**AGENDA**

**Council Meeting Agenda Forum**

**11 October 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday 11 October 2022 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm.

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Bill Parker

Chief Executive Officer

6 October 2022

**Information**

Council Meeting Agenda Forum are run in accordance with the City of Nedlands Governance Framework Policy. If you have any questions in relation to the agenda, procedural matters, addressing the Council or attending these meetings please contact the Executive Officer on 9273 3500 or [council@nedlands.wa.gov.au](mailto:council@nedlands.wa.gov.au)

**Public Question Time**

Public Questions are dealt with at the Ordinary Council Meeting.

**Deputations**

Members of the public may make presentations or ask questions on items contained within the agenda. Presentations are limited to 5 minutes. Members of the public must complete the online registration form available on the City’s website: [Public Address Registration Form | City of Nedlands](https://www.nedlands.wa.gov.au/public-address-registration-form)

**Disclaimer**

Members of the public who attend Council Meetings Agenda Forum should not act immediately on anything they hear at the meetings, without first seeking clarification of Council’s position. For example, by reference to the confirmed Minutes of Council meeting. Members of the public are also advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

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# Declaration of Opening

The Presiding Member will declare the meeting open at 6.00 pm and will draw attention to the disclaimer on page 2.

# Present and Apologies and Leave of Absence (Previously Approved)

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** None as at distribution of this agenda.

# Public Question Time

Public questions will be dealt with at the Ordinary Council Meeting.

# Deputations

Deputations by members of the public who have completed Public Address Registration Forms.

# Requests for Leave of Absence

Any requests from Council Members for leave of absence will be dealt with at the Ordinary Council Meeting.

# Petitions

Petitions will be dealt with at the Ordinary Council Meeting.

# Disclosures of Financial Interest

The Presiding Member to remind Council Members and Staff of the requirements of Section 5.65 of the Local Government Act to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

# Disclosures of Interests Affecting Impartiality

The Presiding Member to remind Council Members and Staff of the requirements of Council’s Code of Conduct in accordance with Section 5.103 of the Local Government Act.

Council Members and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x ….. I disclose that I have an association with the applicant (or person seeking a decision). This association is ….. (nature of the interest).

As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

# Declarations by Members That They Have Not Given Due Consideration to Papers

This item will be dealt with at the Ordinary Council Meeting.

# Confirmation of Minutes

This item will be dealt with at the Ordinary Council Meeting.

# Announcements of the Presiding Member without discussion.

This item will be dealt with at the Ordinary Council Meeting.

# Members Announcements without discussion.

This item will be dealt with at the Ordinary Council Meeting.

# Matters for Which the Meeting May Be Closed

For the convenience of the public, the following Confidential items are identified to be discussed behind closed doors, as the last items of business at this meeting.

Nil.

# En Bloc Items

This item will be dealt with at the Ordinary Council Meeting.

# Minutes of Council Committees and Administrative Liaison Working Groups

# Minutes of the following Committee Meetings (in date order) are to be received:

This is an information item only to receive the minutes of the various meetings held by the Council appointed Committees (N.B. This should not be confused with Council resolving to accept the recommendations of a particular Committee. Committee recommendations that require Council’s approval should be presented to Council for resolution via the relevant departmental reports).

This item will be dealt with at the Ordinary Council Meeting.

# Divisional Reports - Planning & Development Report No’s PD66.10.22 to PD71.10.22

# PD66.10.22 Consideration of Development Application – Signage at 47 Aberdare Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 25 October 2022 |
| **Applicant** | RJ.S & CY Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans |

**Purpose**

The purpose of this report is for Council to consider a retrospective development application for a temporary hoarding sign at 47 Aberdare Road, Nedlands.

**Recommendation**

**That Council in accordance with Clause 68(2)(c) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council refuses the development application in accordance with the plans date stamped 11 August 2022 for Signage at 47 Aberdare Road, Nedlands, for the following reasons:**

1. **The sign is inconsistent with the objectives of the City’s Local Planning Policy – Signs as it is excessive in size and will have an adverse impact on the amenity and character of the residential neighbourhood, and;**

1. **The sign is inconsistent with the aims of the City’s Local Planning Scheme No. 3 as it does not enhance or protect the local character and amenity.**

**Voting Requirement**

Simple Majority.

This report is of a quasi-judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban / Other Regional Road |
| **Local Planning Scheme Zone** | Residential / Other Regional Road |
| **R-Code** | R60 |
| **Land area** | 1045m2 |
| **Land Use** | Residential – Multiple Dwellings |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 47 Aberdare Road, Nedlands. The lot is 1,045m2 in area and is relatively flat, with a fall in ground level of approximately 0.5m from north to south. The site is burdened by a Metropolitan Region Scheme (MRS) Other Regional Road (ORR) reserve on its northern boundary, which is 4m in width and encompasses 92m2 of land.

The site, excluding the MRS reserve, is zoned Residential by LPS3 with a residential density coding of R60 and has its sole street frontage to Aberdare Road. Directly abutting the site to the south are residential lots coded R10, across Aberdare Road the lots are coded R20. The site is currently vacant with the exception of the unapproved signage for which retrospective development approval is being sought.

**Background**

On 10 May 2022, the Metro Inner-North Joint Development Assessment Panel approved a development application (DAP/22/02160) at 47 Aberdare Road for a three storey building comprising 12 multiple dwellings.

The City became aware that a sign advertising the approved development had been erected on site without development approval. On 12 July 2022, in accordance with s. 214(3) of the *Planning and Development Act 2005,* the City issued a direction to either remove the hoarding sign within 60 days or lodge an application for retrospective development approval within 30 days.

30 days after the direction was issued, a development application was subsequently lodged.

**Application Details**

The application seeks development approval for a hoarding sign at 47 Aberdare Road, Nedlands. The sign is 7m in width and 2.6m in height including the support posts. The sign displays promotional material relating to the approved development application. The application is retrospective as the sign has already been erected on site.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed in accordance with the Scheme, the City’s Signs Local Planning Policy (Signs LPP), and the matters to be considered of clause 67(2) of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations). Because the sign is located entirely within the Other Regional Road reservation, the City’s regulatory framework does not hold much authority but has nonetheless been used as a guide.

**Local Planning Scheme No. 3**

The sign is located wholly within the Road Reserve and is not zoned by the Scheme. In the absence of any zone objective, the proposal has been assessed against the aims of LPS3. The proposal is inconsistent with the following aim of LPS3:

1. Protect and enhance local character and amenity

In relation to local character and amenity, the sign is located in a predominantly residential area. Large advertising signage is not typical or expected residential development and is not compatible with the desired streetscape. The visual impact of the sign may present as a nuisance to surrounding residential development. In this regard the proposal is not considered to protect nor enhance local amenity.

**Signs Local Planning Policy (Signs LPP)**

The proposal is defined as a ‘hoarding sign’ as per the City’s Signs LPP. The Signs LPP states that hoarding signs are permitted, subject to development provisions, on all zoned land except the Residential zone. The proposed sign is located on land which is not zoned by the Scheme.

In the absence of development controls for hoarding signs on reserved land, the development is to be assessed against the objectives of the Signs LPP. The sign does not meet the following objective of the policy:

3.1 To ensure that signs do not adversely impact on the amenity of the surrounding area.

In relation to 3.1, the sign is considered to adversely impact the amenity of the surrounding residential area due to its size. The sign is 7m in width and obscures 30% of the lot frontage. At 2.6m, the sign’s height is considered excessive.

**Consultation**

The development application was not advertised to the community. Comment was not sought from adjoining owners and occupiers as the development is not considered appropriate for the locality and should be removed.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

Because the development is located entirely within an Other Regional Road reservation and on land that is not zoned by LPS3, Council is requested to make a decision in accordance with MRS [delegation DEL2022/03](https://www.wa.gov.au/system/files/2022-01/WAPC_DEL-2022-03-Powers-of-Local-Governments_44082.pdf) (Delegation).

If Council wishes to approve the development, the proposal will first have to be referred to the Department of Planning, Lands and Heritage (DPLH) for transport planning related comments in accordance with section B of the Delegation. For this reason, Council may resolve to defer the application to allow for referral of the development application or refuse the development.

**Decision Implications**

If Council resolves to refuse the proposal, the applicant will be directed to remove the development and restore the land as nearly as practicable to its condition immediately before the development started. As a direction to remove the development has already been issued, the applicant will have 30 days to remove the sign. The applicant will have a right of review to the State Administrative Tribunal (SAT).

If Council wishes to approve the development, the application will have to be deferred to seek DPLH referral comments. Subject to the referral comments, the development application can be approved by Council at the next available Council Meeting in accordance with the Council Resolution made on 27 July 2021 which requires hoarding signs 5m2 or greater be presented to Council for determination. When approval is granted, the development can proceed after receiving a Building Permit and necessary clearances. Should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the SAT.

**Conclusion**

The application for temporary signage has been presented for Council consideration as the sign exceeds 5m2. The proposal is inconsistent with the aims of LPS3 and the Signs LPP. It is recommended that Council refuse the application.

**Further Information**

Nil.

# PD67.10.22 Consideration of Development Application –Single House at 24 Rockton Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | Black Pearl Homes |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective 4. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for a single house at 24 Rockton Road, Nedlands.

