this site.

As a consequence of the above, it is considered that the garage door does not comply with the Design Principles, and consequently should not be approved.

However in 1998, a front fence was approved at 1.8m in height, which previously occupied the space (in part) where currently the garage door is located (see Attachment 2).

In this case, it is considered appropriate that the garage door be conditionally approved, being solid up to 1.8m in height, then visually permeable materials above (i.e. a transparent panel). In effect, this will result in a carport with an abutting fence, as discussed below.

### 6.3 Front Setback of a Carport

Notwithstanding that a garage with a solid face is not supported being this close to the street, and that a carport was previously approved in the general vicinity, a carport with open sides requires further assessment.

The site has an approved solid front fence at 1.8m in height, and significant vegetation (see Attachment 2). If the sides of the carport remain visually permeable, then it is considered appropriate for approval.

Notwithstanding this, a condition is required to maintain the vegetation, so that it remains an effective screening device.

### 6.4 Preservation of Amenity

TPS2 clause 5.5.1 (Preservation of Amenity) states:

*'Without limiting the generality of Clause 6.5 the 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.**' [Emphasis added]*

In response, the external appearance of the development is unacceptable (as discussed elsewhere), whereas the other considerations are compliant or not relevant. Accordingly, it is considered that the proposed development will adversely affect the amenity of the surrounding area, and the proposal is not recommended for approval unless suitably conditioned.

### 6.5 Consideration of Applications

TPS2 clause 6.4.1 (Consideration of Applications) states:

*'In considering any application for planning approval the **Council may have regard to the appropriateness of the proposed use and its effect on the Scheme area, and in particular the provisions of this Scheme or any By-laws in***

*force in the district and the relationship of these to the proposed development or use.’ [Emphasis added]*

In response, the development is ancillary to a Single House, which is a ‘P’ permitted use, and therefore is supported.

## 6.6 Orderly & Proper Planning

TPS2 clause 6.5.1 (Determination by Council) states:

*‘The **Council may determine** an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, **having regard to the orderly and proper planning** of the area.’ [Emphasis added]*

In response, the development does not comply with Scheme provisions, with a discretionary variation which is not supported (see 6.0 Discussion section). Accordingly, it is considered that the proposed development does not represent orderly and proper planning in accordance with clause 6.5.1, and is not supported without conditions to amend the garage door.

## 6.7 Consultation

Summary of comments received	Officer’s technical comment
Issue: Amenity The structure adversely affects amenity.	Upheld It is agreed that a garage should not be located this close to the front boundary, as it affects the amenity of the area.
Issue: Appearance from the street The roller door mechanism and the basic structure are visible from the street, which is untidy and has a semi-finished appearance.	Upheld Suitable condition recommended.
Issue: Suitable justification The development is within the CDA, and it is not good practice to allow retrospective applications in the CDA without better justification.	Noted The structure is not within the CDA setback area; and the applicant has since provided a justification.
Issue: Compliance There appears to be an increasing trend to build non-compliant structures, then seek retrospective approval. This is not reasonable, should not be encouraged, and the Council should take the hard line.	Noted This method is not encouraged, however, the City is required by law to consider retrospective applications.

<p>Issue: Precedence</p> <p>The application is non-compliant, and sets a precedent for others to ignore guidelines.</p>	
<p>Issue: Objection to any variations</p> <p>Objection in principle.</p>	<p>Noted</p>
<p>Issue: Suggested conditions</p> <ul style="list-style-type: none"> <li>• 2-year approval, then demolish; or demolish prior to the sale of the property.</li> <li>• Vegetation to be maintained to the City's satisfaction, or else demolish the structure.</li> </ul>	<p>Not Upheld / Condition</p> <ul style="list-style-type: none"> <li>• The structure is either suitable for the area and permanently approved; or it is not suitable and refused.</li> <li>• A significant consideration in approving the structure so close to the front boundary, is the vegetation acting as a screen. Therefore it is reasonable to impose such a condition.</li> </ul>
<p>Note: A full copy of all relevant consultation feedback received by the City has been given to the City's Councillors prior to the Council meeting.</p>	

Details of how consultation was conducted can be found in the 3.1 Consultation Process section.

