**AGENDA**

**Council Meeting Agenda Forum**

**10 May 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Council Meeting Agenda Forum of the City of Nedlands is to be held on Tuesday 10 May 2022 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm.

A picture containing insect

Description automatically generated

Bill Parker

Chief Executive Officer

5 May 2022

**Information**

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

**Public Question Time**

Public Questions are dealt with at the Ordinary Council Meeting.

**Deputations**

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

**Disclaimer**

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

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# Declaration of Opening

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

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

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Councillor J D Wetherall Hollywood Ward

Councillor H Amiry Coastal Districts Ward

# 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.

20.1 CSD03.05.22 CONFIDENTIAL Nominations for City Honours

20.2 PD34.05.22 CONFIDENTIAL Planning Compliance Matter

# 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 PD25.05.22 to PD33.05.22

# PD25.05.22 Consideration of Development Application – 4 Grouped Dwellings at No. 7 Florence Rd, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | H Zhang |
| **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. Development Plans 2. Landscaping Plan 3. 3D Render 4. Aerial Image and Zoning Map 5. Verge Images 6. CONFIDENTIAL ATTACHMENT – Withdrawal of submission agreement and confirmation of non-objection. |

**Purpose**

The purpose of this report is for Council to consider a development application for four grouped dwellings at 7 Florence Rd, Nedlands.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* approves the development application received on 30 November 2021 in accordance with the plans date stamped 22 April 2022 for 4 grouped dwellings at 7 Florence Rd, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 22 April 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
4. **Face brick;**
5. **Painted render;**
6. **Painted brickwork; or**
7. **Other clean finish as specified on the approved plans.**

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

1. **Prior to the lodgement of a demolition permit and/or a building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plan/s shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
2. **Prior to occupation, the balconies located on the northern elevation as annotated in red on the approved plans shall be screened in accordance with the Residential Design Codes by either;**
3. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
4. **fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
5. **a minimum sill height of 1.6 metres above the finished floor level; or**
6. **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, a notification, pursuant to section 70A of the Transfer of Land Act 1893, shall be placed on the certificate of title for the subject lot. The notification shall be created at the owner/applicants’ expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:**

**‘This lot is in the vicinity of a transport corridor and is affected, or may in the future be affected, by road and rail transport noise. Road and rail transport noise levels may rise or fall over time depending on the type and volume of traffic.’**

**The above requirement is a provision outlined in the State Planning Policy 5.4 ‘Road and Rail Noise.’**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
2. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, landscaping is to be installed and maintained in accordance with the landscaping plan dated 28 April 2022 prepared by CX landscape, or any modifications approved thereto, for the lifetime of the development, to the satisfaction of the City of Nedlands.**
4. **The retained trees on site, as annotated on the site plan, are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the trees die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
5. **Prior to the issue of a building permit, a suitably qualified arborist is to submit a report to the City of Nedlands demonstrating that the construction and built development will not adversely affect the health of the retained trees located within units 1 and 4, to the satisfaction of the City. Any recommended mitigation measures as identified within the arborist report, including tree protection zones, are to be undertaken for the duration of the demolition and construction 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** | 1,012m2 |
| **Land Use** | Residential Single House |
| **Use Class** | ‘P’ Permitted Use |

The site is located at 7 Florence Rd, Nedlands, 150m south of Stirling Highway. The site is located on the western side of Florence Rd and has an existing single storey single house on the lot which is to be demolished. The lot is rectangular in shape, has a 20m frontage and a total area of 1,012m2.

The application seeks development approval for the construction of four, two-storey grouped dwellings served by a single common driveway, located on the south side of the subject site.

Amended plans have been submitted following negotiations between the submitter and the applicant. The amendments to the development proposal include:

* Reduction to the area of clear glazing on the ground floor, northern and western elevations of Unit 4 (rear unit).
* Increase to the height of the northern dividing fence to a minimum height of 1.8m.
* Addition of 300mm lattice to the top of the northern dividing fencing.
* Retention of an additional tree located in the north-east corner of the subject site (to the east of Unit 1).
* Allocation of a visitor parking space at the front of each unit, delineated by contrasting coloured paving.