**Recommendation**

**That Council in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 30 September 2022 for a Single House at 24 Rockton Road, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 30 September 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
4. **Face brick;**
5. **Painted render;**
6. **Painted brickwork; or**
7. **Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the privacy screens to the Kitchen, Master Bedroom, Bed 2 and Bed 3 as annotated in red on the approved plans shall be screened in accordance with the Residential Design Codes by either;**
2. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
3. **fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
4. **a minimum sill height of 1.6 metres above the finished floor level; or**
5. **an alternative method of screening approved by the City of Nedlands.**

**The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a demolition permit and a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
2. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Voting Requirement**

Simple Majority.

This report is of a quasi-judicial nature as it is a matter that directly affects a person’s rights and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R12.5 |
| **Land area** | 461m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 24 Rockton Road, Nedlands. The site is on the eastern side of Rockton Road opposite the Western Power Nedlands Substation. The lot is rectangular with a 10m frontage and an area of 461m2. The land is sloping, with a 2m fall from west to east. The lot is currently vacant.

The lot has density coding of R12.5. The site originally featured 2 grouped dwellings in a ‘built strata’ scheme configuration. The grouped dwellings were demolished in approximately July 2021 and the site was converted to a survey strata scheme, resulting in two lots (24 and 26 Rockton Road) with a density coding of R12.5. In accordance with State Planning Policy 7.3: Residential Design Codes (R-Codes), the minimum size for an R12.5 lot is 700m2. The lot is undersized for the R12.5 code, being 461m2. This size lot is more typical of the R20 code.

**Application Details**

The application seeks development approval for the construction of a two storey single house at 24 Rockton Road, Nedlands. During the community consultation period, a set of preliminary development plans for a two storey single house on the southern adjoining lot at 26 Rockton Road were provided by the neighbouring landowner. The assessment has considered these preliminary plans where appropriate.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the R-Codes, Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies 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. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy 7.3 - Residential Design Codes – Volume 1**

The R-Codes apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions or via a design principle assessment pathway.

Given the lot size is less than what is provided for R12.5 in the R-Codes, a number of design principle assessment are required. The proposed development is seeking a design principle assessment pathway for street setback, lot boundary setback, landscaping, site works, visual privacy and solar access. As required by the R-Codes, Council, in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.1.2 – Street setback**

The dwelling proposes a minimum primary street setback of 7m. The design principles require the development to be consistent with and contribute to the established streetscape and not be visually imposing from the street. The application meets the design principles as:

* The proposal satisfies policy measures 4.1.1 of the Residential Development Local Planning Policy as 54% of the houses on the eastern side of Rockton Road have a setback of less than 9m with an average of 7.5m. The proposed setback of 7.0m on the ground floor and 7.6m on the upper floor is largely consistent with the established streetscape.
* As per policy measure 4.1.2 of the Residential Development LPP, a reduced street setback can be considered if the lot is considerably undersized for its density coding. If the density coding of the lot were commensurate with its size, the proposed street setback would be deemed-to-comply.
* The building uses design features that minimise its impact on the street. The street façade includes an entry archway on the ground floor and articulation on the upper floor to create visual interest.
* The proposal maintains deemed-to-comply outdoor living areas and open space.

**Clause 5.1.3 – Lot boundary setbacks**

The following lot boundary setbacks seek a design principle assessment:

* The northern wall on the ground floor proposes a minimum 1.0m setback
* The northern wall on the upper floor proposes a minimum 1.8m setback
* A boundary wall is proposed to the southern lot boundary.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation, minimising overlooking and allowing effective use of space for privacy and outdoor living areas.

**North**

The northern setbacks achieve the design principles as:

* The ground floor elevation is articulated with setbacks from 1.0m to 4.0m. The taller portions of the wall are broken up with varying materials, such as cement render and metal cladding. Any bulk from the upper floor wall is unlikely to be perceived by the adjoining property as there is only one major opening on the ground floor and the proposed wall is further setback where it is adjacent to the neighbouring balcony (see Figure 1 below).

A picture containing grass, sky, outdoor, house

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Figure 1: the house on the adjoining northern lot at 22 Rockton Road.

* Ventilation is maintained by the varied setbacks on the ground floor and the 1.8m setback on the upper floor.
* The wall is to the northern boundary so does not result in overshadowing.
* Overlooking is minimised as the major openings on the ground floor will be screened by a dividing fence or the existing garage wall towards the rear of the lot on the adjoining site. There are no major openings on the upper floor.

**South (boundary wall)**

The application proposes a garage built up to the southern boundary. The development achieves the design principles as:

* The location of the boundary wall to the south improves solar access to the northern portion of the house.
* The boundary wall allows for the provision of a double car garage and an adequately sized study room.
* Boundary walls are a feature of the established streetscape. Several lots on Rockton Road have boundary walls visible from the street, including 18, 16 and 12 Rockton Road.
* The boundary wall is a typical size for a garage, being 7.2m in length and 3.2m in height. If the residential density coding of the lot were commensurate with its size, this aspect of the proposal would be deemed-to-comply.

**Clause 5.2.1 – Setback of garages**

The garage is setback 7.7m from Rockton Road. The garage satisfies the design principles as the setback does not interfere with sight lines along the street and footpath. The proposal achieves the deemed-to-comply vehicular sightlines. The garage will not be the dominant visual feature from the street as the garage is setback 0.7m behind the study window on the ground floor. The upper floor features architectural projections forward of the garage door to create visual interest.

**Clause 5.3.2 - Landscaping**

The application proposes 37% landscaping within the front setback area.

The design principles provide for retention or planting of vegetation and a positive contribution to the streetscape. The proposed landscaping meets the design principles as:

* The front setback area features an entry path of mulch and vegetation separated by steppingstones. This entry path has been discounted from landscaped area but will practically contribute to the sense of greenery and permeability in the front setback area.
* The site includes 30m2 of landscaped area behind the street setback area along the side and at the rear of the house. This provides residents with landscape features that offset the hardscaped surface within the front setback area.
* The design proposes a tree within the front setback area which further contributes to a sense of greenery and creates visual interest when viewed from the street. The proposal also includes two new trees within the site: one to be planted in a small courtyard along the southern boundary and one to be planted in the landscaping at the rear.

**Clause 5.3.7 – Site Works**

The development proposes retaining walls to a maximum height of 0.6m along the northern and southern lot boundaries. The site slopes 2m from the west to the east. The proposal responds to this slope as the house features three different finished floor levels that step down with the natural slope of the land. The retaining meets the design principles as it responds to the natural slope of the site, only exceeds a height of 0.5m for short lengths and does not create undue building bulk or over-height walls.

**Clause 5.4.1 – Visual privacy**

The following major openings on the ground floor are seeking a design principle assessment:

* Kitchen window overlooking the southern lot.
* Master Bedroom window overlooking the northern lot.
* Living Room window overlooking the northern lot.

The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings and maximum visual privacy to side and rear boundaries. The application meets the design principles as:

* All relevant openings are on the ground floor and a standard height dividing fence will partially or entirely obscure views and ensure privacy for adjoining landowners.
* The cone of vision from the Kitchen window is reduced by a fixed privacy screen. Further, the preliminary plan provided by the landowner of 26 Rockton Road shows that any overlooking from the Kitchen will only impact a wall without major openings.
* The cone of vision from the Master Bedroom window does not impact outdoor living areas or major openings as it falls almost entirely over the existing boundary wall on the adjacent northern lot.
* The view from the Living Room window will be obscured by proposed landscaping. Any overlooking will be further minimised as the window is perpendicular to the lot boundary, so overlooking is oblique rather than direct.

**Clause 5.4.2 – Solar access for adjoining sites**

The development proposes 37% shadow over the lot at 26 Rockton Road to the south.

The design principles for solar access consider effective solar access for the development and the impact of solar access for neighbouring properties by considering existing outdoor living areas, major openings to habitable rooms and solar collectors on adjoining sites.

Consideration must be given to the lot constraints. The relatively small lot size, lot width and east-west orientation makes it difficult for a two-storey house to achieve deemed-to-comply solar access without compromising liability and amenity for residents. The application meets the design principles as:

* Based on the preliminary plan provided by 26 Rockton Road, the shadow from the proposal will fall over 16% of the uncovered portion of the outdoor living area, leaving approximately 80m2 of the uncovered outdoor living unaffected by overshadowing. The shadow will fall over less than half of the alfresco area and will not affect any north facing major openings.
* Due to the two storey height, the shadow from the proposal will not affect any future roof mounted solar collectors.
* The shadow that falls over the adjoining outdoor living area is minimised as it is cast by a single storey wall.
* It is acknowledged that a single storey house would result in less shadow to the south. However, altering the design to a single storey house in an attempt to meet the deemed-to-comply provision for overshadowing would likely result in a building that occupies a substantial portion of the site with less corresponding open space and landscaping potential. Whilst a two-storey dwelling creates greater overshadowing, it provides a better overall level of amenity for residents.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 29 adjoining owners and occupiers. The application was advertised for a period of 14 days, from 20 July 2022 to 2 August 2022. At the close of the advertising period, three objections were received.

The following is a summary of the concerns/comments raised and the response and action taken in relation to each issue:

1. The street setback should be 9.0m.

The proposed setback is supported as the development proposal is consistent with the immediate development context and is unlikely to negatively impact the amenity of adjoining landowners or the streetscape. See Clause 5.1.2 assessment above.

1. Stormwater and pool water should be contained on site and drained properly.

A condition of development approval is recommended that requires all stormwater be contained on site. The pool will have to comply with applicable Building and Environmental Health regulations.

1. Windows and outdoor areas on the ground and upper floors will overlook adjoining properties.

All windows from the upper floor satisfy the deemed-to-comply provisions in relation to visual privacy. The proposed overlooking is supported from ground floor openings as they achieve the design principles of clause 5.4.1 Visual privacy as per the assessment above.