## 6.8 Conclusion

A carport was approved with a front setback variation; however, it was built closer to the street, and with a solid garage door. The final setback is very close to the street boundary, and whilst there are examples with small setbacks in the street, there are no examples this close. This also raises concerns that if approved, further approvals may need to be granted for garages with a nil setback, which is detrimental to the streetscape, and not orderly and proper planning.

Whilst it is considered that a garage should not be approved, a carport with a visually permeable door could be approved due to its open nature, as well as screening vegetation and fences.

Accordingly, the application is recommended for approval with suitable conditions.

## 7.0 Attachments

1. Plans (Floor, Elevations & Perspective)
2. Site Photographs

**PD43.13 Adoption of Proposed Detailed Area Plan for the Old Swanbourne Hospital for the Insane - Lot 416 Heritage Lane Mt Claremont**

<b>Committee</b>	10 September 2013
<b>Council</b>	24 September 2013
<b>Applicant</b>	Peter Webb & Associates
<b>Owner</b>	Aegis Aged Care Pty Ltd Group (Aegis)
<b>Officer</b>	Elle O'Connor – Planning Officer
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	HE1/1 - M13/24457
<b>Previous Item</b>	PD15.13 – April 2013

## 1.0 Executive Summary

The purpose of this report is for Council to adopt the proposed Detailed Area Plan (DAP) for the Old Swanbourne Hospital site located at Lot 416 Heritage Lane, Mt Claremont subject to conditions.

Aegis Aged Care Pty Ltd Group (Aegis) has produced this DAP to develop the historic buildings into a residential Aged Care facility that will accommodate 80 residents. It also proposes to utilise Montgomery Hall for social events such as weddings, theatre productions, dance performances, exhibitions, conferences and meetings.

The proposed hours of operation for Montgomery Hall are 9.00am to 11.00pm Monday to Thursday, and 9.00am to 1.00am Friday to Saturday. 100 car parking bays are proposed on-site, located around the perimeter of the lot with vehicle access via Heritage Lane.

Council resolved to proceed with advertising of this DAP at the April 2013 committee and council meetings. Public consultation commenced 12 July 2013 and submissions closed 16 August 2013.

Seventy-seven (77) submissions were received during the consultation period and the following issues were raised by residents in the area:

1. Appropriateness of the function centre use for Montgomery Hall;
2. Hours of operation to 1:00am Friday to Saturday; and
3. Number and location of parking bays.

At the City's Open Day for the proposal, numerous enquiries were made regarding the amount of proposed public access through the site and concerns that there would be limitation on this access.

## **1.1 Recommendation to Committee**

**Council:**

- 1. approves the proposed Detailed Area Plan for the Old Swanbourne Hospital site at Lot 416 Heritage Lane Mt Claremont, subject to the following conditions:**
  - a. the capacity of Montgomery hall shall be limited to 150 persons at all times;**
  - b. the number of times that the venue can be used on a Friday or Saturday evening for weddings/social events per annum is to be limited as a condition of planning approval;**
  - c. the proposed hours of operation for Montgomery Hall shall be limited to 9.00am to 11.00pm Monday to Thursday, and 9.00am to 12 midnight Friday and Saturday;**
  - d. the alignment of the pedestrian and cycling access path being relocated to the front end of the proposed carparking bays to the satisfaction of the City;**
  - e. buffer landscaping being provided along the common boundaries between the subject site and No 2 (Lot 520) The Marlows, No 10 (Lot 167) Heritage Lane and No 18 (Strata Lots 1-27) St John's Boulevard to the satisfaction of the City;**
  - f. the landscape plan for the subject site shall provide for the pathways that link the existing residential lots on Dorset Cove and Barrow Court to the proposed pedestrian/cycle path on the subject site;**
  - g. pedestrian and cycling access to be provided across the site by way of an easement for public access or the creation of a Public Access Way (PAW) to allow the general public to move through the site; and**
- 2. instructs Administration to forward the limited Outline Development Plan to the Western Australian Planning Commission for final adoption.**

## **1.2 Strategic Community Plan**

KFA: Natural and Built Environment

The proposed DAP is associated and will directly affect the amenity of the natural and built environment of the locality.