The application was originally considered at the 26 April Ordinary Council Meeting, where Council resolved to defer the application to the 24 May Ordinary Council Meeting.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (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) of LPS3 – 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. Council is asked to consider the design principles 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.

**Clause 5.1.3 – Lot Boundary Setback**

Unit 4 - Western First Floor Setback

The development proposes a 1.5m setback to the first floor. 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 lot boundary setback is considered to meet the design principles as:

* The proposed western lot boundary setback does not prejudice the western lot’s solar access or ventilation.
* Shadow cast from the western wall is contained wholly within the confines of the subject site. The development satisfies the deemed-to-comply provisions of the R-Codes in relation to solar access for adjoining lots.
* The development satisfies the deemed-to-comply provisions of the R-Codes in relation to visual privacy addressing the western neighbouring lot. The development proposes the use of larger than minimum setbacks and screening addressing adjoining lot boundaries to alleviate any perceived visual privacy intrusions.

**Clause 5.3.3 – Parking**

The development proposes 8 onsite parking spaces by means of a double garage for each dwelling. Consideration may be given, under the design principles of the R-Codes, for a reduction in the minimum number of on-site car parking spaces for grouped and multiple dwellings provided:

* available street parking in the vicinity is controlled by the local government; and
* the decision-maker is of the opinion that a sufficient equivalent number of on-street spaces are available near the development.
* The site is located less than 250m from a high frequency bus route serving multiple destinations located near the intersection of Stirling Highway and Florence Road. This allows ample opportunities for use of public transport.
* There is no permitted parking on the west side of Florence Road, and 3-hour parking restrictions on the east side during business hours. There is un-restricted street parking on the east side of Florence Road outside of business hours.
* The applicant has demonstrated an opportunity for visitors to park in front of the garage of the unit they are visiting while leaving room for other vehicles to pass along the driveway. Access arrangements would be managed by the strata body.

**Landscaping within the lot**

Volume 1 of the R-Codes have no requirements for tree retention within private property. The development proposes to retain two existing trees on site, one located in the south-western corner of Unit 4 and one to the north-east of Unit 1. The development has provided approximately 10% of the parent lot area as landscaping.

The landscaping plan submitted as part of the development application forms part of the application’s determination.

In order to protect the retained trees the following conditions are recommended to form part of the application’s determination:

1. Prior to occupation, landscaping is to be installed and maintained in accordance with the landscaping plan dated 28 April 2022 prepared by CX landscape, or any modifications approved thereto, for the lifetime of the development, to the satisfaction of the City of Nedlands.
2. The retained trees on site, as annotated on the site plan, are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the trees die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit, a suitably qualified arborist is to submit a report to the City of Nedlands demonstrating that the construction and built development will not adversely affect the health of the retained trees located within units 1 and 4, to the satisfaction of the City. Any recommended mitigation measures as identified within the arborist report, including tree protection zones, are to be undertaken for the duration of the demolition and construction to the satisfaction of the City of Nedlands.

**Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 13 adjoining properties. The application was advertised for a period of 14 days from 17 January 2022 to 31 January 2022. At the close of the advertising period, one objection was received.

Following mediation between City Officers, the applicant and the submitter, the objection was formally withdrawn on 22 April 2022. A copy of the agreement and formal withdrawal of the objection is provided as an attachment to this report.

The application is now presented to Council for consideration with no objections or submissions.

**Strategic Implications**

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

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

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

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

**Priority Area**

Urban form - protecting our quality living environment

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

The application for 4 grouped dwellings has been presented for Council consideration due to objections 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.

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

**Further Information**

Nil.

