**AGENDA**

**Council Meeting Agenda Forum**

**8 March 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday 8 March 2022 in the Council Chamber at 71 Stirling Highway Nedlands commencing at 6pm.

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Description automatically generated

Bill Parker

Chief Executive Officer

3 March 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** Councillor R A Coghlan Melvista Ward

**(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.

# 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 PD10.03.22 to PD15.03.22

# PD10.03.22 Consideration of Development Application – Single House at 60A Strickland Street, Mount Claremont

|  |  |
| --- | --- |
| **Meeting & Date** | Council - 22 March 2022 |
| **Applicant** | Oswald 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 and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective Drawings 4. CONFIDENTIAL ATTACHMENT – Submission |

**Purpose**

The purpose of this report is for Council to consider a development application for a single house at 60A Strickland Street, Mount Claremont.

**Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 26 October 2021 in accordance with the plans date stamped 1 February 2022 for a Single House at 60A Strickland Street, Mount Claremont subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation, landscaping shall be installed and maintained in accordance with the approved plans, including the planting of one (1) tree with a minimum planting area of 2m x 2m. All landscaping shall be maintained for the lifetime of the development thereafter, to the satisfaction of the City.**
4. **Prior to occupation, the screening and obscure glazing as shown on the approved plans shall be provided in accordance with the Residential Design Codes (Volume 1) by either:**
5. **Fixed and obscured glass to a height of 1.6 metres above finished floor level;**
6. **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;**
7. **A minimum sill height of 1.6 metres as above the finished floor level; or**
8. **An alternative method of screening approved by the City.**

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

1. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **A Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.**
2. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**

**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** | R20 |
| **Land area** | 506m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ Permitted Use |

The site is located at 60A Strickland Street, Mount Claremont. The site is currently vacant.

The original lot was recently subdivided into two lots with a side-by-side configuration. This application relates to the southern lot of the subdivision. The site is orientated east west and is bound by Strickland Street to the west and Clematis Lane to the east. The site slopes from west to east and has a fall of 1m. The lot is regular in shape, with a 10m frontage and a total area of 506m².

**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. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. 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**

State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes) applies 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.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to lot boundary setbacks, solar access to the adjoining site, and the outbuilding (height). As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot boundary setbacks**

On the upper floor, the guest wing to bedroom wall proposes a 1.7m setback to the northern lot boundary. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed northern lot boundary setback is considered to meet the design principles as:

* The northern elevation is well articulated, via the use of varying setbacks ranging from 1.2m to 1.7m. The elevation incorporates design elements such as different colours and materials (rendered brick and a panel finish) and different roof forms (skillion and pitched roof) on the north which assist in breaking up the building bulk. It is considered that the setbacks proposed will not negatively impact the adjoining property in relation to bulk. Figure 1 below shows the northern elevation of the dwelling.
* Ventilation is maintained by the varying setbacks of 1.2m to 1.7m on the upper floor.
* The northern adjoining lot is not likely to be impacted by the solar access proposal as the shadow will fall to the south. Therefore, the northern setback does not impact overshadowing to the southern lot.
* All major openings to habitable rooms on the upper floor are provided with highlight windows to ensure visual privacy is maintained.

Diagram

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Figure 1: Northern elevation of dwelling showing varying materials and roof forms.

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

The development proposes 35% shadow over the strata lot of 62 Strickland Street, Mount Claremont to the south. It is noted that the southern adjoining property is a strata lot with two lots, being 62 (front lot) and 62A (rear lot) on Strickland Street.

An east-west lot orientation is typically characteristic of the properties in Mount Claremont. Where a lot has been subdivided in a side-by-side configuration, the lot widths are usually 10m. Overshadowing is a key matter to these southern lots where a large proportion of overshadowing is presented by two-storey dwellings on the northern lots.

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

* The shadow from the proposal will fall over one major opening to a habitable room on the adjoining property. Based on a sectional overshadowing assessment, the habitable room will still be provided with access to light.
* Due to the subdivision form of the adjoining southern lot, overshadowing is calculated on the individual strata lot areas of the southern site, not the overall parent lot area.
* It is acknowledged that the single storey house would result in less shadow to the south. Altering the design to create a single storey house in order to attempt to meet the deemed to comply provision for overshadowing without compromising living space would likely result in a building that occupies a substantial portion of the site. Such a design would be closer to lot boundaries and occupy a larger portion of the site. It would have less corresponding open space and landscaping potential in comparison to a two-storey dwelling that allows a larger backyard, additional landscaping opportunities, greater setbacks and more open space. Whilst a two-storey dwelling creates greater overshadowing, it provides a better overall level of amenity.
* Consideration must be given for the constraints of the lots. The width and east-west orientation mean it would be unlikely for a two-storey house to achieve deemed-to-comply solar access without compromising an appropriately sized and liveable design.
* The R-Codes recommend 30m2 an outdoor living area provision for lots coded R20. The subject lot to the south is provided with 30m2 of outdoor living area which is not in the shadow of the proposed dwelling. Therefore, a sufficiently sized outdoor living area is protected from the overshadowing.
* There are no roof mounted solar collectors on the southern lot that would be impacted.
* The City has just received a development application for a new two-storey dwelling on the front lot of the strata to the south. The application is its early stages and the City is in the process of reviewing this application.
* The subject site to the north is currently vacant. Until such a time that the northern adjoining lot is developed, the subject site is provided with good solar access to habitable rooms, the primary living area and the outdoor living area which face north.

**Clause 5.4.3 – Outbuildings**

The garage is considered to be an outbuilding as it is detached from the dwelling. The garage proposes a 2.8m wall height. The design principles require outbuildings to not detract from the streetscape or the visual amenity of residents or neighbouring properties. The garage is considered to meet the design principles as:

* The garage meets the setback to Clematis Lane as recommended by the R-Codes.
* The location of the garage is appropriate as it allows the use of Clematis Lane instead of Strickland Street.
* The wall height of 2.8m is typical for a single storey wall and appropriate to accommodate sufficient clearances for parking a vehicle in the garage. The majority of this wall will also be screened by dividing fencing (typically 1.8m in height). As such, the wall height is unlikely to detract from the streetscape of Clematis Lane or the visual amenity of residents or neighbouring properties.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to seven adjoining properties. The application was advertised for a period of 14 days from 30 November 2021 to 14 December 2021. At the close of the advertising period, one objection was received.

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

1. The development proposes a significant length of boundary walls to the south which result in overshadowing. The boundary wall also brings the development closer to the south, resulting in concerns with privacy and higher density living.

Amended plans were received on 1 February 2022 which reduced the length and height of the boundary walls to the south. The development achieves the deemed-to-comply provisions of the R-Codes in relation to boundary walls.

The development meets the deemed-to-comply provisions of the R-Codes in relation to visual privacy. On the ground floor, any major openings and the outdoor living area which are raised 0.5m above natural ground level will be screened to at least 1.6m above the finished floor level by the dividing fencing on the proposed retaining wall. On the upper floor, the major openings are provided with highlight windows facing south.

The development proposal is seeking a judgement of merit for the solar access to the southern lot. Please see above for the Design Principles assessment on solar access.

1. The development does not provide sufficient open space.

Amended plans were received on 1 February 2022 which increased open space. The development achieves the deemed-to-comply provisions of the R-Codes in relation to open space.

1. The development proposes significant overshadowing of the adjoining lot being the front strata lot to the south.

The development proposal is seeking a judgement of merit for the solar access to the adjoining southern site. Please see above for the Design Principles assessment on solar access.

**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. 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 at 60A Strickland Street, Mount Claremont has been presented for Council consideration due to an objection being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and being consistent with the immediate locality and streetscape character.

The objection received relates primarily to overshadowing. An assessment against the design principles has identified that the proposal can be supported given the characteristics of the site and the affected property.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

N/A

# PD11.03.22 Reconsideration of Development Application – 5 Grouped Dwellings at 18 Tyrell Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council - 22 March 2022 |
| **Applicant** | Urbanista |
| **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/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to reconsider a development application for 5 grouped dwellings at 18 Tyrell Street, Nedlands that was previously refused by Council and subsequently amended following a State Administrative Tribunal (SAT) review.

**Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 23 June 2021 in accordance with the plans date stamped 9 February 2022 for five grouped dwellings at 18 Tyrell Street, Nedlands subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and nonpermeable areas shall be contained onsite.**
3. **Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**

* **Face brick;**
* **Painted render;**
* **Painted brickwork; or**
* **Other clean material as specified on the approved plans;**

**and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **Prior to occupation of the development, the balconies of Units 2, 3, 4 and 5 on the northern elevation, the kitchen windows of Unit 3 located on the south elevation, the master bedrooms of Units 2, 3 and 4 located on the south elevation, and the bedroom 3 window of Unit 5 on the south elevation, all as indicated in red on the approved plans, shall be screened in accordance with the Residential Design Codes by either;**
2. **fixed obscured or translucent glass to a height of 1.60 metres above finished floor level; or**
3. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
4. **a minimum sill height of 1.60 metres as determined from the internal 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 occupation of the development, the approved landscaping plan is to be installed and maintained in accordance with that plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City of Nedlands.**
2. **Prior to the issue of Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.**
3. **All fencing within the primary street setback area and facing Tyrell Street is to be visually permeable above 1.2m above natural ground level to the satisfaction of the City of Nedlands.**
4. **The development shall comply with the approved Waste Management Plan date received 23 June 2021 to the satisfaction of the City of Nedlands. Any modification to the approved waste management plan will require further approval by the City.**
5. **Prior to occupation, the development is to incorporate at least one energy efficiency initiative that exceeds the minimum practice, or all dwellings are to exceed the minimum NATHERS requirement by 0.5 stars to the satisfaction of 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 | R60 |
| Land area | 809m2 |
| Land Use | Existing – Single House  Proposed – Grouped Dwellings |
| Use Class | ‘P’ Permitted Use |

The subject lot is located at 18 Tyrell Street, Nedlands and is 240m south of Stirling Highway. The site is located on the east side of Tyrell Street, two lots north of Edward Street.

The site has a lot area of 809m2 and has an existing Single House. The site is relatively flat with a slight crossfall of around 0.7m from southwest (front) to northeast (rear).

The area is surrounded by existing single residential houses that are predominantly single storey. The properties in this area are coded R60 (Attachment 1).

**History**

The application was refused at the 23 November 2021 Council meeting for the following reasons:

1. The lot boundary setbacks are inconsistent with clause 5.1.3 of the Residential Design Codes and result in the appearance of excessive building bulk to adjoining properties, and do not provide adequate direct sun and ventilation to the building and open spaces on the site and neighbouring lots.
2. The lack of sufficient onsite visitor parking is inconsistent with clause 5.3.3 of the Residential Design Codes and is inadequate to cater for the projected needs of the development given the parking restrictions along Tyrell Street.
3. Building height be limited to two (2) storeys to fit into the existing streetscape.
4. Large windows facing east and west are required to have either permanent shading or reduced in size.
5. There is inadequate landscaping on site.

The applicant subsequently lodged an application for review to the SAT. After mediation, amended plans were submitted that included the following changes:

* The visitor parking bay at the front of the development has been removed and replaced with additional landscaping, including the planting of two pear trees.
* The strata plan is slightly reconfigured. Additional space resulting from the removal of the visitor parking bay has been distributed into the strata lots.
* The Unit 1 master bedroom ground floor setback is increased from 1.2m to 1.3m to the southern lot boundary.
* The lot boundary setback of the kitchen wall directly above the master bedroom is also increased from the boundary from 1.2m to 1.3m.
* The Unit 5 upper floor east-facing wall removes the external boxed landscape area which creates a recessed section that is setback greater from the lot boundary. In addition to the removal of the planter box, the height of the Unit 5 elevation is reduced by 0.2m to 7m.
* The wall belonging to the kitchen and bathroom of Unit 5 is now set back 1.8m from the lot boundary.