1. Lot boundary setbacks proposed to the southern boundary will adversely impact the amenity of adjoining occupants.

All lot boundary setbacks to the southern lot satisfy the deemed-to-comply provisions, except for the boundary wall. The proposed boundary wall is considered to achieve the design principles. See Clause 5.1.3 assessment above.

1. Overshadowing should achieve the deemed-to-comply provisions.

The development proposal is seeking a design principle assessment for the solar access to the adjoining southern site. The overshadowing is supported as the shadow reasonably avoids the indicative outdoor living area and major openings of the adjoining lot. See Clause 5.4.2 assessment above.

1. Dividing fencing should be full height along the entire length of the northern lot boundary.

As indicated on the amended plans, a dividing fence along the northern boundary will be erected subject to discussion with the neighbouring landowner. Dividing fencing is a civil matter between two landowners and is governed by the Dividing Fences Act 1961.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application for a single house has been presented for Council consideration due to objections being received. The proposal meets the design principles of the R-Codes and as such will not have an adverse impact on the amenity of adjoining lots. The proposal is considered consistent with the immediate locality and established streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions contained in the recommendation.

**Further Information**

Nil.

# PD68.10.22 Amendments to Local Planning Policy – Residential Development

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 25 October 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Draft LPP – Residential Development |

**Purpose**

Amendments to the Local Planning Policy – Residential Development (the Policy) are being presented to Council for adoption for the purpose of community consultation. The proposed changes simplify and rationalise the criteria and provide updates to improve planning outcomes.

**Recommendation**

**That Council:**

1. **adopts the draft amendments to the Local Planning Policy – Residential Development for advertising in accordance with Clause 4 of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015; and**
2. **notes that the advertising period will be for a minimum of 28 days.**

**Voting Requirement**

Simple Majority

**Background**

The current City of Nedlands Residential Development Policy was adopted on 17 December 2019. The Policy applies to all development assessed under Volume 1 of the Residential Design Codes (R-Codes). Some of the Policy provisions supersede the R-Codes, while other provisions provide guidance for assessment. Where a proposal does not meet the deemed-to-comply criteria within the policy, it is assessed against any design guidance in the Policy and the design principles of the R-Codes.

The Policy has been operative for about three years and is in need of a general review and update. Council also passed a resolution regarding additional solar access protections and building height that are addressed below. In updating the policy, the format has been amended to reflect the format of the draft precinct policies for Hollywood-Hampden, Waratah and Broadway. Provisions have also been re-ordered to match the order that they appear in the R-Codes.

The proposed Residential Development Policy will initially apply to all single houses and grouped dwellings throughout the City. However, any specific local planning policy will supersede the draft Policy. The City is currently advertising specific local precinct planning policies for Waratah, Hollywood-Hampden, and Broadway precincts, and is in the process of preparing a local planning policy for residential areas north and south of Stirling Highway. Once these policies are adopted, the draft Residential Development Policy would then only impact properties outside of these areas.

The Policy may have to be reviewed once the WA R-Codes Medium Density Policy comes into effect (expected in 2023) to ensure consistency for single houses and grouped dwellings on lots coded R30 and above that fall outside the precinct areas.

**Discussion**

Amendments to the Policy have been made in order to improve planning outcomes and fix issues that have been identified in the nearly three years since the Policy was first adopted. The changes are identified below.

**Major amendments**

1. **Height**

Council resolved to eliminate the existing height controls within the current Policy and revert to the default Table B controls of the R-Codes. A comparison between the existing height settings of the Policy and the R-Codes are shown in the below table:

|  |  |  |
| --- | --- | --- |
| **Element** | **Existing Policy Height** | **R-Codes Volume 1 Height** |
| Wall height (roof above) | 8.5m | 7m |
| Wall height (gable, skillion and concealed roof) | 8.5m | 8m |
| Roof height | 10m | 10m |

**Table 1**: Policy versus R-Codes heights

Should Council adopt the height settings of the R-Codes, it would reduce the deemed-to-comply wall heights across the City. It is recommended that the height settings remain as they are in the Policy, with the inclusion of additional design guidance provided for the assessment of building height that exceeds the Policy criteria. This is recommended for the following reasons:

* The City of Nedlands height controls were originally enshrined in Council’s former Town Planning Scheme No. 2. Dwellings have been developed to this greater deemed-to-comply allowance for several decades, with the design response well enshrined throughout the City.
* The areas of Swanbourne, Dalkeith and the dunes areas around Mt Claremont, among other places, tend to have larger houses owing to the steep slope of the natural ground level of the sites (particularly near the river and the ocean) and the general expectations of residents. Reducing the current deemed-to-comply heights to meet the R-Codes would disadvantage newer houses and additions to existing houses compared to any immediate neighbours. The deemed-to-comply height reduction would also impact any house on a lot with steeply sloping ground level, particularly those near the Swan River and the ocean. Any reduction in the current heights is likely to result in more houses seeking a design principles assessment.
* The City of Nedlands traditionally has higher quality development with better amenity than the R-Codes allows. A key measure of indoor liveability is floor to ceiling heights. Larger floor to ceiling heights make house interiors seem more spacious, and allow for better sunlight access and ventilation through the use of larger windows. Retaining the increased wall heights will continue to encourage high quality housing.

Given the longstanding nature of the height controls in place in Nedlands, their general acceptance by the community, and the improved internal amenity outcomes, removal of the local planning policy height provisions is not recommended.

However, it is recommended that further controls be provided to ensure greater protection for solar access to adjoining properties.

1. **Solar access**

An additional deemed-to-comply requirement and associated design guidance is proposed to protect existing solar collectors on adjoining lots. The deemed-to-comply provision is adopted from the draft Medium Density Codes and provides for a minimum four hours of sunlight to reach existing solar panels on adjoining lots during midwinter. This additional provision applies regardless of whether the new house achieves the deemed-to-comply threshold for overshadowing of adjoining lots.

Additional guidance has been adopted from the State of Victoria Planning Practice Note 88 to help consider whether solar panel location is reasonable and appropriate for purposes of a design principles assessment. For instance, consideration can be given to whether the panels are located high on the roof, whether the adjoining building is set back appropriately, etc.

Protection of solar panels is an important change to the way applications are assessed under the current R-Codes. Currently, if a development achieves the deemed-to-comply for overshadowing, there is no discretion to consider where the shadow falls or what it impacts.

Officers also considered provisions for the protection of future solar panels and major openings to living areas on adjoining southern lots. However, such provisions were considered too complex to be effective and would hamper good outcomes for the following reasons:

* Providing for future solar panels on adjoining southern lots would have the effect of preventing overshadowing to any roof, as solar panels could potentially be placed anywhere on the roof. This would burden any proposals for two storey development that abut single storey development and potentially lead to poorer quality outcomes. Further, there is no guarantee that an existing property would add solar panels in the future. This is especially true as the single storey houses likely to be affected are predominantly older housing stock with a higher probability of being redeveloped in the short to mid-term, which would render any roof consideration moot.
* Some existing major openings may be located too close to boundaries to avoid any degree of overshadowing. This would require substantial setbacks, particularly for upper floors, and may again lead to poorer quality outcomes through the provision of larger unusable space given over to side setbacks.

Protecting sunlight to major openings and future solar panels as deemed-to-comply criteria would add a degree of complexity to an assessment that the Western Australian Planning Commission (WAPC) would be unlikely to support. It would be difficult to determine what an “acceptable” overshadowing would be, and even more complex to manage and assess both for Officers and applicants.

Protecting existing solar panels is a much more feasible control and is important to safeguard existing development. The draft provisions are also consistent with the draft Medium Density policy proposed by WAPC. However, this provision of the policy will require approval from the WAPC before it can be adopted by Council.

1. **Landscaping**

The R-Codes have a deemed-to-comply provision stating that the primary street setback is to consist of at least 50% impervious surfaces. The R-Codes also include swimming pools, barbecue areas and playgrounds in the definition of landscaping. This lends confusion as to what type of “landscaping” is acceptable. The draft Policy defines “impervious surfaces” as:

“Generally vegetated areas not occupied by water impermeable roofed structures except roof eaves, and includes but is not limited to garden beds, ground covers, shrubs and trees, lawn, rockeries and ornamental ponds; but **excludes**: swimming pools, artificial turf, turf-cell, pavement, gravelled or pebble areas or the like.”

This change is recommended to ensure that proposed landscaping meets the generally expected definition of landscaping, meaning vegetation or similar “natural areas” rather than hardscape such as pools, etc. As per the Deemed provisions, this change to the landscaping provisions of the R-Codes will require approval from the WAPC.

Criteria for landscaping in the rear cannot be imposed through a policy because, unlike landscaping within the street setback, there is no existing R-Codes criteria for local government to modify that pertains to rear landscaping. The R-Codes states that if a single house meets all the deemed-to-comply criteria it does not require development approval unless otherwise required by the scheme. Therefore, any criteria within a policy that requires landscaping in the rear would sit outside the R-Codes and would be unable to be enforced.

1. **Garage width**

Garage width allowances have been increased for narrow lots (less than 10m frontage). The changes would allow these lots to have a garage and supporting structures that are 6m wide as viewed from the street (compared to the existing 60% frontage). This would be permitted where an upper floor or balcony extends over more than half the width of the garage, and the garage is set back 1m behind the main wall of the house. This change would apply where there is no available laneway. A 6m wide garage is the minimum width to achieve the Australian Standards for internal car bays.