# PD26.05.22 Consideration of Development Application – Nine Multiple Dwellings at 8 Taylor Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | 3dEdge Designers + Planners |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. R-Code Assessment 4. Schedule of Submissions 5. CONFIDENTIAL ATTACHMENT – Submissions |

**Purpose**

The purpose of this report is for Council to consider a development application for nine multiple dwellings at 8 Taylor Road, 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 in accordance with the plans date stamped 8 April 2022 for nine multiple dwellings at 8 Taylor Road, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 8 April 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Engineering and Design**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plans shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
2. **Prior to the issue of a building permit, a minimum of 20% (2) units are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**
3. **Updated plans are to be lodged with the Building Permit demonstrating that the utilities are accessible and are integrated into design of buildings and landscape.**

**Landscaping**

1. **Prior to occupation, landscaping shall be completed in accordance with the approved development plans received 8 April 2022 or any approved modifications to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
3. **The Arborist Reports dated 23 December 2021 and 14 March 2022 prepared by Arbor Consulting form part of this approval. The recommendations contained within the report must be complied with at all times to the satisfaction of the City of Nedlands.**
4. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

**Acoustics and Visual Privacy**

1. **All recommendations contained within the revised Acoustic Report prepared by Lloyd George Acoustics dated 14 March 2022 shall be implemented and adhered to for the lifetime of the development to the satisfaction of the City of Nedlands.**
2. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the *Environmental Protection (Noise) Regulations* *1997* to the satisfaction of the City’s Health Services.**
3. **Prior to occupation, the northern and eastern elevations of balconies to Unit 3, Unit 6 and Unit 9 facing north-east and east shall be screened in accordance with the Residential Design Codes by either;**

* **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
* **fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
* **a minimum sill height of 1.6 metres above the finished floor level; or**
* **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, a notification, pursuant to section 70A of the Transfer of Land Act 1893, shall be placed on the certificate of title for the subject lot. The notification shall be created at the owner/applicants’ expense and lodged with the Registrar of Titles for endorsement. The notification is to state as follows:**

**‘This lot is in the vicinity of a transport corridor and is affected, or may in the future be affected, by road and rail transport noise. Road and rail transport noise levels may rise or fall over time depending on the type and volume of traffic.’**

**Sustainability**

1. **Prior to occupation, the recommendations contained within the CADDS Group Sustainable Design Strategy dated 16 March 2022, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**
2. **Prior to issue of a building permit, all units are to demonstrate achievement of their respective NatHERS “Upgraded Star Rating” shown in Table 4 of the CADDS Group Sustainable Design Strategy dated 16 March 2022, or any approved modifications, to the satisfaction of the City of Nedlands.**

**Waste**

1. **The development shall comply with the approved Waste Management Plan prepared by Dallywater Consulting dated 11 April 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.**

**Parking**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**
2. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**
3. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

**Screening and Lighting**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**
2. **Prior to occupation, an external lighting plan must be submitted and approved by the City of Nedlands. The lighting is to be designed and located to prevent any increase in light spill onto the adjoining properties in accordance with Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.**

**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** | R160 |
| **Land area** | 923m2 |
| **Land Use** | Residential – Multiple Dwellings |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 8 Taylor Road, Nedlands, which is currently vacant. The site is located on the eastern side of Aberdare Road. The lot is rectangular in shape, has a 20m frontage and a total area of 923m2. The site is relatively flat, and slopes 0.9m from the north-eastern corner to the south-western corner.

The site is coded R160, as are the northern and eastern abutting properties. The northern adjoining site is a stormwater drainage sump, which is owned by Main Roads. The site is vacant and not currently used for any residential purposes, with its main purpose being for drainage. The site directly to the south is coded R60 and is also currently vacant.

**Application Details**

The application seeks development approval for the construction of nine multiple dwellings. Vehicle access will be obtained from the driveway located to the south of the site. Resident and visitor car parking is provided to the rear of the site. Parking is provided on the ground floor, with the remainder of the parking and store rooms provided in the basement.

**Discussion**

**Existing Streetscape Amenity**

The existing character of Taylor Road displays single and two-storey dwellings. There are also 12 apartments at 7 Taylor Road, at the intersection of Taylor Road and Jenkins Avenue. Currently, Nos. 8, 10 and 12 Taylor Road are all vacant sites which have been cleared for proposed development on the sites.

Fencing styles for the residential properties display open style fencing, with some solid fencing also being prevalent on the western side of Taylor Road.

Closer to Stirling Highway, there are commercial and retail properties such as Taylor Road IGA on the western side of Taylor Road and the parking of the IGA on the eastern side of Taylor Road.