**Application Details**

The application seeks a reconsideration for development approval for five grouped dwellings. The dwelling fronting Tyrell Street and the dwelling at the rear are two storeys, with the middle dwellings constituting three storeys.

**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. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. 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.

**Design Review Panel**

The application was supported by the Design Review Panel. For full discussion refer to the previous Council report of November 2021 (Reference PD37.21).

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

State Planning Policy 7.3 Residential Design Codes Volume 1 (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.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to lot boundary setbacks and visitor car parking. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setback**

Council’s reasons for refusal included:

1. The lot boundary setbacks are inconsistent with clause 5.1.3 of the Residential Design Codes and result in the appearance of excessive building bulk to adjoining properties, and do not provide adequate direct sun and ventilation to the building and open spaces on the site and neighbouring lots.

The previous plans sought a design principles assessment for lot boundary setbacks to the east and the south. These amended plans now meet the deemed to comply setback provisions to the east. The plans also propose increasing the southern setback to the master bedrooms of Units 1 and 5 from 1.2m to 1.3m. However, these two sections still seek a design principles assessment. A condition of approval to screen specified windows has been included, with the applicant’s consent, in order to meet the deemed to comply setbacks for all other walls.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed northern lot boundary setback is considered to meet the design principles for the following reasons:

* The southern wall is articulated to provide outdoor living areas and open space, with the walls of the middle three units being set back 3.1m from the boundary. This ensures the majority of the development will be set back so as to reduce the impact of bulk and scale to adjoining properties.
* Additional trees and landscaping are provided facing the southern boundary to obscure views to the building and soften the overall appearance as viewed from adjoining properties.
* The overall development meets the deemed-to-comply criteria for overshadowing.
* The ground floor setback has been increased from 1.2m to 1.3m compared to the previously refused set of plans.

It is worth noting that when the application was previously presented to Council, Unit 5 did not meet the deemed to comply provisions for the eastern lot boundary setbacks. The amended plans alter the setbacks and increase the sill height of the windows such that the eastern lot boundary setbacks now achieve deemed to comply.

**Clause 5.3.3 Parking**

Council’s reason for refusal included:

1. The lack of sufficient onsite visitor parking is inconsistent with clause 5.3.3 of the Residential Design Codes and is inadequate to cater for the projected needs of the development given the parking restrictions along Tyrell Street

The development proposes no communal visitor bays, instead providing landscaping within the Tyrell Street streetscape. The design principles for parking include consideration of proximity to public transport, availability of street parking, and the type and size of the dwellings. The proposed parking arrangements are supported for the following reasons:

* The site is located less than 250m from a high frequency bus route serving multiple destinations located near the intersection of Stirling Highway and Tyrell Street. This allows ample opportunities for use of public transport.
* Each unit has room for two vehicles in the garage, whereas the proximity of the bus stop means the onsite parking criteria of the R-Codes stipulates only a single bay in necessary. The development has an excess of five parking bays total, as each unit has one bay beyond the deemed to comply.
* There is no permitted parking on the east side of Tyrell Street, and 2-hour parking restrictions on the west side. This enables sufficient on-street parking for short and long-term visitors.
* The visitor bay has been replaced with landscaping, including the provision of two trees. This additional landscaping is consistent with Council’s recent decisions on “greening” the City.

**Remaining Reasons for Refusal**

Council’s remaining reasons for refusal included:

1. Building height be limited to two (2) storeys to fit into the existing streetscape.
2. Large windows facing east and west are required to have either permanent shading or reduced in size.
3. There is inadequate landscaping on site.

As the applicant notes, there is no statutory requirement that building height be limited to two storeys, nor is there any provision in Volume 1 of the R-Codes for shading to east and west-facing windows or additional landscaping. Nonetheless, additional landscaping has been provided throughout the development.

Administration also notes that the development meets the height provisions set out in Council’s Local Planning Policy – Residential Development. Further, had the application consisted of multiple dwellings, it would have been assessed under Volume 2 of the R-Codes, which sets out 3 storeys (12m) as an acceptable outcome for building height.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks and visitor car parking.

The development application was originally advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to five adjoining properties. The application was advertised for a period of 14 days from 28 August 2021 to 10 September 2021. At the close of the advertising period, a total of 14 submissions were received; 11 objections, one (1) submission of support (with comments), and two (2) requests to extend the advertising radius. Refer to the November 2021 Council Report for details.

**Sustainability**

The applicant proposes:

* solar panels on the roof of each home with a power share system run by the strata company;
* water efficient fixings and LED lighting throughout; and
* vegetation on the buildings.

**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**

It is noted that the SAT has the ability to award costs in certain circumstances, should the matter proceed to a full hearing.

**Legislative and Policy Implications**

Pursuant to section 31 of the *State Administrative Tribunal Act 2004 (WA),* Council is invited to reconsider its decision for 5 grouped dwellings at 18 Tyrell Street, Nedlands.

Council is requested to make a decision in accordance with clause 68(2) of the 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 the option of proceeding to a full hearing at SAT, which is tentatively scheduled for later this year pending Council’s decision.

**Conclusion**

The application for a reconsideration for five grouped dwellings has been presented for Council consideration following SAT mediation and submission of amended plans. The proposal is considered to address the reasons for refusal raised by Council and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and being consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

N/A

# PD12.03.33 Reconsideration of Development Application – Single House at 37C Kinninmont Avenue, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council - 22 March 2022 |
| **Applicant** | Oswald 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 and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. Architectural Perspective Drawings 4. CONFIDENTIAL ATTACHMENT - Submissions |

**Purpose**

The purpose of this report is for Council to reconsider a development application for a two-storey single house at 37C Kinninmont Avenue, Nedlands.

At the 23 November 2021 Ordinary Council Meeting (Refer item PD38.21), the application was refused by Council. Subsequent to Orders being set out by the State Administrative Tribunal (SAT) and amended development plans being received by the City, this application is presented to Council to reconsider the proposal and make a determination.

**Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 15 July 2021 in accordance with the plans date stamped 8 February 2022 for a single house at 37C Kinninmont Avenue, Nedlands, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation, landscaping shall be installed and maintained in accordance with the approved plans, including the planting of one (1) tree with a minimum planting area of 2m x 2m. All landscaping shall be maintained for the lifetime of the development thereafter, to the satisfaction of the City.**
4. **Prior to occupation, the screening as annotated on the approved plans shall be provided in accordance with the Residential Design Codes (Volume 1) by either:**
5. **Fixed and obscured glass to a height of 1.6 metres above finished floor level;**
6. **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;**
7. **A minimum sill height of 1.6 metres as above the finished floor level; or**
8. **An alternative method of screening approved by the City.**

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

1. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City of Nedlands.**

1. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**

**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 SAT.

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 accordane 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**

**History**

At the Ordinary Council Meeting on 23 November 2021, Council considered a proposed single house at 37C Kinninmont Avenue, Nedlands. Council resolved to refuse the application for the following reasons:

1. The proposed development does not meet the design principles of Clause 5.1.3 - Lot Boundary Setbacks of State Planning Policy 7.3 – Residential Design Codes (Volume 1) as the building is not setback from lot boundaries so as to reduce impacts of building bulk on adjoining properties.

2. The proposed development does not meet the design principles of Clause 5.2.2 - Garage Width of State Planning Policy 7.3 – Residential Design Codes (Volume 1) as the streetscape is dominated by the garage door and the visual connectivity between the dwelling and the streetscape is not maintained.

In December 2021, the applicant lodged an appeal with the SAT to review the decision. Subsequent to Orders being set out by SAT and amended development plans being received by the City in February 2022, this application is presented to Council to reconsider the proposal and make a determination.

**Land Details**

|  |  |
| --- | --- |
| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Residential |
| R-Code | R60 |
| Land area | 337m2 |
| Land Use | Residential – Single House |
| Use Class | ‘P’ Permitted Use |

The subject lot is located 170m north of Stirling Highway. The site is currently vacant and is relatively flat.

The original lot at 37 Kinninmont Avenue, Nedlands was recently subdivided into three side-by-side lots. All lots have direct frontage to Kinninmont Avenue. This application relates to the southern lot of the subdivision.

The site is bound by the primary street – Kinninmont Avenue to the east and by residential properties to the north, west and south. All directly adjoining sites are also coded R60. The lot is regular in shape, with a frontage of 8.5m and a total area of 337m².

**Discussion**

**Amended Plans**

Pursuant to the Order set out by the Tribunal, the City has received amended plans which provide the following:

* A cross section of the southern elevation displaying an outline of the existing vegetation along the lot boundary between 37C and 39 Kinninmont Avenue, Nedlands.
* The vegetation is also shown on the southern boundary fence image, the upper floor plan and supporting renders.
* A revised front elevation to provide Colorbond cladding to the garage door and its surrounds.
* A revised upper floor façade incorporating recycled exposed red brick, which wraps around the master bedroom wall facing south.
* A modified arbour along the southern elevation which is made of steel frame portal columns, leading from the front of the dwelling to the entry door along the south side.
* Additional architectural perspective drawings to assist with the visual representation of the final built form.

**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. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. 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**

State Planning Policy 7.3 Residential Design Codes Volume 1 (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.

The proposed development is seeking a design principle assessment pathway for parts of this proposal, relating to lot boundary setbacks, garage width and visual privacy. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot boundary setbacks**

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking.

Council’s reason for refusal included:

1. The proposed development does not meet the design principles of Clause 5.1.3 - Lot Boundary Setbacks of State Planning Policy 7.3 – Residential Design Codes (Volume 1) as the building is not setback from lot boundaries so as to reduce impacts of building bulk on adjoining properties.

Northern Upper Floor Setback

The wall from the office to the ensuite of the upper floor is setback 1.8m to the northern lot boundary. The proposed northern lot boundary setback is considered to meet the design principles as:

* The upper floor of the dwelling facing north incorporates four wall articulations between the balcony at the front and Bedroom 3 at the rear. The provided setbacks varying from 1.2m to 1.8m will allow the perception of building bulk to be broken up through the articulated walls.
* The northern elevation of the upper floor proposes highlight windows to Bedroom 2, Bedroom 3 and the office to protect the visual privacy of the future dwelling at 37B Kinninmont Avenue. The remainder of the windows facing north are minor openings. Therefore, the visual privacy provisions of the R-Codes are not applicable to these windows.
* The northern adjoining lot is currently vacant. In the design stage, the future dwelling of the northern lot can consider the layout, design and proposed setbacks of this application in their proposal.
* In the context of ventilation, the proposed development meets the provisions outlined in the R-Codes for open space. The proposed open space and setbacks ranging from 1.2m to 1.8m will allows airflow around the dwelling and neighbouring properties.
* In relation to the balcony, an assessment is provided against the design principles for visual privacy under Clause 5.4.1 below.

Southern elevation

The wall from the staircase to the balcony of the upper floor is set back 1.3m and the hallway is setback 2.4m from the southern lot boundary. The proposed southern lot boundary setbacks are considered to meet the design principles as:

* The upper floor of the dwelling facing south incorporates five wall articulations between the balcony at the front and Bedroom 3 at the rear. The provided setbacks, varying from 1.3m to 2.4m, will allow the perception of building bulk to be broken up through the articulated walls.
* The southern elevation incorporates various colours (renders) and materials (recycled exposed red brick) so as to provide visual interest and reduce the perception of building bulk. The southern elevation is shown in Figure 1 below.

A picture containing graphical user interface

Description automatically generated

Figure 1: Southern elevation showing varying colours and materials

* Along the entire southern lot boundary, within the boundary of 39 Kinninmont Avenue, there is existing mature landscaping consisting of a dense treeline. The landscaping, which is approximately 5m in height, will provide vegetative screening of the proposed development. The landscaping is shown in Figure 1 above. As shown in the architectural perspective drawing of Figure 2 below, the ground floor will be screened by the landscaping, along with a majority of the upper floor.