1. **Undersized lots**

Provisions are recommended to modify deemed-to-comply criteria for lots that are undersized relative to their density code. A few blocks within Swanbourne contain numerous lots that are undersized (refer Figure 1 below).

Calendar

Description automatically generated

**Figure 1**: Lots in blue are Swanbourne lots undersized for their density code.

The draft amendments would allow these lots (and any other undersized lots throughout the City) to meet the deemed-to-comply criteria associated with the density code that relates to their actual lot size for open space and lot boundary setbacks. In effect, this would allow the R15 lots in Figure 1 above to achieve R20 deemed-to-comply criteria for some items. Importantly, the lot boundary setback modification would only apply where the adjoining impacted lot was similarly undersized or of a higher code, otherwise the setbacks would revert to those associated with the R15 coding.

For example, take the lot on the corner of Jameson Street and Iolanthe Street in Figure 1 above. This lot and the adjoining southern lot both have a site area of approximately 473 square metres, which is commensurate with a lot coded R20. The lot to the east has a site area of approximately 591 square metres, which is consistent with its assigned density code of R15.

Under the proposed Policy, the corner lot would be allowed to meet the deemed-to-comply criteria for open space and southern lot boundary setbacks commensurate with a R20 density. Rear setbacks against the lower coded R15 lot would still need to meet the deemed-to-comply provisions for rear setbacks on a R15 coded lot (Notwithstanding that a development could seek a design principles assessment).

These undersized lots predominantly have existing houses that already achieve these outcomes. The draft Policy will allow consistent assessment methodology for new single houses or additions on these lots with the intent that they will have comparable outcomes to the existing houses along the street.

1. **Minor amendments**

A number of minor amendments are proposed including:

* Front fencing requirements have been modified and simplified as follows:
  + There is currently a requirement that pillars be separated by 1.5 metres. This doesn’t take into account pedestrian gates and, in any event, is unnecessary as the remaining criteria provide for visual permeability. This pier separation requirement is recommended to be deleted.
  + Meter boxes are recommended to be allowed to have a width of 1.2m in lieu of the current 1m when perpendicular to the street. This is based on officer experience and will allow these minor works (which have minimal impact on the street) to be exempt from requiring approval.
  + Vehicular access requirements have been modified to clarify that where a house has a common property driveway, the house is to use that driveway rather than apply for an additional driveway and crossover.
  + Carport criteria in areas coded R15 and lower have been clarified as design guidance rather than deemed-to-comply criteria. This is because the primary street setbacks for carports in areas coded R15 and lower are set out in the City’s scheme, and policies cannot alter a scheme.
  + Screening that is detached from but adjacent to a dividing fence is now considered as if it were a wall for setback purposes. Currently, it is unclear whether these freestanding structures require planning approval at all.
  + Additional design guidance to assist in a design principles assessment has been provided for building height, vehicular access, and solar access.

**WAPC Approval**

The R-Codes sets out which items the local government may not change without approval from the WAPC. The draft amendments seek to change the following items that will require WAPC approval:

* Landscaping
* Vehicular access; and
* Solar access.

After adoption by Council, the Policy will be forwarded to the WAPC for approval of the above three sections. Under the Deemed provisions, the WAPC must approve the above amendments before they can go into effect.

**Consultation**

In drafting the Policy, the following questions were raised by Elected Members at the Concept Forum of 15 September 2022:

1. How can a 10m high wall work within the overshadowing requirements of the R Codes?

No matter the wall height, development will still have to achieve either the deemed-to-comply criteria or the design principles of the R-Codes. This may mean that higher walls would have to be set back further from boundaries, not be as long, etc.

1. Can areas of Camelia Avenue Mt Claremont that appear to have incorrect zoning also be included in the undersize lot area?

The criteria for undersized lots will be available for all undersized lots throughout the City, not just the lots identified in Figure 1 above.

1. Can the policy place restrictions on rear crossovers that access reserves?

Reserves are generally controlled by the City, with any access requiring permission, usually in the form of a crossover permit. Crossovers are controlled by the City’s Technical Services department and do not form part of this Policy.

1. Can the policy consider hard landscaping restrictions in rear setbacks also?

The proposed changes to modify landscaping build on the existing R-Codes criteria for landscaping within the front setback. There is no mechanism for controlling hardstand in backyards for single houses or grouped dwellings beyond the general requirement that all stormwater is to be maintained onsite.

1. Can a figure (meters) be added to the (percentage) of garage frontage?

The draft Policy has now been amended to stipulate that lots with small (less than 10m) frontage will be permitted to have a 6m wide (previously 75% frontage) garage as viewed from the street, subject to meeting specific criteria. This is the minimum width to allow two internal car bays to meet Australian Standards.

If Council endorses the recommendation, the draft Policy will be advertised for community comment for a period of not less than 28 days.

Once advertising has closed, submissions will be reviewed and possible modifications made. Council may then adopt the Policy and refer required sections to the WAPC for approval. Those sections will not take effect unless and until the WAPC approves them. If the WAPC approves the sections, they can automatically be incorporated into the Policy.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Clause 5 of the Deemed provisions within the [Planning and Development (Local Planning Schemes) Regulations 2015](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s46246.html) provides requirements and processes for amending a local planning policy. The Deemed provisions requires that, where parts of a proposed policy require WAPC approval, those parts will not become operable until approval has been granted by the WAPC. Once adopted by the WAPC and Council, the entire Policy will apply to any development to which the R-Codes Volume 1 applies.

**Decision Implications**

If Council endorses the recommendation, the draft Policy will be advertised for community comment for a period of not less than 28 days.

If Council does not endorse the recommendation to advertise, the amendments will not be progressed, and the current policy will remain as is.

**Conclusion**

It is recommended that Council adopts the draft Policy for community consultation.

**Further Information**

Nil.

# PD69.10.22 Statutory Planning Controls for the Conservation of Heritage and Character

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Schedule of Submissions |

**Purpose**

The purpose of this report is to:

* Address the 26 April 2022 Council resolution relating to heritage protection to Allen Park, Dalkeith/Nedlands Foreshore, Nedlands Baths and the Tawarri Reception Centre;
* Outline the Statutory Planning framework for heritage protection; and
* Outline the potential for planning controls to conserve heritage and character.

**Recommendation**

**That Council acknowledges:**

1. **Its statutory requirements under the Heritage Act 2018 and the Planning and Development (Local Planning Schemes) Regulations 2015;**
2. **That a further Discussion paper will be presented at a Concept Forum regarding the potential protection of the Nedlands character via Character Areas;**
3. **That community engagement is an integral part of heritage protection;**
4. **That a Discussion paper will be presented at a concept the City’s Local Heritage Survey will need to be updated in the future; and**
5. **Submissions received following consultation on the Dalkeith/Nedlands Foreshore, Nedlands Baths and Tawarri Reception Centre and thanks those submitters for their comments.**

**Voting Requirement**

Simple Majority.

**Background**

**Heritage Classification in Western Australia**

Heritage listings within Western Australia broadly fall into three categories.

The first is the Local Heritage Survey (previously the Municipal Heritage Inventory). This is a starting resource for local heritage planning and itself has no statutory role. The Local Heritage Survey assists local governments in making decisions reflecting local heritage values and supports the creation of a heritage list or heritage areas.

The second is the Heritage List, which is a list of places compiled under a local governments Local Planning Scheme. These places are given certain protection under the Scheme such as the requirement for development approval for most works as well as demolition. The Heritage List is derived from those places within the Local Heritage Survey with the highest levels of heritage significance.

The third is the State Register of Heritage Places, which is a statutory list of places that generally is the best representation of the story of Western Australia’s history and development. State heritage listing, like the local Heritage List, is afforded a higher level of protection by the Heritage Act 2018.

**Local Heritage Survey (LHS)**

It is a statutory requirement for all Local Governments to establish and maintain a LHS in accordance with the Heritage Act 2018.

The City’s first MHI contained 144 places and was first adopted by Council in 1999. In 2018, the MHI was reviewed and endorsed by Council after consultation with affected landowners and included a total of 112 places. The Department of Planning, Lands and Heritage recommends that Local Governments review their LHS every 5-8 years.

**Heritage List**

The City’s Heritage List identifies places which are of cultural heritage significance and worthy of conservation and heritage protection. It is a statutory requirement for all Local Governments to establish and maintain a Heritage List in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions).

The City maintains a Heritage List in accordance with the Deemed Provisions. The Heritage List was last reviewed in 2017 and contains 21 places.

**26 April 2022 Council Resolution**

At the 26 April 2022 Ordinary Council Meeting Council resolved:

Council:

1. requests that the CEO advertises seeking early public comment submissions from the Nedlands community proposing establishment of concept Heritage precincts to protect areas consisting of concentrated heritage and character sites of significance to the Nedlands community in the following areas;
   1. Nedlands Foreshore and surrounds
   2. Allen Park and surrounds
2. requests that the CEO advertises seeking early public comment submissions from the Nedlands community proposing stronger Heritage protections for the following locations;
   1. the Nedlands Baths, more recently known as JoJo's Cafe and Aqua Viva Reception Venue
   2. the Tawarri Reception Centre
   3. any other Nedlands foreshore sites or surrounds of heritage significance to the Nedlands community
3. requests that the CEO brings a report of these early public submissions to the Council by the July 2022 Ordinary Council Meeting.

A response to each part of the resolution is discussed further in this report, including the findings of consultation.