**Future Intended Streetscape Amenity**

An increase in density is anticipated for Taylor Road, between Stirling Highway and Jenkins Avenue. The density ranges from R-AC1 to R60. The future streetscape of the locality is likely to change to respond to the increase in density. The future intended streetscape amenity will be sympathetic to the scale of the street, surrounding buildings and density. The development is adequately scaled through bulk and height and is sympathetic to the R60 coding of adjoining properties.

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies. The matters below have been identified as key considerations for the determination of this application.

* Side and rear setbacks
* Visual privacy
* Car and bicycle parking

The development meets the element objectives for the above matters subject to conditions of approval and is supported. Please refer to the assessment provided below.

A detailed R-Code assessment is also provided within Attachment 3 to this report.

**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 the potential impact it will have on the local amenity.

**Sustainability**

The development proposes a minimum NatHERS rating of 6.5 stars and an overall average NatHERS rating of 8 stars, which far exceeds the minimum requirement of 5.5 stars. This is considered to be a positive outcome for sustainability.

The following sustainability initiatives are implemented by the development:

* Double glazed windows
* Solar panels
* Natural cross-ventilation
* Water efficient plumbing fixtures and fittings
* Waterwise landscape reticulation
* Provision of 10x resident bike bays and 2x visitor bike bays as a mode of low emission transport
* Provision of electrical framework for EV charging to parking bays (one per unit)

**State Planning Policy 7.3 - Residential Design Codes – Volume 2 – Apartments**

The proposal has been assessed against all relevant design elements of the Residential Design Codes Volume 2 – Apartments (R-Codes) which provides a comprehensive basis for the control of residential development. Those elements which require key consideration are detailed below.

**Element 2.4 – Side and rear setbacks**

The northern setbacks provide an adequate separation to the neighbouring property. It has been taken into consideration that the neighbouring northern property which is owned by Main Roads and is used for the purpose of a drainage sump. Main Roads has advised that the need for the sump at 6 Taylor Road, Nedlands will continue indefinitely.

The setbacks provided to the east are considered to provide an adequate separation to the neighbouring property for the following reasons:

* The car parking on the ground floor at the rear will be landscaped in accordance with the request of the rear landowner for dense screening. The trees will be Hibiscus Rubra, viburnums, snow maidens and Summerscents. A total of 8 trees are proposed along the rear boundary. At maturity, this landscaping will provide screening and mitigate the visual impacts of the car parking when viewed from the adjoining site.
* The adjoining site to the east has an existing mature Coral Tree which is 12.5m in height. According to the Arborist Report, the tree is young with good vitality. The mature tree, along with the proposed landscaping on site will provide relief from the bulk of the development.
* The development proposes a 2.8m high boundary screen wall (as requested by the rear landowner). The boundary wall will effectively screen the car parking area of the ground floor of the development to the rear adjoining site.

The setbacks to side and rear boundaries will enable the protection of the trees on the adjoining sites. The setbacks provide sufficient area and volume to sustain healthy growth for the landscaping proposed, consisting of 3 medium trees, 21 small trees and other low shrubs and vegetation.

**Element 3.5 – Visual privacy**

The application meets all the acceptable outcomes for visual privacy for major openings to habitable rooms facing east and south. In relation to the major openings to habitable rooms and balconies facing north, it is noted that the adjoining property to the north is a stormwater drainage sump owned by Main Roads and not a residential property. Main Roads has advised that the use of the sump for the stormwater sump will continue indefinitely.

The outlook onto the sump is considered acceptable as it does not overlook habitable rooms and private outdoor living areas of neighbouring properties. The major openings and balconies are a positive outcome for the development itself as it provides good daylight and solar access, ventilation and a northern external outlook from the primary living areas and bedrooms.

**Element 3.9 – Car and bicycle parking**

The development proposes two visitor bays in lieu of three bays.

The subject site is within ‘Location A’ as it has two bus stops which are within a 250m walking distance from the site:

* Bus stop 10398: located 160m from site (Fremantle bound)
* Bus stop 10372: located 220m from site (City bound)

Given the proximity of the site to the high frequency bus routes on Stirling Highway and the total resident parking provision, the parking is considered appropriate for this site.