A group of trees in a field

Description automatically generated with low confidence

Figure 2: Render of existing vegetation and view of proposed dwelling from neighbour’s perspective from eye level.

* On the upper floor facing south, the master bedroom proposes highlight windows to protect visual privacy to the south. The windows to the stairs, hallway and void facing south are defined by the R-Codes as minor openings. Therefore, the visual privacy provisions of the R-Codes are not applicable to these windows.
* Notwithstanding, the applicant has proposed a band of obscure film on the window to the staircase facing south to limit the view from the staircase and landing. The obscure band is provided over and above the deemed-to-comply provisions of the R-Codes. The glazing is shown in Figure 1.
* Diagram

  Description automatically generatedThe existing vegetation along the entire southern boundary provides a visual screen from the windows of the staircase, hallway and void facing south. As shown in Figure 3 below, the vegetation limits the line of sight and obscures views facing directly into the open space of the southern adjoining property. The line of sight is limited to a view of the sky.

Figure 3: Cross-section showing line of sight facing south.

* The proposed development meets the deemed-to-comply provisions of Clause 5.4.2 – Solar Access for Adjoining Sites. Although the overshadowing from the development will fall over the open space of the southern lot, the application cannot be assessed against the design principles as the deemed-to-comply provisions have been met.
* The open space provision and setbacks ranging from 1.3m to 2.4m will allow access to natural sunlight and ventilation to the subject site and adjoining properties.
* In relation to the balcony, an assessment is provided against the design principles for visual privacy under Clause 5.4.1 below.

**Clause 5.2.2 – Garage width**

Council’s second reason for refusal was:

2. The proposed development does not meet the design principles of Clause 5.2.2 - Garage Width of State Planning Policy 7.3 – Residential Design Codes (Volume 1) as the streetscape is dominated by the garage door and the visual connectivity between the dwelling and the streetscape is not maintained.

The subject site has an 8.5m wide frontage. The development proposes a garage width of 74% of the frontage (6.3m). The garage width has been assessed against the design principles which consider the visual connectivity between the dwelling and the streetscape to be maintained and the effect of the garage door on the streetscape being minimised so that the streetscape is not dominated by garage doors.

In order to reduce the visual impact of the garage door on the streetscape, the development proposes:

* The original plans proposed a sectional Colorbond garage door and brickwork to the garage surrounds. An updated front elevation of the garage proposes Colorbond cladding to the garage door and its surrounds to minimise the effect of the garage door on the streetscape (see Figure 4 below);
* An arbour along the southern elevation to lead pedestrians to the entry of the dwelling;
* Soft landscaping on both sides of the driveway;
* Reduced driveway width;
* A tree in the south-western corner of the front setback area; and
* An upper floor balcony above the garage which cantilevers over the garage door line to provide articulation and reduce the visual dominance of the garage door.

A house with trees around it

Description automatically generated with low confidence

Figure 4: Architectural perspective drawing of the front façade displaying the cladding on the garage, landscaping of the driveway, tree in the front setback area and upper floor cantilever.

**Clause 5.4.1 – Visual privacy**

The front portion of the balcony (eastern elevation) facing Kinninmont Avenue is seeking an assessment against the design principles. 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.

* No direct overlooking is proposed from the balcony, and the majority of oblique overlooking is confined to the street setback area. The balcony is provided with screening along the northern and southern elevations to provide visual privacy to the respective adjoining lots. The screening ensures there is no direct overlooking and that visual privacy is maintained behind the front setback area. This is shown in Figure 5 below.
* The indirect overlooking from the eastern elevation (front) of the balcony facing north and south falls primarily in the front setback areas of the adjoining lots. The indirect overlooking does not fall over an active habitable space or outdoor living area. As shown in Figure 5 below, the area of indirect overlooking is minimal with 0.2m2 of overlooking to the north and 0.1m2 of overlooking to the south behind the front setback area. It is noted that the indirect overlooking to the south will be screened by the existing vegetation. This is shown in the image below.

Graphical user interface, diagram

Description automatically generated

Figure 5: Area of indirect overlooking to adjoining properties and screening along the northern and southern elevations of the balcony.

* The indirect overlooking to the side adjoining properties is a result of the portion of the balcony on the front elevation of the balcony which faces Kinninmont Ave. This allows for passive surveillance of the street.
* The design of the building, the internal layouts and the screening provided ensure that all other upper floor major openings protect the visual privacy of the adjoining sites in accordance with the deemed-to-comply provisions of the R-Codes.

**Consultation**

The development application was originally advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 20 adjoining properties. The application was advertised for a period of 14 days from 15 September 2021 to 29 September 2021. At the close of the advertising period, three objections were received.

Please refer to the original council report presented to Council on 23 November 2021 (Refer item PD38.21) for a summary of the comments from the consultation and the Administration’s response and action taken in relation to each issue.

**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**

It is noted that the SAT has the ability to award costs in certain circumstances, should the matter proceed to a full hearing.

**Legislative and Policy Implications**

Pursuant to section 31 of the *State Administrative Tribunal Act 2004 (WA),* Council is invited to reconsider its decision for the single house at 37C Kinninmont Avenue, Nedlands.

Council is requested to make a decision in accordance with clause 68(2) of the 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, any tentative SAT hearing will likely be vacated and development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have the right of review through a full hearing at which the Tribunal will be the final decision-maker.

**Conclusion**

The application for a two-storey single house at 37C Kinninmont Avenue, Nedlands has been presented to Council for reconsideration under section 31 of the *State Administrative Tribunal Act 2004 (WA).* With the updated development plans and supporting information, the proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and being consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

Nil.

# PD13.03.22 Consideration of Development Application – Rear Addition to a Single House at 89 Stanley Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council - 22 March 2022 |
| **Applicant** | Premier One Constructions |
| **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 and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT - Submission |

**Purpose**

The purpose of this report is for Council to consider a development application for the addition of an above ground cellar to the rear of the existing single house at 89 Stanley Street, Nedlands.

**Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 18 November 2021 in accordance with the plans date stamped 31 January 2022 for rear additions to a single house at 89 Stanley Street, Nedlands, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**

**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 | R10 |
| Land area | 1012m2 |
| Land Use | Residential – Single House |
| Use Class | ‘P’ Permitted Use |

The site is located at 89 Stanley Street, Nedlands. The site is currently occupied by a two-storey single house.

This application proposes the addition of an above ground cellar which is connected to the rear of the dwelling. The cellar will be accessible via the existing covered alfresco. In order to facilitate the proposed cellar position, some of the existing planter boxes in the garden will be removed and the balustrade of the balcony above will be modified.

**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. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. 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**

State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes) applies 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.

The proposed development is seeking a design principle assessment pathway for parts of this proposal, relating to lot boundary setbacks. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot boundary setbacks**

The cellar proposes a 5m setback to the western lot boundary (rear). The addition meets the deemed-to-comply setback to the southern lot. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed western (rear) lot boundary setback is considered to meet the design principles as:

* The cellar is proposed to be finished in similar materials to the external façade of the existing dwelling. The roof of the cellar in its design and form is also similar to the roof of the existing dwelling. It is considered the elevational treatment of the cellar is compatible to and consistent with the remainder of the dwelling. With the design of the cellar and the setback of 5m to the west, the cellar is not likely to negatively impact the adjoining properties in relation to bulk.
* Ventilation is maintained by the 5m setback to the western lot boundary and open space provided within the rear setback area.
* Overshadowing for the proposal meets the deemed-to-comply provisions.
* The cellar is not considered to be a “habitable room/space” as defined in the R-Codes. The proposed use of the cellar is for the storage of wine. As such, the cellar is considered to be a space of specialised nature occupied neither frequently nor for extended periods. Therefore, visual privacy is not applicable.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to five adjoining properties. The application was advertised for a period of 14 days from 30 November 2021 to 14 December 2021. At the close of the advertising period, one objection was received.

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

1. The application does not meet the deemed-to-comply setbacks to the south prescribed under the R-Codes.

The cellar provides a 1.2m setback to the southern lot boundary which meets the deemed-to-comply setbacks prescribed by the R-Codes. The cellar is seeking a judgement of merit for the setback to the western lot boundary (rear). Please see the report above for the Design Principles assessment on lot boundary setbacks.

1. The cellar addition will contribute to building bulk and reduce the amenity for the adjoining property.

Amended plans were received on 31 January 2022 to increase the setback to the western lot boundary to by 0.5m to 5m and decrease the height of the cellar by 0.5m to 5.5m. Please see the report above for the Design Principles assessment on lot boundary setbacks.

1. The cellar addition will result in additional overshadowing to the adjoining property.

The development achieves the deemed-to-comply provisions of the R-Codes in relation to overshadowing.

1. The addition to the existing dwelling will increase the noise from the air-conditioning units and will impact the adjoining property when the air-conditioning is in use.

The existing air conditioning units are not the subject of this current application. The applicant will be advised that noise levels (from the existing and proposed development) are to comply with the Environmental Protection (Noise) Regulations 1997 at all times.

**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. 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 an above ground cellar addition to the existing dwelling at 89 Stanley Street, Nedlands has been presented for Council consideration due to an objection being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and being consistent with the immediate locality and streetscape character. ‘

The objection relates primarily to setbacks and bulk. As assessment against the design principles has identified that the proposal can be supported.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

N/A

# PD14.03.22 Consideration of Community Benefits and Infrastructure Contribution Models

|  |  |
| --- | --- |
| **Meeting & Date** | Council - 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Overview of Community Benefits and Infrastructure Funding Models |

**Purpose**

The purpose of this report is for Council to consider the research and analysis of five community benefit and infrastructure contribution models and select the most appropriate model/s for the Nedlands context. This report has been prepared in response to Council’s 27 October 2020 Notice of Motion relating to infrastructure contributions.

**Recommendation**

**Council:**

1. **endorses the Mayor writing to the Hon. Rita Saffioti MLA Minister for Transport; Planning; Ports, requesting the adoption of standardised development levies, into the Western Australian planning framework, for significant development similar to those required under section 7.12 of the New South Wales *Environmental Planning and Assessment Act 1979;***
2. **selects the Cash-in-lieu of land for Public Open Space developer contribution model; and**
3. **supports the development of a Public Open Space Strategy and associated Local Planning Policy.**

**Voting Requirement**

Simple Majority.

**Background**

**Previous Council resolution**

At the 27 October 2020 Ordinary Council Meeting, Council resolved to commence the preparation of an Infrastructure Contributions Framework, and allocated funds to allow for this work. This report has been prepared in response to Council’s resolution.

**Independent research**

Council was provided background research into the merits of five infrastructure funding models in May 2021. To determine which model was the most suitable, the City engaged an external consultant to undertake the complex analysis and provide recommendations in an independent report.

Officers first recommendation is for Council to commence advocating at the State level for a development levy that would apply to all significant development, similar to that of the New South Wales section 7.12 – Fixed Development Consent Levies.

Officers also recommend that Council prepare a Public Open Space strategy and Local Planning Policy (LPP) for the purpose of obtaining infrastructure contributions for cash-in-lieu of land for Public Open Space for subdivision involving three lots or more.

**Discussion**

**The Scheme and increase in population / change in demographics**

Since the gazettal of the City of Nedlands Local Planning Scheme No. 3 (the Scheme) on 16 April 2019, the City of Nedlands (City) has experienced a rise in the number and scale of development applications proposing increased residential density within its four urban growth areas. The State Government’s Perth and Peel @ 3.5 million establishes a target of 4,400 additional new dwellings for the City of Nedlands by 2050. Over time, the City’s population will increase and demographics will change, placing strain on existing infrastructure and generating demand for new or upgraded community infrastructure.

Despite facilitating significant additional dwellings, the Scheme does not contain infrastructure contribution provisions. There are a number of long-standing contribution models contemplated under the Western Australian planning framework. However, in undertaking its research, officers became aware of funding models being employed both interstate and within Western Australia.