**Discussion**

**Heritage within the Nedlands Context**

The gazettal of the City’s Local Planning Scheme No. 3 in 2019 saw an increase in density throughout many areas which were identified for character protection within the 2014 review of the Municipal Heritage Inventory. Currently there are no statutory heritage protections for streetscapes or character areas within the City. As a result of the zoning and density changes, the City could lose many character areas and heritage properties which are not currently protected from redevelopment and intensification. There are two pathways that could be used to protect these streetscapes: Heritage Area designation, or Character Area designation.

**Heritage Area**

A Heritage Area is a collection of houses which has been assessed as having cultural heritage significance and, in the opinion of Council, requires special planning controls to conserve and enhance the cultural heritage significance of the area.

Heritage Areas would not prohibit development but would aim to ensure new development is designed to be respectful and sympathetic to the existing heritage values of the area. However, a Heritage Area is afforded additional legislative power such as requiring development approval on sites where they may already meet the deemed to comply criteria of the R-Codes as well as requiring landowners to submit for the approval to demolish their property. A Heritage Area would focus more on the significance of the street rather than the individually heritage listed properties. This generally means that, when considering a development application, the primary concern would relate to items that could potentially impact the streetscape appearance. This may include things like the location of a second floor so it doesn’t overwhelm the house, or controls on extensions forward of the dwelling such as porches and carports.

**Character Area**

A Character Area is a lower level of protection and would operate by providing design guidelines for development, through a local planning policy. However, it would not have the legislative power to stop the demolition of buildings nor would it require development approval if a development meets specific deemed to comply provisions. A Character Area would instead focus on the redevelopment of properties within a precinct.

A Character Area would likely provide additional development requirements for street-fronting design elements such as street and lot boundary setbacks, building heights, front fencing, street surveillance and carport and garage location. A Character Area would make new development more sensitively designed to the character of its street, but would not be as far reaching as a Heritage Area designation.

**Heritage Value and condition for Allen Park, Swanbourne**

Allen Park is a 13.6ha reserve which contains a mixture of sports grounds and bush with Melon Hill as the prominent natural landmark. Four buildings, ‘Tom Collins House’, ‘Mattie Furphy House’, ‘Tom Fricker House’ and the ‘Friends of Allen Park Cottage’ are located on the reserve and identified within the City’s LHS. A fifth building, ‘Mayo House’ no longer exists as it was destroyed by fire in 2007. ‘Tom Collins House’ and ‘Mattie Furphy House’ have individual listings on the heritage list and state heritage register.

In 2020, the City undertook building condition inspections of ‘Tom Collins House’ and ‘Mattie Furphy House’, which concluded that they were in either in good or fair to good condition. ‘Mattie Furphy House’ was in better condition of the two, requiring only monitoring of external concrete slabs for uneven surfaces. ‘Tom Collins House’ inspection identified external painting as an item which would need to be addressed due to some areas of cracking and swelling. In February 2022, the City undertook building condition inspections of ‘Tom Fricker House’ and concluded that apart from minor maintenance issues, the building noted as showing signs of aging but is in a neat and tidy condition overall.

Owing to the heritage significance of ‘Tom Collins House’, ‘Mattie Furphy House’ and ‘Tom Fricker House’ the continual maintenance and review of these structures and allocation of funding determined by the condition of each building, is recommended.

**Dalkeith/Nedlands Foreshore, Nedlands Baths and Tawarri Reception Centre**

The Dalkeith/Nedlands foreshore, Tawarri Reception Centre and Nedlands Baths were all listed on the municipal inventory in the initial review of the inventory in 1999. As such, they were recognised as having a considerable level of heritage significance. However, these properties were not included in the 2018 adoption of the municipal inventory (now known as the Local Heritage Survey).

As the City’s Local Heritage Survey is reaching five years since review and noting absences from the Survey such as the Nedlands Baths and Foreshore area, it is proposed that a discussion paper be presented at a concept forum for the potential of updating the Local Heritage Survey.

**Consultation as part of the Council resolution**

The City undertook public consultation following the 26 April 2022 Council resolution, seeking the community’s views and comments on providing stronger heritage protection to the following sites:

* Dalkeith/Nedlands Foreshore and surrounds;
* Allen Park and surrounds;
* Nedlands Baths (including JoJo’s Café and Aqua Viva Reception Centre); and
* Tawarri Reception Centre

A total of 12 submissions were received, with six supporting and six objecting further heritage protection measures on site. A summary of these submissions is included in **Attachment 1.**

**Consultation**

Should Council wish to introduce statutory development provisions for the retention of cultural heritage significance and character, this can be achieved through the introduction of Heritage or Character Areas. Either a Heritage Area or Character Area would require significant consultation with the community and would include community forums whereby affected landowners would be able to speak directly with an officer of the City, posts to social media, door knocking and letter drops to take landowners and occupiers on the journey of separate heritage or character protection.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our City will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

There is no allocation of funds for Heritage projects within the 2022/23 budget.

**Legislative and Policy Implications**

Under Schedule 2, Part 2, Clause 3(1) of the [Planning and Development (Local Planning Schemes) Regulations 2015](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44080.pdf/$FILE/Planning%20and%20Development%20(Local%20Planning%20Schemes)%20Regulations%202015%20-%20%5B00-l0-00%5D.pdf?OpenElement), the City may prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area.

Under Schedule 2, Part 3, Clause 9 of the Planning and Development (Local Planning Schemes) Regulations 2015*,* the City may designate an area as a Heritage Area subject to consultation with affected landowners.

**Decision Implications**

Nil.

**Conclusion**

Built heritage and character are key to the City’s identity and should be preserved, whether the City approaches this through heritage area protection or as character areas, both of which would require the development of separate local planning policies.

Owing to the current age of the endorsed Local Heritage Survey, a report will be presented to council in 2023 ensuring all properties worthy of recognition are listed.

**Further Information**

Nil.

# PD70.10.22 Adoption for Advertising of Local Planning Policy – Signage and Advertisements

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| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Local Planning Policy – Signage and Advertisements |

**Purpose**

The purpose of this report is for Council to adopt for advertising the draft Local Planning Policy – Signage and Advertisements (the Policy), included as **Attachment 1**.

**Recommendation**

**That Council:**

1. **adopts the draft Local Planning Policy – Signage and Advertisements for the purpose of advertising in accordance with Clause 4 of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015.**
2. **notes that the advertising period for the draft Local Planning Policy – Signage and Advertisements will be for a minimum of 21 days.**

**Voting Requirement**

Simple Majority

**Background**

The current Signs Local Planning Policy (the Policy) was adopted at the Ordinary Council Meeting held on 23 July 2019. A review of the Policy has been undertaken in the context of the Council resolution dated 27 July 2021, which reflects the development pressure Nedlands is currently facing, with attention to construction signs and property transaction signs. The review also includes amending the Register of Delegation in relation to construction site, property transaction and hoarding signs 5 square metres or larger. The Policy has been updated in line with the resolution as discussed below.

**Discussion**

The content of the Policy has been reviewed in the context of the legislative planning requirements and practical application of the existing provisions.

The updated Policy seeks to provide a more contemporary and concise set of provisions to assist the City in the assessment of signage proposals.

The key elements of the Policy include:

* 1. **Policy Title**

The policy title has been revised from “Signs Local Planning Policy” to “Signage and Advertisements Local Planning Policy” to align with the statutory terminology used by the Planning and Development (Local Planning Schemes) Regulations 2015 relating to Advertisements.

The Regulations also contain a definition of “heritage-protected place”, and this new terminology is proposed to be included in the Policy.

* 1. **Objectives**

The objectives of the Policy are worded to highlight the importance of minimising the adverse impacts of signage and advertisements on the amenity of residential areas and heritage-protected places.

The objectives seek to limit commercial signage to areas zoned for non-residential uses and reduce the proliferation and cumulative impact of signage across the City.

* 1. **Exemptions/Non-Exemptions**

Temporary advertisements and election advertisements are exempt under the Regulations and the Policy updated to reflect this.

* 1. **Where approval is required**

All signs on “heritage protected places” require development approval, as do signs which emit light (refer to section 4.1 (i) and (vii)).

Appendix A provides a list of the different signs, including a definition and an image of an example of that form of signage.

If the sign meets the requirements listed under “Development Provisions for Exemption” then approval is not required.

The following key Provisions are highlighted:

1. **Construction Site and Development Signs**

For a Construction site and Development Sign, if the sign is:

* More than 5 square metres in area or
* More than 2 metres above the natural ground level

then development approval will be required, or if more than one sign per street frontage is requested.

1. **Digital Signs**

All digital signs will require a development application to be lodged, with the exception of window signs less than 5 square metres in area located in the window of an approved or exempt business.

Property Transaction Signs

The definition of a property transaction sign is to be updated to include the words ‘coming soon’ and the sign is to be removed within 14 days of settlement or leasing of the property.

Development approval is required if the proposed property transaction sign has an area of more than 3 square metres.

1. **Roof Sign**

Development approval is required if:

* the total height of the building and the sign (combined) exceed the building height for the applicable property
* the sign exceeds 5 square metres in area.

**Deemed to Comply or Acceptable Outcomes Criteria**

Deemed to comply or acceptable outcomes criteria are not considered appropriate in respect to a signage policy, as “exempt” provisions (effectively deemed to comply / acceptable outcomes) already exist in the Regulations and draft policy. It is important to provide consistency, certainty, and clarity in the application of such a policy.

However, previous legal advice received by the city confirms that a local planning policy cannot fetter discretionary consideration. In other words, a planning policy cannot be used to ban advertisements over a certain size, for example. Application for signage and advertisements that exceed the exemption criteria are assessed against the objectives of the policy (Clause 3) as well as the general requirements for all signage and advertisements (Clause 4).