In relation to the visitor bays, Design Guidance DG 3.9.3 provides for visitor parking to be reduced where there is adequate on-street parking in the vicinity of the development. It is noted that on-street parking is provided in the vicinity of the development:

* On the eastern side of Taylor Road, street parking is permissible outside the hours of 8am – 5pm on weekdays.
* On the western side of Taylor Road, street parking is permissible. The parking on the western side is restricted to two hours from 8am – 6pm on Monday to Friday and 8am – 1pm on the weekends.

The reduction in one visitor car bay is considered acceptable as this provides additional space for landscaping within the front setback area as demonstrated in the Landscape Plan.

The development proposes a total of 16 resident parking bays for the 9 units. Where the occupiers of the units do not use all their allocated private carparking bays, visitors to their units can use their unoccupied private car bays where available.

The development is also provided with a dedicated bike store, two visitor bike bays and three motorcycle parking bays as alternate modes of transport.

**Consultation**

The application was advertised for 28 days from 21 January 2022 to 18 February 2022 by the following:

* Letters posted to all landowners and occupiers within a 200m radius of the site;
* A sign on site was installed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website with all documents
* relevant to the application made available for viewing during the advertising
* period;
* Notice placed in the “Post” local newspaper;
* Posted on the City’s social media platforms; and
* Community information session held on 2 February 2022.

Upon conclusion of advertising, a total of 10 responses were received comprising nine objections and one submission providing comments neither objecting to nor supporting the development. The key concerns in the objections related to:

* Building Height
* Traffic
* Car and bicycle parking
* Landscaping
* Solar access
* Façade Design

A copy of the summary of submissions and the Applicant and Officer response to the submissions is contained within Attachment 4.

Following the advertising period, the City received amended plans which propose the following changes and additional documentation:

* Increased setbacks to the rear and southern lot boundaries.
* Reduction in building height and reduction in overshadowing.
* Provision of opaque glass windows and screening to the windows and balconies on the rear elevation.
* Provision of an additional two car parking bays, with a total of 16 car parking bays now proposed for the residents.
* Increase in landscaping at the rear of the site, with proposed species requested by the rear adjoining landowners.
* Amendments to the façade design and materials and expansion of lobby on the ground floor.
* Provision of a bike store on the ground floor for resident bike parking.
* Provision of moped parking.
* Updated arborist report and technical documents.

Following discussions between the applicant and the rear adjoining landowners, the objection received from the rear landowner has now been withdrawn as a result of all the amendments proposed to the development. The landowner of the subject site and the rear landowners have a signed agreement between the parties relating to the withdrawal of the objection and the development proposal.

**Design Review**

The development was reviewed by the City’s Design Review Panel on three occasions. The first review of the development was during the pre-lodgement stage of the application, with the following two reviews being post lodgement. The DRP summary is as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **DRP Design Quality Evaluation** | | | |
|  | Supported | | |
|  | Further Information Required | | |
|  | Not supported | | |
| SPP 7.0 Principles | 18 October 2021  (pre-lodgement) | 14 February 2022 | DRP Chair review March 2022 |
| 1.      Context and Character |  |  |  |
| 2.      Landscape Quality |  |  |  |
| 3.      Built Form and Scale |  |  |  |
| 4.      Functionality and Built Quality |  |  |  |
| 5.      Sustainability |  |  |  |
| 6.      Amenity |  |  |  |
| 7.      Legibility |  |  |  |
| 8.      Safety |  |  |  |
| 9.      Community |  |  |  |
| 10.   Aesthetics |  |  |  |

The DRP advice is subject to the drainage sump staying on the northern lot at 6 Taylor Road, Nedlands. Main Roads has advised that the need for the sump will continue indefinitely.

**Strategic Implications**

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

**Values** **Healthy and Safe**

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

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

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

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

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

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes (Volume 2) 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 nine multiple dwellings has been presented for Council consideration due to objections being received. The objections received relate primarily to building height, parking, landscaping, solar access and façade design. An assessment against the relevant element objectives has identified that the proposal can be supported.

The development is generally well designed and sits comfortably within the built form outcomes anticipated by Volume 2 of the R-Codes. The siting, mass and scale of the building is sympathetic to the streetscape and surrounding lots and is consistent with the form of expected development within the immediate locality. Conditions are recommended to ensure the development adheres to the proposed outcomes in regard to sustainability, noise management, waste management, traffic and landscaping.