The following five funding models were analysed:

1. Developer Contribution Plans;
2. Development Incentives for Community Benefit;
3. Cash-in-lieu of land for Public Open Space;
4. Specified Area Rates; and
5. Development Levies.

**Attachment 1** summarises the research and consultant analysis of each funding mechanism and ranks each in terms of suitability, efficiency and impact. A more detailed summary of each model is provided below.

**Model 1 -** **Development Contribution Plan (DCP)**

Development Contribution Plans (DCPs) are more suited to funding the delivery of new infrastructure in outer metropolitan areas, rather than established infill areas where significant dwelling yield is achieved in a short period of time. Therefore, within the City of Nedlands, it can be difficult to determine how much additional or upgraded infrastructure is required to meet the needs of new developments versus the existing community.

To establish a DCP, the City will need to comprehensively assess the current condition of its assets and their ability to meet the community's needs. The City can only collect contributions to deliver infrastructure needed to cater for new dwelling growth within the 10-year operating life of the DCP. Based on the projected dwelling yield in the City, very little could be wholly funded via a traditional DCP, leaving a potential funding liability for the City for many projects. Further, the cost of implementing and maintaining a DCP is large relative to the expected revenue. For these reasons, Model 1 is not recommended, as there are more appropriate models for the Nedlands context.

**Model 2 - Development Incentives for Community Benefit**

A formal community benefit framework must be informed by a site and context analysis, with incentives to be linked to design excellence and community benefit (i.e. a public good that a proposal delivers). A community benefit framework could be implemented using a Local Planning Policy that applies either to a specific area or City wide, or a Local Development Plan or Precinct Structure Plan. Scheme provisions may also be necessary to provide certainty. Comprehensive community engagement must be carried out to determine what is considered a tangible community benefit, to ensure discretion is applied appropriately. Although community benefit provisions may be suitable for specific areas of the City, it is not recommended to apply to all the City’s urban growth areas.

**Model 3 - Cash-in-lieu of land for Public Open Space**

This approach has the potential to yield the greatest reward with the least effort and expense by the City when compared to other infrastructure and community benefit funding arrangements.

In accordance with the Western Australian Planning Commission’s Development Control Policy 2.3 – Public Open Space in Residential Areas, where more than five residential lots are created through subdivision, 10% of the gross subdivisible area of land is generally required to be given up as a reserve for recreation. However, it is often preferable to provide cash-in-lieu of land for Public Open Space (POS) where a 10% land area contribution is too small for practical use, there is already sufficient POS in the locality, or where POS is planned in another location. Any expenditure of POS cash-in-lieu funds must be directly related to the use or development of land for POS purposes.

Further understanding of the amount, type and distribution of existing POS and its capacity to accommodate population growth is required, to identify any POS shortfalls and the amount attributable to dwelling and population growth. Preparation of a POS strategy may demonstrate a genuine need for new and/or improved POS. An LPP would be needed to supplement the strategy and guide conditions on development approvals.

Should Council endorse the City’s recommendation to establish a cash-in-lieu of land for POS framework, the City will commence work on a POS Strategy. The POS Strategy will generally aim to deliver the following outcomes:

* Identify the current POS provision across the City, and provide a clear decision-making process to assess the need for POS and to address gaps within the community.
* Identify and respond to changing industry trends, challenges, population growth and associated impacts.
* Recognise and communicate the benefits of POS for community health outcomes.
* Establish a POS framework to manage sustainable provision of amenity and facilities while providing equitable access to a range of functions.

In light of the above, Model 3 is deemed appropriate and optimal for the City of Nedlands.

**Model 4 - Specified Area Rates**

The City can impose a Specified Area Rate (SAR) on land to levy costs to deliver a work, service, or facility, where it is accessible or beneficial to ratepayers within that area (i.e. underground power). The costs to implement a SAR are low, however, must be adopted annually and are therefore susceptible to reduction or removal through budget deliberations, creating uncertainty and insecurity for that income stream. Accordingly, this model is not recommended.

**Model 5 - Section 7.12 Fixed Development Consent Levies (NSW Model)**

New South Wales introduced section 7.12 Fixed Development Consent Levies in 2005, to offer a simplified and less administratively costly alternative to traditional developer contribution plans. This flat levy is used more frequently in infill areas where it is difficult to establish nexus between the development and the infrastructure need and where growth is difficult to predict.

There are several benefits to a levy applied at a specific rate. The levy is based on the total cost of development, meaning its application is relative to the development size. The levy applies uniformly to specific types of development meaning there is no avenue for appeal and the collected funds can be spent on previously identified infrastructure projects. These projects do not need to directly relate to the development which allows the local government to fund a wider range of infrastructure than what a traditional DCP would typically fund.

The current levy applied to development is up to 1% of the total development cost. It is expected, however, that the ‘Amending Regulation’ to the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Regulation 2021* which is proposed to go before the New South Wales parliament in July 2022, will change the basis on which the levy is charged to:

* $15,000 per additional dwelling for single and grouped houses;
* $15,000 per additional dwelling for all other forms of accommodation;
* $50 per square meter of additional gross floor area of commercial uses;
* $35 per square meter of additional gross floor area of retail uses; and
* $35 per square meter of additional gross additional floor area for industrial uses.

There is currently no legislative mechanism available in Western Australia to establish this type of contribution plan. If Council is willing to advocate to the State Government for the introduction of such a levy, it is recommended that the City work in partnership with other inner-city local governments to secure a suitable and mutually beneficial outcome for all stakeholders.

**Recommended Funding Models**

The City recommends that Council adopts Model 3 - Cash-in-lieu of land for Public Open Space and advocates alongside other local governments for Model 5 - Fixed Development Consent Levies (NSW model) to be adopted into the Western Australian Planning framework.

**Consultation**

A POS strategy and associated Local Planning Policy would be publicly advertised (in draft format) for a minimum period of 21 days, if endorsed by Council in the future. Any development levy would need to be implemented at the State level, negating the need for local consultation.

**Strategic Implications**

Both recommendations align with the following values from the City’s Strategic Community Plan 2018-2028.

**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 Area** Renewal of Community Infrastructure

Providing for sport and recreation

Working with neighbouring Councils to achieve the best outcomes for the western suburbs as a whole

The City of Nedlands Strategic Community Plan 2018-2028 identifies the estimated dwelling growth anticipated in the municipality and that infrastructure investment will be required to support the City’s existing and growing community, including POS and a high standard of urban design in growth areas. Obtaining cash-in-lieu of land for POS achieves this strategic objective.

**Budget/Financial Implications**

Preparation and adoption of the POS Strategy would be in accordance with allocations in the City’s 2022/2023 operating budget. The Strategy outcomes, including the development of localised POS plans, will have financial implications.

**Legislative and Policy Implications**

The POS Strategy and any associated Local planning Policy is required to be prepared in accordance with the relevant requirements for State and Local Planning Policies/Strategies. Section 153 of the *Planning and Development Act 2005* facilitates POS contributions for subdivisions when three lots or more are created.

**Decision Implications**

If Council does not endorse this report’s recommendation, Council will likely fund any shortfall when building, upgrading or maintaining facilities and POS infrastructure.

**Conclusion**

The community will benefit from infrastructure contributions, resulting in enhanced areas of Public Open Space and facilities within the City of Nedlands. Adopting this approach (Model 3) has the potential to yield the greatest reward with the least resources by the City, when compared to other infrastructure and community benefit funding arrangements.

Advocating alongside inner-city local governments for the adoption of a Section 7.12 style development levy may assist in securing a suitable and mutually beneficial outcome for all stakeholders.

**Further Information**

Nil.

# PD15.03.22 Indoor Wood Fire Heaters

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Report Author** | Jessica Bruce A/Manager Health & Compliance |
| **Director/CEO** | Tony Free Director Planning and Development |
| **Attachment** | 1. Perth Wood Heater Replacement Programs |

**Purpose**

The purpose of this report is for Council to consider the investigations and recommendations following the Council resolution of 27 July 2021 requested the Chief Executive Officer to commence an advisory period aimed at banning the use of indoor wood fire heating in the City of Nedlands before April of 2024

**Recommendation**

**That Council:**

1. **endorses the Mayor writing to the Hon Reece Whitby MLA the Minister for Environment; Climate Action requesting that the State Government establishes and funds** **an indoor wood heater replacement program; and**
2. **acknowledges the education initiatives to be undertaken by the City.**

**Voting Requirement**

Simple Majority.

**Background**

The Council resolution of 27 July 2021 was for the Chief Executive Officer to commence an advisory period aimed at banning the use of indoor wood fire heating in the City of Nedlands before April of 2024. The basis of the resolution was that wood smoke has negative impacts on community health.

It is acknowledged that wood smoke affects the quality of both indoor and outdoor air. According to WA Department of Health, wood smoke could contribute to short and long-term health issues such as irritation of the eyes, throat and nose, difficulty breathing, and decreased lung function.

**Discussion**

The State’s Department of Water and Environmental Regulation (DWER) is responsible for the control and enforcement of the State legislation in place for solid fuel heaters and firewood. They are regulated through the administration of the *Environmental Protection (Solid Fuel Heater and Firewood) Regulations 2018* (the Regulations), made under the *Environmental Protection Act 1986* (the Act), which regulates the manufacture, sale or distribution for sale of solid fuel burning equipment, or solid fuel, of a prescribed class or description.

In addition, DWER has developed and implemented the BurnWise program aiming to promote the efficient operation of domestic wood heaters to minimise smoke emissions (or particle pollution). This is achieved via providing a series of brochures and other materials to the community, with BurnWise wood smoke management guide to support local government to manage domestic wood smoke.

At a local level, the City of Nedlands has the *City of Nedlands Health Local Law 2017,* which regulates smoke emissions to the extent that the escape of smoke from premises is not to cause a nuisance.

**City’s Current Approach**

The City encourages wood heater users to operate their heaters in an efficient manner by providing relevant information developed by DWER.

BurnWise information and brochures about wood heaters and health, the operation of domestic wood heaters, and backyard burning is publicly available to the community upon request or via DWER’s BurnWise program webpage.

As a comparison, other local governments including the Cities of Wanneroo, Swan, Subiaco, Fremantle, and Towns of Cottesloe, Claremont, Mosman Park address wood smoke concerns similarly to the City. Most local governments provide residents with BurnWise program material, information on backyard burning/wood/smoke, and the complaints response process.

**Approaches by Other States and Territories**

It is found that other states and territories do not have legislation that prohibits the operation of domestic wood heaters. Instead, approaches taken have been consistent across Australia including providing informative materials to educate members of the community and regulating wood heaters and smoke through the administration of state legislation.

**Potential of Banning Indoor Wood Heaters**

The State government agency DWER is responsible for the control and enforcement of the State legislation in place for solid fuel heaters and firewood.

The Regulations, administered by DWER are in place to establish mandatory efficiency and emission standards for wood heaters sold in WA, and mandatory quality standards for firewood offered for sale. The Western Australia Government does not prohibit the use of wood heaters within the state, rather it aims to ensure that air emissions from heaters and firewood are minimised. This approach is consistent with other Australian states.

Officers have undertaken investigations into the City establishing a local law on the banning of indoor wood heaters under the *Local Government Act 1995* (LG Act) prohibiting the use of wood heaters. The advice received is that such a law is likely to be disallowed by the Joint Standing Committee on Delegated Legislation (Committee) for the following reasons:

The proposed local law would be in substantive terms inconsistent with the Regulations.

* A ban on the use of wood fire heaters under a local law would not satisfy the standard of reasonableness or test of proportionality, as it is a matter more appropriately dealt with by legislation enacted by parliament than under delegated legislation.
* The proposed local law would be beyond the scope of the City’s legislative power as the regulation of activities on private land would be in a manner not contemplated by the LG Act.
* The proposed local law attempts to deal with matters concerning private land beyond those provided for in Schedule 3.1 or 3.2 and therefore would be beyond the scope of the City’s legislative power under section 3.5 of the LG Act.