## 2.0 Background

Property address	Lot 416 Heritage Lane Mt Claremont
Lot area	1.6789ha
Zoning:	
Town Planning Scheme No. 2	Development Zone

### 2.1 Key Relevant Previous Council Decisions

Council resolved to proceed with advertising of this Detailed Area Plan at the April 2013 committee and council meetings (PD15.13).

### 2.2 Legislation / Policy

Clause 5.15 of Town Planning Scheme No. 2 (TPS2) specifically provides for the Old Swanbourne Hospital site. It stipulates permitted uses for the site, the need for an ODP (Outline Development Plan) and Local Planning Policy and the preconditions for subdivision and development approval.

The ODP adopted by the WAPC discusses the requirement for future Detailed Area Plans (DAPs) for the site as follows:

*“The ODP contains general development provisions that are intended to inform a set of Detailed Area Plans (DAPs) which are to be created for three (3) character areas; the Northern Subdivision Wing, the Southern Subdivision Wing and the Heritage Buildings”.*

As the ODP requires that a DAP for the Heritage Building lot has to be prepared and approved to the satisfaction of the WAPC on the advice of the City and the Heritage Council of Western Australia (HCWA), the approval process of Clause 3.8 of the TPS2 applies.

As the advertising period has concluded, Council is required to consider the DAP in the light of the submissions received by residents (Clause 3.8.6).

If Council agrees to adopt the proposal (in its original or revised form), Council forwards the proposal to the WAPC together with the submissions (Clause 3.8.7).

No appeal rights exist should Council decide not to proceed with the proposed ODP.

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

Consultation was undertaken in accordance with Clauses 3.8.4 and 3.8.5 of TPS2.

Required by legislation:

Yes

No

Required by City of Nedlands policy:

Yes

No

### **3.2 How and when was the community consulted?**

The DAP was advertised in the Post Newspaper on 12 July, 19 July and 26 July 2013. The proposal was then open for comment for a further 21 days, until 16 August 2013.

An open day was also held on Wednesday 31 July 2013 from 4.00 pm to 8.00 pm at the Mt Claremont Community Centre. Approximately 30 residents attended to discuss the proposal with the City's planning staff.

Sixty six (66) objections and eleven (11) support submissions were received during the consultation period.

### **4.0 Budget / Financial Implications**

Not Applicable.

### **5.0 Risk management**

By failing to progress this proposal Council misses the opportunity to work towards an outcome to improve the amenity of the area.

### **6.0 Discussion**

#### **6.1 Consultation**

The following issues were raised by residents in the area:

1. Appropriateness of the function centre use for Montgomery Hall and hours of operation to 1:00am;
2. Number and location of parking bays; and
3. Securing pedestrian and cycle access for the public across the site.

#### **Montgomery Hall Use & Hours of Operation**

Residents in the area have raised concerns regarding the use of Montgomery Hall for social events, wedding receptions in particular, and the proposed hours of operation until 1am.

Another concern was the likelihood that the venue would be licensed to cater for such events and the resulting disorderly and loud behaviour that will negatively affect the amenity of the surrounding residential area.

The issue of music and noise associated with such events has also been raised as disrupting the amenity of the residential area, especially on Fridays and Saturdays when functions are able to operate until 1.00am.