**Consultation**

If Council resolve to adopt the Policy for advertising it will be advertised in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals, which involves the following methods of consultation:

* Minimum 21-day advertising period
* Notice in the local newspaper
* Notice on the City’s Notice board
* Notice on the City’s Your Voice engagement portal
* Notice on the City’s social media channels

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Reflects Identities**

We value our precinct character and charm. Our neighbourhoods are family-friendly with a strong sense of place.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

If Council proceeds with the Policy, there will be no immediate cost to the City other than those associated with advertising.

**Legislative and Policy Implications**

Clause 3(1) of the Deemed Provisions of Schedule 2 of the Regulations allows the City to prepare an LPP in respect to any matter related to the planning and development of the Scheme area. The review and amendments made to the existing Signs Local Planning Policy are significant and as such require the Policy to be advertised. Once Council resolves to prepare an LPP, in accordance with Clause 4 of the Deemed Provisions it must publish a notice of the proposed policy in a newspaper circulating the area for a period of not less than 21 days and seek submissions. Further detail on the advertising of the Policy is provided in the Community Consultation section above.

Following the advertising period, the Policy will be presented back to Council to consider any submissions received and to:

1. Proceed with the policy without modification;
2. Proceed with the policy with modification; or
3. Not proceed with the policy.

**Decision Implications**

If Council resolves to prepare the Policy, it will be advertised in accordance with the process outlined above.

If Council resolves not to endorse the recommendation, the Policy will not be advertised or progressed. Doing so will mean the existing Policy will remain in use by the City when assessing Development Applications for signage and advertisements.

**Conclusion**

The Policy has been reviewed and updated to provide applicants with clear and concise provisions to support applicants in determining their approval obligations for proposed signage and advertisements. It also guides the assessment of development applications for proposed signage and advertisements by officers. It is recommended that Council adopts the Recommendation and formally advertises the Policy.

**Further Information**

Nil.

# PD71.10.22 Adoption of the Election Signs Council Policy

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. |
| **Report Author** | Jessica Bruce – Acting Manager Health and Compliance |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft Election Signs Council Policy |

**Purpose**

The purpose of this report is for Council to adopt the Draft Election Signs Council Policy included in **Attachment 1.**

**Recommendation**

**That Council adopts the Draft Election Signs Council Policy as per attachment 1.**

**Voting Requirement**

Simple Majority.

**Background**

At its meeting of 24 May 2022 Council resolved:

That the City of Nedlands Signs Local Planning Policy Section 4.3.2(b) be amended as follows:

1. Election advertising signs not to obstruct public thoroughfares.
2. Signs need to be placed on either private property or on front boundary of property and a maximum of 1 sign per frontage; and
3. No signs to be placed on City of owned or controlled land.

During the past Federal, State and Local Government elections, free-standing election signs were erected in road reserves. The purpose of this Policy is for Council to formalise the practice of the placement of election signs for Federal, State, Local Government elections, and Referendums in road reserves. It is considered appropriate that Council should allow election signs within road reserves as it is in line with the implied freedom of political communication contained within the Australian Constitution.

The Policy establishes a clear framework regulating how, where and for what period of time election signs may be displayed whereby safety and public health are prioritised.

**Discussion**

The proposed draft Policy proposes the following regime:

* + Election signs will be allowed in thoroughfares controlled by the City provided they meet the criteria in the Policy. Signs that do not meet the criteria in the Policy can be removed and impounded.
  + Whereby election signs have been placed on the thoroughfare or on City buildings/land which demonstrates a flagrant breach of the conditions outlined in this Policy, the City may either immediately remove and impound the sign or issue an infringement notice for failure to obtain a permit in accordance with the relevant local law.
  + Election signs must not be placed where it will obstruct driver’s vision or pose a risk to road users, including cyclists and pedestrians. The City prioritises safety and public health.

The requirements of the Policy are that signs must be:

* + At least 1.5 metres from the edge of the carriageway and 0.5 metres from the footpath;
  + Erected at least 10 metres from any intersection of thoroughfares;
  + Not closer than 50 metres to a signalised intersection or before any speed indicator sign;
  + Not placed on a median strip, roundabout or other traffic control device;
  + Not placed within an intersection;
  + Not placed within 50m of a pedestrian crossing;
  + Not located in, or within 50 metres of, a 40kph school zone;
  + Election signs are not permitted to be placed on or within any City parks and/or reserves to ensure the safe use;
  + Election signs on City facilities or City land are interpreted as having the endorsement of the City. Election signs are not permitted on or adjacent to municipal buildings and leased facilities, including but not limited to Nedlands Library, Mt Claremont Library, Nedlands Community Care, Tresillian, Point Resolution Child Care, Depot, and the Administration Building;
  + The above point does not apply to any City Land or facility that is used as a polling place on an election day where election signs may be displayed;
  + The following process will apply to the removal and impounding of signs:
    1. the candidate will be notified that the sign has been removed and impounded and will be held by the City for 48 hours during which time it will be available for collection; and
    2. if the sign is not collected within the 48 hours, the sign may be destroyed by the City.

**Consultation**

The draft Election Signs Council Policy was emailed to political parties on 24 August 2022 that have run in Curtin or Nedlands electorates recently and parties represented in the Legislative Council. The Administration has received several acknowledgements of receiving the email and a forward of the draft Policy to Mr Shane Love MLA as Shadow Minister for Local Government. No further feedback on the Policy has been received by the City.

At the Concept Forum of 20 September the following matters were raised;

1. Signs being 3 metres from the carriage – the proposed policy has been modified to make this 1.5m.
2. Main Roads have a catch all provision associated with safety – under the Enforcement section of the Policy it notes “Where a sign breaches this Policy, the Local Law or any other relevant law, or **poses a health or safety hazard**, the City will exercise its powers to ensure compliance and/or remove any health and safety hazard as appropriate”.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Priority Area**

* Urban form - protecting our quality living environment

**Budget/Financial Implications**

No financial implications have been identified associated with the recommendations. Activities relating to compliance and enforcement of the Policy will align with the existing operational budget and resource allocation.

**Legislative and Policy Implications**

Subject to the terms of this Policy, a permit for election signs to be displayed on City land will not be required under the City’s Local Law relating to Thoroughfares. Activities and signage that do not meet the provisions within the policy will be subject to the City’s ordinary approval procedures in accordance with the relevant City local law.

* [Commonwealth Electoral Act 1918](https://www.legislation.gov.au/Details/C2022C00074)
* [Electoral Act 1907](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44407.pdf/$FILE/Electoral%20Act%201907%20-%20%5B17-b0-00%5D.pdf?OpenElement)
* [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45135.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-z0-00%5D.pdf?OpenElement)
* [Local Law Relating to Throughfares 2000](https://www.nedlands.wa.gov.au/documents/38/local-laws-thoroughfares)
* [ReferendumsAct1983](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legislation.wa.gov.au%2Flegislation%2Fprod%2Ffilestore.nsf%2FFileURL%2Fmrdoc_26504.pdf%2F%24FILE%2FReferendums%2520Act%25201983%2520-%2520%255B02-a0-03%255D.pdf%3FOpenElement&data=05%7C01%7Clmehanni%40nedlands.wa.gov.au%7C0176aaffd4f44ff56fa708daa28af7ae%7Cd583947c8c4246bd927527ca45e5e84c%7C0%7C0%7C638001014983540822%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=chHVYNTMmiKLZWIsOYuZvXTnPLZ5y2aJWWVggwJ6Q8M%3D&reserved=0)

At the Concept Forum of 20 September additional background information was sought in relation to the court cases which have informed the Policy. With respect to this matter previous Supreme Court and High Court decisions have clarified the extent of the local government’s powers to control election signs in light of the implied right to freedom of political communication. In particular, laws attempting to control or limit elections signs may not be enforceable unless they are to protect health and safety.

The High Court in the case of Australian Capital Television Pty Ltd v Commonwealth of Australia (1992) deemed there is an implied freedom of political communication (‘the implied freedom’) within the Australian Constitution. In this case, the majority of the High Court reasoned that representative democracy is constitutionally entrenched and there is therefore implied in the Constitution a guarantee of freedom of communication on all political matters.

The position in Western Australia was the subject of a decision by the Supreme Court in Liberal Party of Australia (WA Division) Inc v City of Armadale (2013). The City of Armadale’s Local Planning Policy prohibited electoral signage in the locality of Armadale, even on privately owned land. At the hearing the City sought a compromise, as opposed to a complete ban, limiting:

* the number of electoral signs to one sign per street frontage of every lot;
* the area of the sign would not exceed 1 square metre in area; and
* the period during which the signs were erected to no more than 60 days prior to the election date.

The Court considered that the above regulatory controls were still a significant fetter against political communications in the lead up to the State election in circumstances where the only justification was the preservation of local amenity. The Court concluded that the democratic process outweighed any concerns about amenity, at least for the duration of the looming election campaign.

The City must ensure that the policy does not conflict with the provisions of the Electoral Act 1907 or the Referendums Act 1983 including any applicable subsidiary legislation. Any policy development on election signs will need to align with the Supreme Court and High Court decisions which clarify the extent of the local governments powers to control election signs in light of the implied right to freedom of political communication**.** In particular, rules attempting to control or limit elections signs where the only justification is preservation of local amenity may not be enforceable unless they are to protect health and safety.