Any proposed ban of wood heaters would need to be introduced by DWER, as the appropriate State government authority, through legislative change.

**Alternative Options Available**

The alternative approaches explored by officers involved firstly an education program for the community and secondly an advocacy program aimed at the State Government introducing changes.

**Education**

The City encourages wood heater users to operate their heaters in an efficient manner by providing relevant information developed by DWER. This includes:

* Make DWER’s BurnWise program information and flyers available on City’s website.
* Raise awareness of efficient use of wood heaters through the promotion of BurnWise program from late summer through to end of winter including:
  + making information and flyers readily available, aiming to have awareness messages reaching as many residents as possible, for example at City administration building, libraries, Point Resolution Childcare Centre, on City’s social media platforms, and through City’s newsletters.
  + have BurnWise leaflets on the responsible and efficient use of wood heaters available to City residents and visitors at City events.

**Advocacy**

The Australian Capital Territory and Victoria have an economic incentive program currently in place to encourage the replacement of existing solid fuel heaters.

In Western Australian the Wood Heater Replacement Program (2006 and 2007) was managed by the then Department of Environmental Conservation in collaboration with home heating retailers, offered an economic incentive to encourage people using wood heaters to convert to an alternative heating source. The program was created as an action from the Perth Air Quality Management Plan 2000-2030 ensuring clean air is achieved and maintained through the Perth metropolitan area. The program offered 378 (2006) and 577 (2007) rebates of which 15 and 17 rebates respectively were within the City of Nedlands.

It is recommended that the Mayor write to the Hon Reece Whitby MLA the Minister for Environment and Climate Action requesting that a similar program be re-established in Western Australia.

**Consultation**

The Administration consulted with the following during the advisory period:

* Department of Water Environmental Regulation
* Western Australian Local Government Association
* Northern Territory Environmental Protection Authority
* Environmental Protection Authority South Australia
* Queensland Government
* Brisbane City Council
* New South Wales Environmental Protection Authority
* New South Wales Government
* Australian Capital Territory Government
* Solar Victoria
* Environmental Protection Authority Victoria
* Environmental Protection Authority Tasmania

There has been no community engagement relating to prohibiting indoor wood fire heaters.

**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** **Healthy and Safe**

Our City has clean, safe neighbourhoods where public health is protected and promoted.

**Priority Area**

* Urban form - protecting our quality living environment

**Budget/Financial Implications**

No financial implications have been identified associated with the recommendations.

**Legislative and Policy Implications**

Matters relating to wood heaters and firewood are currently governed under the *Environmental Protection (Solid Fuel Heater and Firewood) Regulations 2018* (Regulations) which is administered by the Department of Water and Environmental Regulation.

**Decision Implications**

Should recommendations be endorsed, Administration assist the Mayor writing to Hon Reece Whitby MLA the Minister for Environment; Climate Action requesting that the State Government establishes and funds an indoor wood heater replacement program. Administration would continue implementing the education initiatives.

Should recommendations be voted against, only the implementation of education initiatives will be continued as part of the City’s ongoing community engagement activities.

**Conclusion**

The Administration advises that matters associated with wood heaters, wood smoke and firewood are regulated under the current legal framework. At the state level, DWER regulates the manufacture, sale and distribution of solid fuel heaters and firewood through the administration of the *Environmental Protection (Solid Fuel Heater and Firewood) Regulations 2018.* Smoke emissions are regulated at the local level via the administration of the *City of Nedlands Health Local Law 2017*. Current laws at both state and local levels do not prohibit the use of wood heaters.

As a local law to prohibit the use of indoor wood heaters is likely to be disallowed, two alternative options have been explored by the Administration. First, raising the community awareness of the efficient use of wood heaters by making DWER's BurnWise information available to the community at City's buildings and websites etc. Second, advocate to the State Government with the aim to requesting a wood heater replacement program with economic incentives be established in WA, similar to the State's initiative that took place in 2006 and 2007.

As a result of the investigation above the Administration recommends that Council endorse the Mayor writing to Hon Reece Whitby MLA the Minister for Environment; Climate Action requesting that the State Government establishes and funds an indoor wood heater replacement program, and acknowledges the education initiatives to be undertaken by the City.

**Further Information**

Nil.

# Divisional Reports - Technical Services Report No’s TS02.03.22 to TS03.03.22

# TS02.03.22 Montario Quarter - Stage 2 Road Naming Approval

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 22 March 2022 |
| **Applicant** | MNG Survey |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Steve Crossman – Asset Coordinator |
| **Director** | Andrew Melville – Acting Director Technical Services |
| **Attachments** | 1. Proposed Road Name Table 2. Landgate Preliminary Approval 3. Road Name Plan 4. Extract of Landgate’s Policies and Standards for Geographical Naming in Western Australia |

**Purpose**

MNG Survey (MNG), on behalf of Landcorp are seeking the endorsement of Council to name three (3) new roads in the Montario Quarter development in Shenton Park.

Endorsement by Council will allow MNG to apply formally to Geographic Names Landgate (GNL) to accept the proposed road names.

**Recommendation**

**That Council approve the proposed road names as listed below:**

1. **preferred names:**
   1. **Wellness Court,**
   2. **Coalesce Lane; and**
   3. **Forge Mews; and**
2. **back up Names:**
   1. **Innovation; and**
   2. **Legacy.**

**Voting Requirement**

Simple Majority.

**Background**

The Shenton Park Rehabilitation Hospital ceased operation on 4 October 2014 when its vital services and functions were relocated to the new Fiona Stanley Hospital. Landcorp, as the land and development agency for the Western Australia Government, is redeveloping the Shenton Park Rehabilitation Hospital site into a residential development as part of the Government’s asset divestment program. This development is known as Montario Quarter.

On 27 March 2018, Council approved the first tranche of names for stage one (1) of the development including a supplementary list. This list of names was then sent to the GNL

for approval. GNL approved the following names and they have subsequently been

used:

* Sadka Lane,
* Muecke Way,
* Dawes View,
* Guttman Approach,
* Seymore Avenue, and
* Goatcher Vista

On the 28 August 2018, Landcorp applied to the City for the second tranche of road names. Council approved the following names:

* Orton Road;
* Salk Road; and
* Sabin Road.

The Salk and Sabin names are now no longer acceptable to Landgate.

**Discussion**

On the 11 January 2022, MNG contacted the City with the latest tranche of names for Stage 2 of the Montario Quarter development. Each name suggested has had pre-approval from Landgate’s Geographical Names Committee. MNG has supplied justification for each as follows.

Preferred Names:

* Wellness Court - Connected to the site’s former use as the Shenton Park Rehabilitation Hospital of which wellness was the forefront of the sites use, through the many medical innovations, nurses and individuals.
* Coalesce Lane - Calls individuals to reflect on the sites’ history and present context that shapes Montario Quarter, located on the site of the former Shenton Park Rehabilitation Hospital, and the shared aspirations for the future.

Meaning ‘to grow together’ or ‘to unite distinct elements into a whole’. The sites former use and reprisal as a growing residential estate brings people together, through public open space, interactive heritage elements including Public Artworks such as the Wellness Machine and interpretative trails.

Note, that over the next decade Montario Quarter will grow with more than 1,100 dwellings and change in response to the way people use the precinct.

* Forge Mews - In reference to unbreakable bonds, connections shared, union, rebuilding and renewed strength. This name seeks to embody concepts of connection to place and people.

Montario Quarter, located on the site of the former Shenton Park Rehabilitation Hospital is built on the connections to the past through heritage elements, connection to nature with the Woodland Precinct and ongoing rehabilitation.

The site is noted to be of Aboriginal significance with an ethnographic site (DPLH Site ID #3763) being identified as Other Heritage Place, with Traditional Owners noting it was associated with a camp, bringing people together.

The former Hospital also brought people together and, forged new relationships including between nurses and patients.

Back-up Names

It must be noted that the back up names do not have a road suffix at this time.

* Innovation - Named after the pioneering medical achievements of Sir George Bedbrook in the field of paraplegia including the founding of the Department of Paraplegia.
* Legacy - Contribution to the legacy of the achievements at the former Shenton Park Rehabilitation Hospital including the legacy of Sir George Bedbrook, Dr Phyllis Goatcher and Dr Marie Sadka.

**Consultation**

Landcorp have advised the City that the State Heritage Office and their contracted heritage consultants, Palassis Architects, were consulted in the process of developing proposed road names for the Montario Quarter. A Conservation Management Plan and an Interpretation Plan were developed for the site in 2017.

Policy 15 of the Conservation Management Plan states:

“Interpretation about the social significance of SPRH should be included in the Interpretation Plan and implemented by Landcorp within the public realm as part of the overall site redevelopment.”

Landcorp have advised that the Interpretation Plan goes into some detail about significant people and associations and naming themes. This Plan identifies that, site, the alignment if these names need to, where possible, reflect the previous physical locations of buildings on the site.

**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 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.

**Reflects Identities**

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

**Easy to Get Around**

We strive for our City to be easy to get around by preferred mode of travel, whether by car, public transport, cycle or foot.

**Budget/Financial Implications**

There are no budget or financial implications in Council adopting this recommendation.

**Legislative and Policy Implications**

Under the provisions in the [Land Administration Act 1997,](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_28626.pdf/$FILE/Land%20Administration%20(South%20West%20Native%20Title%20Settlement)%20Act%202016%20-%20%5B00-b0-01%5D.pdf?OpenElement) the Minister for Lands has the authority for officially naming roads in Western Australia. Through delegated authority, Geographic Names Landgate, acts on the Minister’s behalf to undertake administrative responsibilities, including the development of policies and procedures required for the formal approval of road names.

Policy dictates that the selection of new road names within new subdivisions is usually the developer/landowner’s role. Endorsement from the relevant Local Government(s) is necessary prior to the developer/landowner making a submission to the GNL for approval.

An extract of Langate’s Policies and Standards for Geographical Naming in Western Australia can be viewed in Attachment 2.

**Decision Implications**

By endorsing the recommendation, MNG can finalise the application for new road names with GNL

**Conclusion**

Administration recommends Council approve the requested names list for the Stage 2 roads as applied for.

**Further Information**

N/A.

# TS03.03.22 Foreshore Management Steering Committee – Establishment and Appointment of Members

|  |  |
| --- | --- |
| **Meeting & Date** | Council – 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Daniel Kennedy-Stiff, Manager City Programs and Projects |
| **Director/CEO** | Andrew Melville, Acting Director Technical Services |
| **Attachments** | Nil. |

**Purpose**

The purpose of this report is for Council to adopt the Terms of Reference for the Foreshore Management Committee and confirm the appointment of its members.