## **Car Parking**

The following issues have been raised in relation to the amount and location of parking:

- Some residents living in the Aged Care Facility (ACF) may have vehicles and require permanent carbays. Taking this into account, in addition to staff parking and 150 guests at a function, 100 car bays may not be sufficient;
- The forward gear positioning of carbays located around the perimeter of the site will cause headlights to shine into the adjoining properties at night time;
- The proposed pedestrian/cycling access way is located behind carbays, creating a potential safety hazard for pedestrians and cyclists; and
- The multiple uses proposed on site will create increased traffic congestion on Heritage Lane, with potential overflow traffic and parking onto local roads.

## **Public Access**

At the City's Open Day there were also numerous enquiries regarding the amount of proposed public access through the site and concerns that there would be limitation on this access.

## **6.2 Applicant's Comments**

### **Montgomery Hall Use & Hours of Operation**

In regards to the compatibility of the proposed uses of Montgomery Hall with the Aged Care Facility (ACF) in the remainder of the buildings, the applicant has commented that the principle to determine suitability of uses is based on ensuring that the aged care residents in the ACF do not suffer from any undue impacts which might be created by uses associated with the Hall.

The applicant further advised that:

- One quarter of the uses associated with Montgomery Hall will be by the residents of the ACF and other Aegis facilities who might visit the Hall for the purposes of attending school choirs, small concerts and functions and have interactions with children who attend through childcare programs;
- The hall would also be used for a range of uses as indicated in the DAP such as theatre productions, dance performances, exhibitions, conferences and meetings;
- The hall would also be made available for use by students and staff of the adjoining John XXIII College;
- At all times a compatible synergy between Montgomery Hall and the remainder of the buildings will be retained; and

- The property owner will undertake comprehensive noise amelioration/insulation of Montgomery Hall and will be required to meet the *Environmental Protection (Noise) Regulations 1997*.

In relation to the query regarding liquor licensing, the applicant advised that:

- As a function centre application would be made for a 'Special Facility Licence';
- Under the Liquor Control Act 1988 there are numerous mechanisms to protect the amenity of surrounding residential properties which requires liquor licence holders to accept responsibility to ensure that anticipated problems associated with patrons of a licensed facility are managed;
- Security staff will be engaged to ensure appropriate behaviour of patrons while they are on the property. This includes both inside of Montgomery Hall and on the grounds as they are leaving the facility to ensure that the residential amenity of nearby residences, which includes the property owners' own aged care residents are not compromised by the activities at the Hall; and
- That a limitation on the use of Montgomery Hall until midnight can be entertained (with a reduction from 1:00am as was previously proposed) and limiting the serving of alcohol to 11.00pm, to ensure guests are removed from the Hall by midnight.

## **Car Parking**

To ameliorate the impact from parking areas located in close proximity to adjoining residential properties it is proposed that:

- Car parking bays be sloped down in order for headlight glare to be directed downwards, and not directly into residential properties; and
- Dense landscaping will be planted between parking bays and the common boundary with the adjoining residential properties, to assist with the reduction of headlight glare.

In relation to carparking numbers the following advice was provided:

- The operator (Aegis) believes that there is no need for aged care residents to have their own vehicles and car bays based on statistics from other Aegis facilities. Out of the 2300 Aegis residents in all of the Aegis facilities in WA, five (5) residents own vehicles, and only three (3) of those actually drive. It is therefore considered that there is no demand for this, and as such no need to provide bays for the residents themselves at Montgomery House;
- There will be sufficient car parking opportunities (100 bays) on the site and no car parking associated with this venue will be allowed on nearby streets (assisted by Council signage);

- Traffic congestion will not be an issue as the limited number of vehicles entering the site at all times will only do so via Heritage Lane which itself is ‘buffered’ from nearby residences due to the residences being higher than the access road;
- Submissions raising the issue of congestion associated with school pick-ups and drop-offs will no longer apply once drop-off of school children on land privately owned by Aegis will not be permitted, and the new drop off zone that is proposed to be constructed in front of the school has been completed; and
- Access to Montgomery House from other streets including Abbey Gardens, St John’s Wood Boulevard and Charles Lane will not occur, and access to the site will be limited to Heritage Lane only, as suggested by the ODP.