**Decision Implications**

If adopted by Council the Policy will become an official Council Policy and will prescribe the way in which the City responds to election activities and signage. Activities and signage that do not meet the provisions within the policy will be subject to enforcement provisions under the Policy. This Policy will guide engagement with electoral candidates as it relates to political communication signage and provide them with direction to ensure compliance and the health and safety of the community.

If this Policy is refused, the placement and enforcement of election signage along with the directions given to candidates will lack solid policy foundation whereby safety and public health may be compromised.

**Conclusion**

The proposed Election Signs Council Policy outlines how election signs may be displayed within the boundaries of the City of Nedlands during Federal, State, Local elections, and Referendums. The Policy establishes a clear framework regulating how, where and for what period of time election signs may be displayed. The Administration has developed the Policy for the adoption by Council.

**Further Information**

Nil.

# Divisional Reports - Technical Services Report No’s TS21.10.22

# TS21.10.22 Repurposing of Former Tennis Courts at David Cruickshank Reserve, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Andrew Dickson – Project Manager (Parks Services) |
| **Director** | Daniel Kennedy-Stiff – Acting Director Technical Services |
| **Attachments** | Attachment 1 – Image of tennis court area on 5 March 2017  Attachment 2 – Image of tennis court area on 24 March 2022  Attachment 3 – Overview of proposed works |

**Purpose**

The purpose of this report is to seek Council’s endorsement for a proposed least cost solution for improving the upkeep and presentation of the former tennis courts at David Cruickshank Reserve, whilst preserving the opportunity to undertake a more comprehensive project at a later date to repurpose the area for the long term.

**Recommendation**

**Council:**

1. **endorses the proposal for a least cost solution for improvements to enhance the upkeep and presentation of the former tennis courts at David Cruickshank reserve in the short term;**
2. **requests a capital budget item is prepared to be included in the** **2022/23 midyear budget review for Council’s consideration, which if approved, will provide for the proposed works to be delivered in the fourth quarter of the 2022/23 financial year; and**
3. **requests that a capital budget item is prepared for the 2023/24 annual budget for Council’s consideration to provide for a more comprehensive design and delivery project to deliver a permanent repurposing of the former tennis courts at David Cruickshank Reserve.**

**Voting Requirement**

Simple Majority.

**Background**

The David Cruickshank Reserve Enviro-scape Master Plan (EMP) concept was endorsed by Council at its meeting on 27 June 2017. When the EMP was endorsed, the Dalkeith Tennis Club (Club) lease included six (6) tennis courts at David Cruickshank Reserve (DCR) directly south of the Point Resolution Child Care building. These courts were maintained by the Club in accordance with their terms of lease with the City. On 31 October 2017, the Club formally notified the City of its intention to surrender this portion of their lease.

The City formally took back responsibility for the former lease area on 2 January 2018. As a consequence of these events, future use of the former leased tennis court area was not considered during the EMP consultation process. Other than the removal of the fencing surrounding the courts, the area has remained largely unchanged since the City assumed responsibility for its maintenance.

**Previous Council resolution**

Ordinary Council meeting 23 August 2022 – item 21.3 accepted

* Council Resolution

That the CEO provides a report to Council by the October 2022 OCM to provide a least cost solution to repurpose the former tennis courts in front of PRCC which were not included in the David Cruickshank Reserve Enviro Masterplan.

**Discussion**

DCR is classified as a ‘District Park’ in accordance with the City’s adopted Parks and Reserves Function and Hierarchy Classifications. Repurposing of the former tennis courts needs to consider what recreational activities are already catered for at DCR and within its catchment.

A District Park typically has a catchment area of between two (2) and five (5) kilometres or a five (5) to ten (10) minute drive. District Parks will attract visitors from nearby districts and should broadly cater for surrounding communities. Parks and public open space that are within the DCR catchment area include:

* Sunset Hospital Precinct
* Point Resolution Reserve
* Bishop Road Reserve
* Sunset Foreshore
* Beaton Park (Jo Wheatley All Abilities Play Space)
* Charles Court Reserve
* Melvista Park
* College Park
* Masons Gardens
* Peace Memorial Rose Garden
* Eleven (11) ‘Local and Neighbourhood Parks’
* Ten (10) foreshore reserves

**Least cost solution**

The proposed concept of a least cost solution for repurposing the former tennis courts may not provide for the best long term solution and may limit future opportunities for the area.

In considering the least cost requirements of Council’s resolution, the Administration proposes limited intervention to enhance the upkeep and presentation of the area in the short term, maintaining the area as reticulated passive turf over the summer period. This will involve mowing once every 3-4 weeks, and watering approximately once per week. Watering need will be based on the climactic conditions being experienced at that time.

This will involve leaving the area largely unchanged, as an open grassed area for passive recreation use. The recently landscaped eco-zone surrounding the area is establishing and maturing. Additional native trees and shrubs can be extended marginally into the grassed area to lessen the geometric interface between the former courts and the new landscaping.

Any identified hazards in the area would be remediated and made safe (e.g., sudden level changes). It is proposed that reticulation in the area is renewed to deliver better presented turf through summer, and the bollards are extended to infill the current gap along the car park to prevent vehicle access. No other infrastructure need be incorporated within the area at this time. To further reduce costs, it is proposed to use City resources and equipment wherever possible to deliver works and to limit the use of contractors.

This proposal is intended to improve the safety, appearance and presentation of the area in the short term at minimal cost. The proposed works would not be considered a long term solution. The intent is to improve the upkeep and appearance of the area whilst preserving the opportunity to explore more extensive options for repurposing the area at a later date.

**Consultation**

If the recommendation is adopted, the proposed least cost solution would involve community consultation based around informing the community of the purpose for the restricted works and the longer term plans for the area.

Feedback associated with recent projects at David Cruickshank Reserve has provided some ideas for the repurposing of the former tennis courts. Concepts put forward by the community following endorsement of the EMP have been generally aspirational and could not be considered to fall within the scope of a least cost solution as resolved by Council. The feedback has been useful in that it has provided a sense of community expectation for the area in the longer term.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

**Priority Areas** Renewal of community infrastructure such as roads, footpaths, community and sports facilities.

Providing for sport and recreation

**Budget/Financial Implications**

Subject to Council endorsing the proposed actions within this report, the Administration proposes to submit a capital budget item to the 2022/23 midyear budget review to improve upkeep and presentation of the area as outlined. Without the benefit of current quotes, the capital budget estimate to deliver the scope of works proposed would be in the order of $15,000 (inclusive of project management costs) +/- 30%.

It is not anticipated that the proposed improvements to the area will incur substantial additional operational costs to the City. There will be a reallocation in resources from other areas to cover the extra time required to maintain the area to a higher level of presentation, noting any impacts on other locations will be minor and likely less than $5,000 per annum.

The officer recommendation does not propose any additional works other than the ground levelling, bollard installation and reticulation. Any works in addition to these will need to be considered and consulted on as part of a new project initiative, within the context of the Long Term Financial Plan, should Council wish to look at providing new services in this area.

**Legislative and Policy Implications**

* *Disability Discrimination Act 1992* (Federal) – the City is obligated to observe the accessibility design standards for public use areas legislated under the Act.
* Community Engagement Council Policy – the City is required to consult with stakeholders on all proposals and new initiatives in accordance with Council’s policy.

**Decision Implications**

Endorsement of the recommendation will allow the City to progress a course of action to improve the upkeep and presentation of the former tennis court area as a short term solution at the least cost. It will also preserve the opportunity to deliver a more considered repurposing of the area for the long term.

If Council do not consider this proposal adequate and desire a more comprehensive repurposing of the area, either now or in the future, this will need more comprehensive consideration of available resources. To deliver a suitable long-term solution will require appropriate project planning, concept development, community consultation and adequate budget allocation to allow for project delivery.

**Conclusion**

The City has proposed a least cost solution for improving the appearance and upkeep of the former tennis court area at DCR. This proposal is intended to provide short term improvements to the area without comprising the future options for a more significant project to comprehensively repurpose the space if this was the long term expectation of Council and the community.

**Further Information**

Nil.

# Divisional Reports - Corporate & Strategy Report No’s CPS46.10.22 to CPS49.10.22

# CPS46.10.22 New Lease to Dalkeith Nedlands Bowling Club

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 25 October 2022 |
| **Applicant** | Dalkeith Nedlands Bowling Club (inc) |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Peter Scasserra – Coordinator Land and Property |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | Nil |

**Purpose**

The purpose of this report is for Council to consider a new lease for the Dalkeith Nedlands Bowling Club Inc. for portion of Reserve 1668, 55 Jutland Parade Dalkeith.

**Recommendation**

**That Council:**

1. **approves the disposal of a 13,860 m² (approx.) portion of Reserve 1668 (Part Lot 14867 on Deposited Plan 35721) by way of lease to the Dalkeith Nedlands Bowling Club Inc. consistent with the key terms noted within this report;**
2. **approves an exemption to section 3.58 of the Local Government Act 1995 pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996* for the disposal of a 13,860 m² (approx.) portion of Reserve 1668 (Part Lot 14867 on Deposited Plan 35721) by way of lease; and**
3. **subject to the Minister for Lands’ Consent, authorises the Chief Executive Officer and Mayor to execute all documents necessary to give effect to a lease and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority

**Background**

Reserve 1668 (Reserve) comprises Lot 14867 on Deposited Plan 35721 and is land owned by the State of Western Australia that has been vested to the City of Nedlands (City) by way of a Management Order.

The Management Order for the Reserve provides the City with a statutory right to manage and control the Crown land for the purpose of Recreation with power to lease for any term not exceeding 21 years, subject to consent of the Minister for Lands.