**Recommendation**

**Council:**

1. **adopts the Terms of Reference for the Foreshore Management Steering Committee as per the below;**
2. **appoints the Mayor and four Councillors (one Councillor from each ward) as Committee Members:**

**Councillor (insert name) - Coastal Ward**

**Councillor (insert name)- Hollywood Ward**

**Councillor (insert name) - Dalkeith Ward**

**Councillor (insert name) - Melvista Ward**

1. **appoints one representative from the Department of Biodiversity, Conservation and Attractions (DBCA) as a member**
2. **appoints the Deputy Mayor and four Councillors (one Councillor from each ward) as Deputy Members of the Committee:**

**Councillor (insert name) - Coastal Ward**

**Councillor (insert name)- Hollywood Ward**

**Councillor (insert name) - Dalkeith Ward**

**Councillor (insert name) - Melvista Ward:**

**Terms of Reference**

**Purpose**

**This Committee is established by Council in accordance with section 5.8 of the Local Government Act 1995 to oversee the City of Nedlands Foreshore Management Planning Project.**

**Scope**

1. **Evaluate the Request for Quote (RFQ) responses received by the City for the provision of Foreshore Management planning services and select a preferred consultant.**
2. **Provide guidance to the Consultant on the community consultation plan and process.**
3. **Approve the community consultation plan.**
4. **Provide guidance to the Consultant on the Concept designs, Program of Works and Community Consultation results.**
5. **Provide guidance and input into the draft Foreshore Management Plan; and**
6. **Consider the draft Foreshore Management Plan and make a recommendation to Council on the adoption of the Foreshore Management Plan.**

**Membership**

1. **The membership of the committee shall comprise the Mayor and one Councillor from each ward with the Councillors being determined by nomination and if necessary, a ballot conducted at a Council Meeting and up to one non-Councillor Member, being a representative from the Department of Biodiversity, Conservation and Attractions (DBCA) as voting members.**
2. **Council will appoint one Councillor from each ward as deputy members of the committee.**
3. **If a vacancy on the committee occurs for whatever reason, then Council shall appoint a replacement in accordance with the same arrangements as for the original appointment.**
4. **Deputy members are only required to attend and vote if the primary member is absent, an apology or on leave or has resigned.**
5. **The term of the presiding member and committee members will expire immediately prior to the next ordinary Council election.**
6. **The presiding member shall be determined by election amongst the members of the committee at the first meeting of the Committee.**
7. **Should the elected presiding member not be present during a meeting of the committee then a temporary presiding member shall be elected in accordance with 7 above.**

**Staff**

**The Project Management Team, including the City’s Project Managers and the appointed Consultant team will work closely with the Committee throughout the Project.**

**Meetings**

1. **This Committee operates under the Council’s Standing Orders Local Law.**
2. **The committee shall have flexibility in relation to when it needs to meet, but as a minimum shall meet monthly. It is the responsibility of the presiding member to call the meetings of the committee.**

**Reporting**

**The Committee shall report quarterly to the Council summarising its activities during the previous financial year.**

**Voting Requirement**

Absolute Majority

**Background**

At the Ordinary Council Meeting on 17 December 2019 Councillor Bennett put forward a Notice of Motion (NoM) regarding the Riverwall and foreshore management. Cr Bennett recognised that the area is a high profile and important gateway to Nedlands from Perth. Additionally, he highlighted concerns that the revetment wall design does not reflect an understanding of coastal ecology, coastal engineering or the relevant physical forces that need to be considered. Aesthetic concerns were also raised.

Further, there was opportunity to involve local experts who could assist in developing best practice, holistic solutions, to enhance existing environmental values, with the aim of improving river access, community recreational benefits, and foreshore activation.

Concern was also raised that the proposed uneven limestone boulders within the continuous revetment wall would be a hazard for slips and falls into the river with limited access to get out.

Following their consideration of the notice of Motion, Council resolved to delay acceptance of the tendered contracts associated with the Nedlands Foreshore Riverwall Restoration to explore other community benefit and nature-based options. Additionally, Council requested that the Administration, in collaboration with other technical experts, hold a workshop to explores alternative option to revetment solutions.

Consequently, a Foreshore Workshop was organized and held on 10 September 2021 and was attended by the Mayor, Councillors, Administration staff, members from the University of Western Australia and representatives from Department of Biodiversity, Conservation and Attractions (DBCA).

The workshop sought input from Councillors and other key stakeholders on matters regarding foreshore management along the full length of the Nedlands Foreshore. The input and guidance for the workshop has been incorporated into the Project planning and Request for Quote documentation.

The guiding aims and objectives of the FMP, which are consistent with the Swan Canning River Protection Strategy, have been categorized into socio economic, commercial and sustainability benefits realization objectives, which have been developed, and weighted by relevance, are shown below:

**Tier 1:**

1. Be consistent with the Swan Canning River Protection Strategy, its vision of ‘A healthy river for all, to be enjoyed and shared, now and in the future’, its responses, strategies and actions.
2. Create a highly accessible and integrated public open space

By improving access, connectivity and legibility for all users to the foreshore environment.  
Review current transport provisions and investigate multi modal transport options.  
Identify transport considerations aimed at reducing car use and conflict between nodes of transport.

1. Create a sustainability benchmark

Develop a strategy to manage the operation, maintenance, renewal and upgrade of infrastructure assets to meet key stakeholders and community needs in a sustainable, cost effective and holistic manner.

Support environmental values to enhance native flora, fauna and marine species – particularly dolphins

Promote an environment that responds to the requirements of climate change and water sensitive urban design practice and provides biodiversity

Recommend management / maintenance strategies for the next ten years.

1. Establish key areas for sport activities, passive recreation and nature spaces.

Provide safe and diverse recreation choices at the foreshore.

Increase activation and appeal of existing spaces.

Provide unique environment for fitness and leisure activities with passive and relaxation opportunities.

**Tier 2:**

1. Celebrate Aboriginal culture and the wider history and heritage as a strong element of the foreshore’s identity

Create opportunities in partnership with the local community to celebrate and educate visitors on the historic use of the foreshore by the Noongar Aboriginal peoples.

Create opportunities in partnership with the local community and heritage.

1. Create Partnership Opportunities

Within the local area by attracting commercial opportunities to key nodal areas.

1. Create Education and Training Opportunities

Leverage the location and provide innovative education opportunities through the provision of way finding and other public infrastructure.

Leverage the location on the river and relationships with government and community groups for the provision of innovative training and educational water related programmes.

By improving access, connectivity and legibility for all users to the foreshore environment.

**Tier 3:**

1. Enhance Nedlands as a residential location of choice

By attracting tourists and residents from regional and national and international markets.

**Discussion**

Due to the strategic importance of a Foreshore Management Plan, Administration is seeking to establish a Foreshore Management Plan Steering Committee to provide guidance and input into the process of developing a comprehensive Foreshore Management Plan.

This project will be conducted in partnership with DBCA, who will assume several roles in the project:

1. Project co-funder: DBCA has committed $30,000 to assist in the development of a Foreshore Management Plan.
2. Statutory approval authority.
3. Specialist advisor and Subject Matter Expert on the Swan/Canning River and Foreshore.

The proposed project timeline is shown below:

|  |  |
| --- | --- |
| **Activity** | **Indicative timeline** |
| Appoint FMP Steering Committee | 22 March 2022 |
| RFQ Award | late March 2022 |
| Start up meeting | late March 2022 |
| Community Consultation Plan approved by Steering Committee | June 2022 |
| Key stakeholder and Community consultation commences | July 2022 |
| Draft Foreshore Management Plan (including Works Program, funding analysis and Concept drawings) presented to Council | December 2022 |
| Foreshore Management Plan approved by Council | February 2023 |

**Consultation**

Consultation with Councillors and other key stakeholders was initiated through the Foreshore Workshop on 10 September 2021, held at the University of Western Australia.

The strategic guiding principles of the Foreshore workshop are shown above in the Discussion section of this report.

A community consultation plan will be developed as part of this project, and consultation with the Community, the Steering Committee and key stakeholders will be undertaken throughout the project.

**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** **Healthy and Safe**

Our City has clean, safe neighborhoods where public health is protected and promoted.

**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 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.

**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.

**Reflects Identities**

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

**Easy to Get Around**

We strive for our City to be easy to get around by preferred mode of travel, whether by car, public transport, cycle or foot.

**Priority Area**

* Urban form - protecting our quality living environment
* Renewal of community infrastructure such as roads, footpaths, community and sports facilities

**Budget/Financial Implications**

There is $76,084 of Municipal funds currently allocated to this project, and DBCA have made a commitment of a further $30,000. It is expected that further funds of the approx. $50,000 will need to be allocated next Financial Year to finalise the project. Additional funding will be proposed as part of the City’s 2022/23 Budget process.

**Legislative and Policy Implications**

Section 5.8 of the [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement) allows Council to establish Committees to assist the Council to exercise the power and discharge the duties of the Local Government. The Foreshore Management Plan will need to be complaint with the [Swan and Canning Rivers Management Act 2006](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44210.pdf/$FILE/Swan%20and%20Canning%20Rivers%20Management%20Act%202006%20-%20%5B03-h0-00%5D.pdf?OpenElement). Partnering with DBCA and the engaging of an expert consultant mitigates the risks associated with legislative non-compliance.

**Decision Implications**

If Council endorse the recommended Terms of Reference for the establishment of this Committee, the Project will be able to proceed with Councillor input and guidance throughout the project.

If Council does not endorse recommended Terms of Reference for the establishment of this Committee, the Project will have limited Councillor involvement. This will significantly increase the risk of changes to the Plan, or the Plan not being endorse when presented to Council.

Without an endorsed Foreshore Management Plan, the Administration will not have Strategic guidance on how to effectively plan and manage works along the Foreshore, which will result in a poor outcome for this key area of the City.

A Foreshore Management Plan that has been endorsed by Council will enable the City to apply for state and federal grant funding opportunities that will assist to deliver future capital works.

**Conclusion**

The Foreshore Management Plan project presents a unique opportunity for the City of Nedlands to undertake community consultation that will inform the City as to how our residents want to use the Foreshore over the coming decades, and then to develop a long-term strategic plan to manage and improve the Foreshore.

The establishment of the Foreshore Management Plan Steering Committee will ensure Council has the opportunity to provide strategic guidance to the project and is involved in the development process.

**Further Information**

N/A

# TS04.03.22 City of Nedlands Drainage Infrastructure Study

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Finn Macleod, Manager Assets |
| **Director/CEO** | Andrew Melville, Acting Director Technical Services |
| **Attachments** | 1. Draft City of Nedlands Drainage Infrastructure Upgrade Study 2. Proposed additional 2021-22 Drainage Projects 3. Flooding of City Buildings and Assets 4. City of Nedlands Stormwater Council Policy 5. City of Nedlands Crossover Specification |

**Purpose**

The purpose of this report is to present the draft City of Nedlands Drainage Infrastructure Upgrade Study. The report also recommends a series of projects for inclusion within the 2021/22 capital works program.

**Recommendation**

**That Council:**

1. **receives the Drainage Infrastructure Upgrade Study;**
2. **directs the Chief Executive Officer to include the Drainage Infrastructure Upgrade Study recommendations into the long term financial plan;**
3. **endorses the following capital works projects for 2021 – 22:**
   1. **Taylor Road Basin**
   2. **Waroonga Road Basin**
   3. **30 Bulimba Road, Nedlands**
   4. **55 Adderley Street, Mount Claremont**
   5. **57 Adderley Street, Mount Claremont**
   6. **54 Jenkins Road, Nedlands**
   7. **3A Bulimba Road, Nedlands**
   8. **12 Edwards Green, Floreat**
   9. **105 Broadway, Nedlands**
   10. **1A Doonan Road, Nedlands**
4. **directs the Chief Executive Officer to review the City’s Stormwater Policy; and**
5. **directs the Chief Executive Officer to Review the City’s Crossover Specification.**

**Voting Requirement**

Simple Majority.

**Background**

On 9 July 2021, a storm event impacted the western suburbs of Perth, causing flooding to a number of private properties within the City of Nedlands. The storm event has been classified as a 1 in 180 year storm.

Following the storm event, Council considered the matter at the August Ordinary Council Meeting where it was resolved that:

Council in acknowledging recent winter storm events:

1. requests the CEO to prepare a City-wide report of damage, including but not limited to;

* Flooding from water draining from public land into private land with lots identifies,
* Flooding and storm damage to City buildings and assets,
* River, ocean and wetland inundation of shorelines and assets,
* Call out assistance received from State Emergency Services,
* A program of works for the remedial draining infrastructure required (if any) and
* A cost projection for any remedial work and impact on Budget in out years.