### **Public Access**

While the detailed area plan provides a pedestrian/cycle way that allows access through the site, the property owner has advised that:

- The proposed pathways linking to existing gatehouses to residential lots on Dorset Cove and Barrow Court be removed and replaced with dense screening landscaping to assist in buffering vehicle noise and headlight glare; and
- While the property owner has no objection to enabling the public access to the site, it is resolute in that the company does not feel it at all appropriate to formalise this with formal legal access as this could make control of any antisocial behaviour (or any other nuisance) difficult if not impossible to manage.

## **6.3 Officer’s Comments**

### **Montgomery Hall Use & Hours of Operation**

Under the ODP, Montgomery Hall may be used for private community uses such as meeting rooms, a cafe, museum and gymnastics. Any other proposed use for the hall must be considered in the context of other uses proposed for the site (Aged Care) and with regard to parking, hours of operation and noise levels.

The day time and weekday evening uses of the hall is acceptable and can be supported with noise matters being addressed as part of the planning approval process.

The proposed function centre use for social events and weddings is not listed as a permitted use under the ODP. In addition to this, it is considered that the proposed hours of operation until 1am is excessive in the context of the proposed aged care use and residential locality.

Due to this, it is recommended that:

- The number of times that the venue can be used on a Friday or Saturday evening for weddings/social events per annum is limited as a condition of planning approval; and
- No function can operate beyond 12 midnight.

The proposed area plan does not address hours of operation on Sundays, which is a matter that can be determined at the development application stage.

### **Car Parking**

Based on current car parking requirements it is considered that the proposed parking provisions of 100 car parking bays across the site for staff and visitor use will adequately meet the needs of the proposed uses on the following basis:

- The maximum number of residents at the aged care facility is 80 persons, with the maximum number of staff in attendance on the site being 28. The minimum parking requirement for the aged care facility under TPS2 therefore would be 20 bays;
- Given that the halls capacity is limited to 150 persons, with likely parking requirement for Hall under TPS2 would be approximately 75 bays; and
- As the busiest times for Montgomery House likely to be in the mornings and Montgomery Hall in the evening the peak demand for parking for each use is likely to be reciprocal.

It is agreed that the proposed pedestrian/cycling access way, located behind the proposed car bays, creates a potential safety hazard for pedestrians and cyclists. In light of this, it is recommended that the pedestrian/cycling access way be re-located in front of the car bays (around the perimeter of the site) which in turn will create an additional amenity buffer for adjoining residents.

### **Public Access**

The ODP for the Old Swanbourne site requires that pedestrian and cyclist access will be provided across the precinct generally along the routes shown on the ODP, and that the pathways will be created via an easement for public access or the creation of a Public Access Way (PAW). The ODP also requires that the detailed design and placement of the shared access paths be addressed as part of a detailed landscaping plan required as part of the DAP for the Heritage Buildings Area.

The proposed DAP currently proposes public access through the site, however as discussed in the applicant's comments, Aegis does not feel it at all appropriate to formalise this with legal access. It is considered by both administration and the WAPC that this is not in keeping with the requirements of the ODP, and is therefore unacceptable.

It is considered that a more formal access arrangement, as envisaged by the ODP be put in place to ensure the public are able to traverse the site in perpetuity.

## **6.4 Conclusion**

Overall it is considered that the proposal for the Old Swanbourne Hospital is a balanced response to the constraints and opportunities provided by the site and the amenity of the surrounding locality. It is considered to be an acceptable proposal and recommend that it be approved for adoption by the WAPC subject to conditions.

## **7.0 Attachments**

1. Detailed Area Plan
2. Landscape Concept Plan
3. Applicant's Comments