Reserve 1668 currently consists of land utilised by several Sporting Clubs a Day Care Centre and Pre-School. The Sporting Clubs and Pre-School occupy their respective facilities pursuant to either a lease or management licence whilst the Day Care Centre is operated by the City of Nedlands. The management licence agreements provide a source of revenue for the City.

The proposal seeks approval from the City to lease a 13,860 m² (approx.) portion of Reserve 1668 for the purpose of lawn bowls and clubrooms to the existing Dalkeith Nedlands Bowling Club.

Considering Reserve 1668 is land classified within the Metropolitan Region Scheme (MRS) area for parks and recreation purposes, a use that is within the definition of “parks and recreation” can be considered.

The Dalkeith Nedlands Bowling Club (Club) was established in 1948, with planting of the first two greens on the then Point Resolution Reserve in September that year. Following the establishment of the adjacent Tennis Club in 1938, the subject land began to establish itself as a Community Recreation Reserve.

The Club’s official opening occurred in November 1950. By the end of the year the Club had affiliated with the Western Australian Bowling Association and was entering teams regularly in pennant competition. A third green with electric lighting was eventually added to the facility to allow for night games.

The clubhouse building was officially opened in 1955 and remained unchanged until 1958 when the architects W.G. Bennet and Associates designed changes to facilitate required upgrades and extensions.

Presently, the facility has five greens in regular use as well as the existing clubhouse that is being occupied by the Club pursuant to a lease with the City. Considering the lease expires on 24 September 2022 with no option for a further term, the Club is seeking Council approval for a new lease to secure tenure and ensure their current operations can continue for a term of 10 years with a further term of 5 years.

**Discussion**

Reserve 1668 is located within the locality of Dalkeith and is situated on the corner of Jutland Parade and Victoria Avenue, opposite Point Resolution Reserve. Development within and surrounding the Reserve comprises Adam Armstrong Pavilion, Point Resolution Child Care Centre, Dalkeith Tennis Club, Dalkeith Pre-School and established single residential dwellings.

The Reserve is Crown land vested to the City by way of a Management Order. A Management Order provides a nominated management body with a statutory right to care, control and manage Crown land in accordance with any conditions on the use and development of the reserve and may grant the management body certain powers to deal with the land, such as power to lease.

The Management Order for Reserve 1668 permits the land to be used for the purpose of ‘Recreation’ and requires the City to seek the consent of the Minister for Lands prior to formalising any agreement for lease over the Reserve. The Club’s proposal does not change the existing land use which is consistent with the MRS reservation and with the Management Order.

Reserve 1668 is also an MRS Reserve classified for parks and recreation purposes. Noting the current use of the site by other recreational and sporting bodies that provide services of benefit to the community, it is considered that a use that is within the definition of “parks and recreation” can continue to operate on the site. The MRS defines “parks and recreation” as “Land of regional significance for ecological, recreation or landscape purposes”.

The Dalkeith Nedlands Bowling Club currently has 241 active members (excluding casual bowlers at functions), of which approximately one third are City of Nedlands residents. In addition to delivering sport and recreation for a wide range of community uses, their operations also provide various social and community benefits, particularly for seniors.

The recommendation proposes Council consider approving a lease for the Dalkeith Nedlands Bowling Club for a 13,860 (approx.) portion of Reserve 1668 for the purpose of lawn bowls and clubrooms and uses reasonably ancillary thereto subject to reviewing and being satisfied with the key terms and the inclusion of a redevelopment clause.

**Key Terms and Special Conditions**

The Key Terms have been negotiated in accordance with the City’s *‘Use of Council Facilities for Community Purposes Policy’.*

On 18 August 2022, the Dalkeith Nedlands Bowling Club’s agreed to all the key terms noted within the report below to facilitate a lease.

|  |  |  |
| --- | --- | --- |
| **Proposed Lease – Dalkeith Nedlands Bowling Club (Inc)** | |  |
| **Key Terms** | |  |
| **Lease Term** | **Details** |  |
| Land | Part of Reserve 1668 |  |
| Lease Area | As per Sketch (TBC) |  |
| Landlord | City of Nedlands |  |
| Tenant | Dalkeith-Nedlands Bowling Club (Inc) |  |
| Commencement Date | Upon execution by both parties |  |
| Term of Lease | 10 years with an additional 5 year option |  |
| Permitted Purpose | Lawn Bowls and Clubrooms and uses reasonably ancillary thereto. |  |
| Lease Fee | Peppercorn |  |
| Rent Reviews | N/A |  |
| Outgoings | All outgoings payable by Lessee |  |
| Insurance | **Building Insurance** - The City will insure its interest in the building and will on-charge a pro-rata premium to the Lessee.  **Public Liability** - The Lessee is responsible for Public Liability, however, the City will continue to hold its policy. |  |
| Maintenance | All maintenance obligations to be undertaken by the Lessee, including structural maintenance. |  |
| Works and Fit Out | N/A |  |
| Signage | With prior written consent from the Lessor and subject to the Lessors conditions. |  |
| Special Conditions | 1. Subject to City of Nedlands Council approval. 2. Subject to Minister for Lands consent. |  |

**Lease Area Sketch**

The current lease area sketch is displayed below.

Diagram

Description automatically generated

To identify the lease area more clearly, the following lease area sketch is proposed as an annexure to the lease should Council resolve to approve a new agreement.

A picture containing text

Description automatically generated

**Consultation**

Upon receiving the request from the Dalkeith Nedlands Bowling Club for a new lease for portion of Reserve 1668, 55 Jutland Parade Dalkeith, the City carried out the following internal engagement.

**Planning Services**

The City’s Planning Services Team advised they have no objections to land tenure arrangement, but suggested clauses be included within the agreement to ensure the Applicant understands no alterations or additions are to made without statutory approvals being obtained.

**Community Development**

The City’s Community Development Team advised they support Dalkeith Nedlands Bowling Club’s request for a new lease. The request is consistent with Council’s strategic priority of providing for sport and recreation.

**Land & Property**

The City’s Land & Property Team advised they have no objections to the land tenure arrangement. The proposed lease is consistent with the terms of the current arrangement and the inclusion of the updated survey sketch is of benefit to the City. The Key Terms as proposed within this report mitigate all risk to Council and do not have any cost implications either.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

The lease as proposed would be at no cost to Council.

Should elected members agree to the recommendation as proposed, the new lease would be prepared by a solicitor and full costs would be on-charged to the proponent.

**Legislative and Policy Implications**

The City is bound by specific conditions under the *Local Government Act 1995* with regard to the disposal of property. Section 3.58 of the Act enables a local government to dispose of a property to the highest bidder at a public auction, by way of a public tender process or by giving local public notice of the proposed disposition and following the public consultation process as prescribed by sub-section section 3.58 (3) of the Act. In this context, disposing of a property means to ‘sell, lease or otherwise dispose of, whether absolutely or not’.

Considering the Dalkeith Nedlands Bowling Club are an incorporated recreational sporting body, they are eligible for an exemption to section 3.58 of the *Local Government Act 1995* pursuant to Regulation 30 of the *Local Government (Functions and General) Regulations 1996*, therefore the proposed disposal of land is not required to be advertised.

Proposals to lease or licence land for a community/recreational purpose will be subject to the terms of the City’s *‘Use of Council Facilities for Community Purposes Policy’*.

Crown land reserves vested to the City by way of a Management Order are generally subject to conditions. Consent is required from the Minister for Lands prior to formalising any lease agreement for Reserve 1668.

**Decision Implications**

Should Council resolve to approve the disposal of a 13,860 m² (approx.) portion of Reserve 1668 to the Dalkeith Nedlands Bowling Club by way of lease, Officers will instruct the City’s solicitor to prepare a lease in accordance with the key terms contained within this report at the full cost of the Lessee.

If Council do not resolve to approve the disposal of a 13,860 m² (approx.) portion of Reserve 1668 to the Dalkeith Nedlands Bowling Club by way of a lease, the proponent will not be able to secure tenure and will have to consider their future within the City. The lease expiry date is 27 September 2022.

**Conclusion**

The Dalkeith Nedlands Bowling Club have occupied the facility on portion of Reserve 1668 from circa 1950. Their lease will expire on 27 September 2022 and does not provide an option for a further term. To allow their operations to continue, the Dalkeith Nedlands Bowling Club are seeking Council approval to continue using a 13,860 m² (approx.) portion of Reserve 1668, 55 Jutland Parade Dalkeith in accordance with a lease for the purpose of lawn bowls and clubrooms and uses reasonably ancillary thereto.

Officers believe this request can be accommodated without significant changes to the current arrangement. Additionally, the proposal presents an opportunity for social engagement contributing to the health and well-being of the community.

**Further Information**

Nil.

# CPS47.10.22 Monthly Financial Report – September 2022

This item will be dealt with at the Ordinary Council Meeting.

# CPS48.10.22 Monthly Investment Report – September 2022

This item will be dealt with at the Ordinary Council Meeting.

# CPS49.10.22 List of Accounts Paid – September 2022

This item will be dealt with at the Ordinary Council Meeting.

# Council Members Notice of Motions of Which Previous Notice Has Been Given

This item will be dealt with at the Ordinary Council Meeting.

# Urgent Business Approved By the Presiding Member or By Decision

This item will be dealt with at the Ordinary Council Meeting.

# Confidential Items

Confidential items to be discussed at this point.

# Declaration of Closure

There being no further business, the Presiding Member will declare the meeting closed.