1. instructs the CEO to commission a drainage study to:
2. Review the available local weather data of the storm event that occurred on 9 July 21;
3. Assess the capacity of the drainage network in all affected areas; and
4. Provide recommendations on any upgrade works that are required.
5. approves by absolute majority the transfer of $200,000 from the Service Reserve to the City Wide Drainage account for the drainage study; and
6. instructs the CEO to present a report to Council with the findings of this study, inclusive of recommendations, works cost estimates and a program of works to be considered within the Forward Capital Works Plan.

As a result of this decision, the City engaged GHD to undertake a drainage assessment which involved consultation with affected residents, data collection and modelling.

Photos, videos, resident recollection and anecdotal evidence from the community, and City staff, was used to calibrate and validate the model. The model was used to understand the cause of flooding in each location and then test potential works to improve drainage capacity and mitigate the risk of future flooding events.

The report and modelling are nearing completion, with minor addendums to be provided in areas in which additional modelling has been requested.

**Discussion**

The recommendations contained within the study can be categorised as follows:

1. Upgrades to infrastructure
2. Improvements to policy and specifications

**Upgrades to infrastructure**

The proposed works in the report have been designed to prevent private property flooding and convey all stormwater within the road or drainage infrastructure for a 1% Annual Exceedance Probability (AEP) event. This is in line with the Department of Water’s *Stormwater Management Manual for Western Australia 2014*.

The modelling has shown that there are many locations within the City that are at risk of flooding again in future storm events if further works on the City’s drainage infrastructure are not undertaken.

During the investigation, multiple solutions were investigated for all locations, with the most cost-effective solutions recommended by GHD. The investigation has resulted in 41 recommended projects, worth a total estimated cost of $2.45 million at a confidence of ± 50%. The low confidence in the estimate reflects the use of unit rates as opposed to specific estimates for each project.

Due to the volume and complexity of several of the recommended projects, staff are investigating a multi-year capital works program to implement the proposed upgrades, prioritised by the City’s ability to deliver the works, risk of future flooding, impact of future flooding and further investigative and design works that may be required prior to construction.

Staff have proposed a list of works which are expected to be relatively simple to deliver within the remainder of this financial year while further work on developing a staged capital works program to implement all upgrades is undertaken. Details of these projects can be seen in Attachment 2

It is expected that some residents may oppose the suggested works, as in many locations residents’ crossovers do not meet the City’s Crossover Specification and will require replacement to meet standards. In other locations, both crossover replacement and increases to the level of the verge has been recommended. While this may be unpopular with residents, it is far more cost effective than other alternatives such as large underground systems or lowering road levels. It is proposed that the City fund verge raising and crossover replacements using like for like materials where available. Crossovers which do not comply should be replaced even when the resident opposes the replacement and wishes to accept the risk of flooding as a crossover not to specification may impact flooding of properties surrounding the property with a non-compliant crossover.

The recommended projects for 2021-22 financial year that have been provided by staff reflects the largest impact that staff believe can be made in the short term. Deliverability of many projects is constrained by further survey, design and investigative works required along with the availability of resources to deliver projects in the time remaining this financial year.

**Improvements to the policy and specifications**

The report also highlights changes to Council policy and specifications as a recommendation. It is important that stormwater generated from private property does not exit and place additional burden on the drainage network for which it has not been designed. The GHD report has highlighted recommendations in relation to the City’s planning and drainage policies that will be reviewed by City staff and presented to Council for further consideration.

**Consultation**

Within the City of Nedlands, there were 55 properties that were reported as being affected by flooding caused by the 9 July 2021 storm event. All affected property owners and occupiers were invited to a 1 on 1 consultation with the appointed consultant. 37 of the 55 residents requested to speak to the consultant, all of whom have now met or spoken with the consultant.

Importantly, the information gathered, inclusive of verbal, video and photographic materials have informed the model’s design and subsequent recommendations.

Consultation on proposed projects will occur during the project delivery process.

**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.

**High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Easy to Get Around**

We strive for our City to be easy to get around by preferred mode of travel, whether by car, public transport, cycle or foot.

**Priority Area**

* Urban form - protecting our quality living environment
* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Encouraging sustainable building
* Working with neighbouring Councils to achieve the best outcomes for the western suburbs as a whole

**Budget/Financial Implications**

Council approved $250,000 within the Mid-Year Budget Review to implement works from the Drainage Infrastructure Upgrade Study and river wall repairs. Following further investigation, the river wall repairs can be completed within the existing budget allowing $250,000 to be allocated to funding the recommended drainage projects in 2021/22. Projects listed will be completed in line with the assigned priority. Due to the uncertainty of current estimates, it is possible that not all approved projects are completed in 2021/22. Projects which are not completed will be planned for a future year.

The estimate undertaken by the consultant to complete all works totals $2.45 million, however, staff expect it is likely that the total cost will exceed this significantly. Many of the projects will incur additional expenses that may include site specific surveys, additional modelling and design prior to construction, while costs including service location and relocation, project management and traffic management have not been included. It is estimated that the total cost of all projects combined could increase to more than $5 million.

As the majority of these works are new infrastructure, or infrastructure upgrades, there will be an ongoing cost of maintenance and renewal of these assets. It is expected annual maintenance costs to clean and maintain the new infrastructure will be in the order of $5,800 per annum with ongoing renewal costs of approximately $50,000 per year.

Given the quantum of the recommended works and associated costs, the City will incorporate the recommended works into the long-term financial plan. This plan covers a 10 year time horizon.

**Legislative and Policy Implications**

The following legislative and policy implications relate to this item:

* City of Nedlands Stormwater Council Policy
* Local Government Act 1995 (s3.51, Schedule 3.2 and 9.1)
* State planning policy 2.9 - Water Resources

**Decision Implications**

If Council endorse the recommendation, the City will begin works as quickly as possible, with future works incorporated into the long-term financial plan. Additionally, the City will prepare discussion papers for presentation at a future Concept Forum with regard to the City’s Stormwater Policy and Crossover Specification.

If Council did not endorse the recommendation, the delivery of required drainage infrastructure will be delayed.

**Conclusion**

The Drainage Infrastructure Upgrade Study has shown that there are many areas of the City’s drainage network which do not meet current best practice.

It is recommended that Council receive the Drainage Infrastructure Upgrade Study, request that the CEO develop a Capital Works Program incorporating the Report’s recommendations, and endorse the listed capital works projects for the 2021-22 financial year.

These actions will enable the City to commence work on improving drainage infrastructure to reduce the risk of future storm events adversely impacting private property.

**Further Information**

N/A

# Divisional Reports - Community Services & Development Report No CSD02.03.22

# CSD02.03.22 CSRFF Application Allen Park Tennis Club

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 *Local Government Act 1995*** | Nil. |
| **Report Author** | Marion Granich – Manager Community Development |
| **Director/CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | Nil |

**Purpose**

This item seeks Council’s endorsement of a grant application to the Department of Local Government, Sport and Cultural Industries (DLGSCI) for the Community Sport and Recreation Facilities Fund (CSRFF) Small Grant Round.

**Recommendation**

**Council:**

1. **advises Department of Local Government, Sport and Cultural Industries (DLGSCI) that it has ranked and rated the application to the Community Sport and Recreation Facilities Fund Small Grant Round as follows:**
2. **Allen Park Tennis Club – Tennis Court Fence Replacement: Well planned and needed by the applicant (B Rating);**
3. **endorses the above application to DLGSCI on the condition that all necessary statutory approvals are obtained by the applicant; and**
4. **includes an amount of $37,516 (ex GST) for Allen Park Tennis Club for consideration in the 2022/2023 budget process, conditional on the project receiving DLGSCI funding.**

**Voting Requirement**

Simple Majority.

**Background**

**Community Sporting and Recreation Facilities Fund**

The Department of Local Government, Sport & Cultural Industries administers the CSRFF. The purpose of the fund is to provide financial assistance to sporting clubs and local government authorities to develop basic infrastructure for sport and recreation. The program aims to increase participation in sport and recreation, with an emphasis on physical activity, through rational development of sustainable, good quality, well designed and well utilised facilities. This fund has three categories, shown below:

Table 1: CSRFF Grant Categories

|  |  |  |  |
| --- | --- | --- | --- |
| **Grant Category** | **Total Project Cost Range** | **Standard DLGCSI Contribution** | **Frequency** |
| Small Grant | ≤ $300,000 | $2,500 – $100,000 | Bi-annual |
| Annual Grant | $300,001 - $500,000 | $100,001 - $166,666 | Annual |
| Forward Planning Grant | ≥ $500,000 | $166,667 - $1,000,000 | Annual |

For applications to be supported by Department of Local Government, Sport and Cultural Industries, they must firstly be endorsed by the relevant Local Government Authority. For approved projects, DLGSCI will provide a grant of a maximum of 1/3 of the total project costs.

Ranking: The City is required by Department of Local Government, Sport and Cultural Industries to rank in priority order the applications received for each CSRFF round.

Rating: The City is required by Department of Local Government, Sport and Cultural Industries to rate each application against the categories below:

A - Well planned and needed by municipality

B - Well planned and needed by applicant

C - Needed by municipality, more planning required

D - Needed by applicant, more planning required

E - Idea has merit, more preliminary work needed

F - Not recommended

**Key Relevant Previous Council Decisions:**

* CM05.20 – 28 July 2020 – Community Sport and Recreation Facilities Fund Application – Dalkeith Tennis Club and Allen Park Tennis Club.
* CSD01.21 – 23 March 2021 – Community Sport and Recreation Facilities Fund Applications – Various Clubs

On both occasions, Council endorsed the APTC application and approved a   
Council grant of $27,324 towards the fencing project. However, the project did not receive DLGSCI funding, so did not proceed.

**Discussion**

There is only one application to this CSRFF round, with an overview of it provided in Table 2 below.

Table 2: CSRFF Small Grant Application 2022/23 Round

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Applicant** | **Project** | **Total Project Cost (EX GST)** | **Club Contribution** | **Grant Amount Requested of State Govt.** | **Grant Amount Requested of Council** |
| Allen Park Tennis Club | Tennis Court Fence Replacement | $112,549 | $37,517 | $37,516 | $37,516 |

**Allen Park Tennis Club (APTC)**

|  |  |
| --- | --- |
| Total Membership | 230 |
| No. of City of Nedlands Members | 148 |

APTC was founded in 1929 and is located on Allen Park, Swanbourne. It leases this building and the surrounding fenced tennis court area from the City. APTC has 7 grass courts and 4 hard courts. The Club and its facilities are used all year round. APTC has a membership of 230 with 148 (64%) being City of Nedlands residents. As well as coaching and competitions, the hard courts are available to hire by members of the public through an online booking system. Many of these casual bookers are City of Nedlands residents.

APTC is seeking a CSRFF small grant to assist with funding the replacement of tennis court fencing. The fencing has reached the end of its life. Many of the existing posts are rusted through at the base and in these sections, a large length of fence could be blown over in windy conditions. The Club has patched the fences numerous times; however, the fencing is now becoming unsafe.

APTC is requesting a Council grant of $37,516 towards this project, which will cost $112,549 in total. The Club will contribute $37,517. This fits with the standard approach to funding such projects, which is that the Club, Council and State Government each contribute 1/3 of the total project cost.

The project will have a high level of community benefit as 64% of members are City residents. Additionally, other members of the community who hire the courts will benefit. The club also provides other community events and activities, which are attended by community members who are not necessarily club members, and these people will also benefit by the Club’s ongoing viability. Therefore, it is recommended that Council supports this much-needed project that will have significant community benefits.

**Consultation**

The applicant has completed a formal application to submit to DLGSCI for this grant round. The application is available to Councillors on request from the CEO’s office.

**Strategic Implications**

**Values** **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 Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Providing for sport and recreation

The application is consistent with Council’s strategic priorities being renewal of community infrastructure and providing for sport and recreation. The project will benefit the club members as well as members of the wider community who use the facilities.

**Budget/Financial Implications**

APTC is requesting a grant of $37,516 from Council, the same from DLGSCI with the Club providing the remaining 1/3. The overall cost of the project is $112,549. The proposed works are in the Club’s leased area.

If the application is supported by Council, this amount will be included in the funds allocated for CSRFF grants to sporting clubs, in the draft 2022/2023 Council budget.

**Legislative and Policy Implications**

**Council Policy**

Council’s Capital Grants to Sporting Clubs Policy states that:

“To ensure the financial support it provides to sporting clubs is effectively targeted to achieve maximum community benefit, Council will consider the following key priorities:

1. Multi-use: priority will be given to developing facilities that will be used by more than one sporting club or type, particularly where such clubs are not yet sharing facilities. This is to facilitate the intent of maximising efficiencies and encouraging clubs to share some facilities while still retaining each club’s separate management and identity.
2. Recreation Plan rating: priority will be given to supporting sports identified as a high priority in the City’s Strategic Recreation Plan. The Strategic Recreation Plan provides a rating for each sport type, based on two factors: the demand to play that sport type and the facilities already provided for that sport type. These two factors result in a rating for each sport type as high, medium or low priority for facility development. Sport types with a high level of demand (growing membership) and a low level of existing facilities receive the highest rating.
3. Other funding: priority will be given to projects that are eligible for funding for other government bodies such as the Department of Recreation’s Community Sport and Recreation Development Fund (CSRFF) or Lotterywest funding. This is to facilitate the overall financial viability of the project and contribute most effectively to the upgrade of community facilities.
4. Level of community benefit: priority will be given to projects that demonstrate a high level of benefit to the local City of Nedlands community. This will include, but is not limited to, City of Nedlands resident membership of the applicant sporting club (total and proportional), support for junior sport and the level of community access (i.e., by non-club members and by community groups and organisations)”.

This application is consistent with the policy referred to above, with the following exceptions:

* Multi-use: APTC is not a shared facility because of the nature of tennis as a sport, which requires sports-specific courts, unlike sports such as football which can share ovals with other sports). Therefore, this criterion is not relevant to this application.
* Recreation Plan rating: the City currently has no Recreation Plan in place, so there is no such rating currently available. Therefore, this criterion is not relevant to this application.

This application fulfils all other the requirements of the policy, including:

* Other funding: the applicant is applying for state government funding for 1/3 of the cost of the project and meets the eligibility criteria for funding through DLGSCI’s CSRFF program.
* Community benefit: The project will have a high level of local community benefit, with 64% of the Club’s members being City of Nedlands residents. Additionally, many of those who hire courts casually without being Club members, are City of Nedlands residents.

**Decision Implications**

Council is required to make a decision on the Club’s application by the grant round closing date of 31 March 2022. If Council endorses the application, it will be submitted to DLGSCI for consideration. If Council does not endorse the Club’s application, the Club cannot proceed with their application to DLGSCI.

**Conclusion**

It is recommended that Council endorses this CSRFF application for funding to Department of Local Government Sport & Cultural Industries and provides a grant of $37,516 to Allen Park Tennis Club, on the conditions they receive state government support for this project and meet all necessary statutory approvals. Council’s support for the application will strengthen the Club’s ability to receive funding from the state government; and is consistent with Council’s strategic aim of providing sport and recreation infrastructure as essential for healthy communities.

**Further Information**

N/A

# Divisional Reports - Corporate & Strategy Report No’s CPS09.03.22 to CPS11.03.22

# CPS09.03.22 List of Accounts – February 2022

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

# CPS10.03.22 Monthly Financial Reports – February 2022

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

# CPS11.03.22 Monthly Investment Report – February 2022

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

# Divisional Reports – Reports from the Audit & Risk Committee Report No’s AR01.03.22

# AR01.03.22 Annual Compliance Return 2021

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

# Divisional Reports – Report form the Public Art Committee Meeting No’s PAC01.02.22

# PAC 01.02.22 Commissioning Health Workers Tribute Public Art Project

|  |  |
| --- | --- |
| **Meeting & Date** | Public Art Committee Meeting – 7 February 2022  Council Meeting – 22 March 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 *Local Government Act 1995*** | Nil. |
| **Report Author** | Marion Granich – Manager Community Development |
| **Director/CEO** | Bill Parker – Chief Executive Officer |
| **Attachments** | 1. Confidential Attachment - Health Workers Project – Proposal 2 |

**Purpose**

This report seeks Council’s approval of the Public Art Committee’s recommendation of an artwork to be commissioned as the Health Workers Tribute Project. The Public Art Committee has been working towards this project since May 2020. After an extensive advertising, selection and shortlisting process, the Committee has now selected its preferred proposed artwork and seeks Council approval of that selection.

**Recommendation**

**That Council approves the commissioning of Proposal 2 (as at Confidential Attachment – Health Workers Project – Proposal 2) for the Health Workers Tribute public artwork.**

**Voting Requirement**

Simple Majority.

**Background**

The Health Workers’ Tribute Project was initiated by the Public Art Committee in May 2020. Initially, the idea of purchasing an existing artwork that would fit this purpose was explored. However, Council decided that an artwork was to be commissioned, rather than purchased.

On 25 May 2021 Council approved the expenditure of $20,000 on a consultant to co-ordinate the project; expenditure of $50,000 on the artwork itself; and approved Dot Bennett Reserve as the site for the artwork. The City then advertised for EOIs from experienced public artists interested in creating an artwork expressing the Health Workers’ Tribute brief. The City received 5 submissions.

On 6 December 2021, the Public Art Committee considered the 5 submissions received; and short-listed to 3. The 3 shortlisted artists were each paid $1,500 to prepare more detailed proposals and present on them in person to the Public Art Committee. All 3 detailed proposals were received by the deadline of 27 January 2022.

**Discussion**

On 7 February 2022, the Public Art Committee met and considered the 3 shortlisted proposals, with each artist (or team of artists) addressing the Committee in person on their proposal. After detailed consideration of the 3 proposals, the Public Art Committee selected their preferred submission and made the following recommendation to Council:

“That the Public Art Committee recommends to Council the commissioning of Proposal 2 (as at Confidential Attachment 2 – Health Workers Project – Proposal 2) for the Health Workers Tribute public artwork.”

Having undertaken a thorough advertising, shortlisting and presentation process, meeting the shortlisted artist and asking questions about their proposals, the Public Art Committee now provides their choice to Council for approval.

**Confidentiality**

The proposals are treated confidentially at this stage as a courtesy to the artists and to protect their intellectual property rights. If the proposals were to be made public at this stage, there would be a risk of the material being exploited by another party before the artist has been commissioned and the work fabricated and installed. The time between concept and installation is longer for projects commissioned by government than for privately commissioned pieces, so care needs to be taken not to publish the artists’ concepts at this stage. It is also a courtesy to only announce the winning artist, rather than name all applicants publicly. Treating applicants confidentially will also make it easier for the City to attract applications in future.

**The Selected Work**

The proposal for the work that has been selected by the Public Art Committee for commissioning, and which is now recommended to Council, can be seen at Confidential Attachment – Health Workers Project – Proposal 2. The artwork consists of two sculptural works separated by the safe physical distance of 1.5 metres. The two works are of stylized human figures, fabricated in molded satin Perspex. Each of the two separate works is displayed on a Corten steel plinth. The top of each plinth, and the side facing inwards, is clad with mirror polished, marine grade, stainless steel.

The first plinth displays a 1 metre tall figure surrounded by a cloak, which represents the personal protective equipment of a health care worker. The cloak will display the medically-associated symbol of the cross, using a laser cut pattern onto the cloak. The figure sits on top of a 1.5 metre high plinth, making a total height of 2.5 metres of figure plus plinth.

The second plinth features a cluster of 4 figures of different sizes and colours, representing members of the community affected by the pandemic, from children to the elderly. These community figures range from 40 – 80 centimeters high and stand on a 1.5 metre high plinth, making a total height of 2.3 metres of figures plus plinth.

Both works combined create a footprint of 1.1 metres wide x 3.2 metres in length x 2.5 metres high, including the plinth bases. The figures will have integrated lighting to create a soft glow from the inside the figures. The lights will be on a timer for limited night-time viewing. All materials used in the work have been used in both architectural and public art fabrications and are suited to permanent outdoor installation with minimal maintenance.

This artwork is a unique and significant response to the brief of creating a tribute to the role of health workers during the COVID-19 pandemic. In their consideration and assessment of the 3 shortlisted proposals, members of the Public Art Committee noted that this was the only proposal that put emphasis on the health workers and illustrated their connection with, and service of, the community. The work is materially engaging, uplifting and encourages inquisitiveness. The artwork will be an exciting new addition to the City’s public art collection, being both topically important and conceived in an upbeat and contemporary manner.

Once there is a formal Council decision commissioning the work, the artist can commence design development, followed by fabrication. It is expected that the work will be installed in approximately September 2022.

**Consultation**

No consultation has been undertaken on the proposals submitted by the artists as they are confidential at this stage, to protect the intellectual property rights of the artists. However, once there is a Council decision commissioning the work, the Public Art Consultant co-ordinating the project will undertake consultation with major health providers in the area.

**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.

**Great Communities**

We are strong for culture, arts, sport and recreation.

**Reflects Identities**

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

**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.

**Reflects Identities**

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

**Budget/Financial Implications**

**Table 1: Total Health Workers Tribute Project Budget**

|  |  |
| --- | --- |
| Public Art Consultant | $ 5,500 |
| Development of detailed proposals by shortlisted artists  (payment of 3 x $1,500 to each artist) | $ 4,500 |
| Commissioned artwork  (including artists fee, fabrication & installation of work) | $50,000 |
| Contingency  (traffic management etc.) | $10,000 |
| **Total Cost of Artwork** | **$70,000** |

The total cost of the Health Workers Tribute public art project is $70,000. This will be spread across two financial years, with approximately $25,000 expenditure expected in the 2021/22 financial year and $45,000 in the 2022/23 financial year. This is because the artist, once commissioned, will be paid in stages at specific milestones; and installation of the work, with its associated costs, is not expected to take place until the 2022/23 financial year.

**Legislative and Policy Implications**

There are no legislative or policy implications.

**Decision Implications**

If Council approves the Public Art Committee’s recommendation to commission this work, the project will proceed, with the work expecting to be implemented early in the 2022/23 financial year. A formal opening event will take place, with senior health dignitaries invite to attend. The work will be visible from the high-traffic artery of Smyth Road and will represent the City’s acknowledgement of the role of health workers.

If Council does not approve the Public Art Committee’s recommendation, the project will be further delayed.

**Conclusion**

The City has been working towards this Public Health Workers Tribute project since May 2020. It has been a protracted process, with the project initially being approached as an artwork purchase, rather than a commission. This approach was later changed to commissioning a work. The commissioning process is necessarily more complex than purchasing an existing artwork and has involved:

* appointing a consultant to co-ordinate the project
* calling publicly for submissions from suitably experienced public artists
* receiving and considering 5 submissions
* shortlisting those 5 submissions to 3
* paying the shortlisted artists to develop more detailed proposals and present them, in person, to the Public Art Committee
* the Public Art Committee’s consideration of those 3 shortlisted submissions and its recommendation to Council of the work to be commissioned.

A Council decision supporting the Public Art Committee’s recommendation will allow the project to be implemented. The artwork selected by the Committee effectively expresses the artist brief, while doing so in an innovative, contemporary and positive way. It pays tribute to the health workers themselves while also representing the community which has been protected and supported by them. The work will be a fitting and visible expression of the City’s acknowledgement of the health profession, particularly with the City’s proximity to so many major health facilities. The formal artwork launch event will be held at the site of the new work, on Dot Bennett Reserve and is expected to be officiated by the Mayor, with high profile health representatives and media invited. It is recommended that Council endorses the Public Art Committee’s recommendation and commissions the work as proposed at Confidential Attachment – Health Workers Project – Proposal 2.

**Further Information**

N/A

# 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.