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

**Further Information**

Nil.

# PD27.05.22 Consideration of Development Application for a Single House at 61A Aberdare Road, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | J-Corp Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT – Submission |

**Purpose**

The purpose of this report is for Council to consider a development application for a single house at 61A Aberdare Road, Nedlands.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the development application in accordance with the plans date stamped 8 February 2022 for a single house at 61A Aberdare Road, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 8 February 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
   1. **Face brick;**
   2. **Painted render;**
   3. **Painted brickwork; or**
   4. **Other clean finish as specified on the approved plans.**

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

1. **Prior to the issue of a 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.**
2. **Prior to the issue of a building permit, the fence shall be truncated or reduced to 0.75m height within 1.5m of where the driveway meets the street boundary to the satisfaction of the City of Nedlands.**
3. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
4. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
5. **Prior to the issue of a building permit, a detailed landscape plan in accordance with Clause 5.3.2 of the R-Codes (Volume 1) shall be submitted to and approved by the City of Nedlands. Prior to occupation, landscaping 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.**

**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** | 202m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 61A Aberdare Road, Nedlands, which is currently vacant. The site is located on the southern side of Aberdare Road and has vehicle access through a common property driveway that also serves three other lots. The lot is rectangular in shape, has a 9.4m frontage and a total area of 202m2. The site is relatively flat.

Through the subdivision process, the 4m of land required for the widening of Aberdare Road has already been set aside.

The application seeks development approval for the construction of a two-storey single house. Vehicle access will be obtained from the communal driveway that serves the parent lot. A recommended condition requires the fencing along the communal driveway to be truncated or reduced to 0.75m in height within the sight lines area.

There is a street tree present within the verge. A recommended condition requires the street tree to be protected and maintained through the duration of the demolition and construction process.

**Discussion**

**Existing Streetscape Amenity**

The existing character of Aberdare Road contains single and two-storey dwellings. A large majority of dwellings have a 9m setback to the Aberdare Road reserve, with landscaping within the front setback area. The dwelling proposed in this application will be set closer to the street, with a proposed setback of 2m. This is in addition to the 4m of land which has already been ceded for road widening, Aberdare Road is a District Distributor ‘A,’ meaning it has a high degree of connectivity between primary and other distributor roads. It has a high capacity of traffic movements. Due to the high traffic volumes, many properties along Aberdare Road propose solid fencing up to 1.8m in height, with some open style fencing also being prevalent.

There is also a Local Centre on Aberdare Road which provides small scale retail and services for the locality.

**Future Intended Streetscape Amenity**

An increase in density is anticipated for Aberdare Road, with the density code of R60 applying to the majority of the lots on the southern side of Aberdare Road. The future streetscape of the locality is likely to change to respond to the R60 density. The future intended streetscape amenity will be sympathetic to the scale of the street and surrounding buildings. The proposed development is appropriately scaled through bulk and height and is sympathetic to the scale of the street and the surrounding buildings.

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (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 the potential impact it will have on the local amenity.

**By-Law relating to new street alignment – Aberdare Road**

The Aberdare Road By-Law was gazetted on 20 October 1978. The By-Law prescribes a street alignment setback 9m from the present street alignment of Aberdare Road. When the By-Law was adopted, there was a provision under the Metropolitan Region Scheme (MRS) for Aberdare Road to be widened by 9m. The MRS was subsequently amended to only require a 4m widening of Aberdare Road. Although the MRS was amended, the City’s By-Law has not been amended or repealed accordingly.

The By-Law does not prohibit building within the 9m widening. Rather, it requires approval to be granted.

The subject site has received subdivision approval from the WAPC, and titles have been issued. The By-Law was not recognised in the determination of the subdivision by the WAPC. The WAPC only recognised the 4m widening for Aberdare Road required by the MRS.

A 9m setback was required by Town Planning Scheme No. 2 (TPS 2), but this is no longer required under Local Planning Scheme No. 3 (LPS 3). A 2m setback applies from the edge of the MRS road reserve as per the street setback provisions of the R-Codes. There is currently no mechanism to modify the street setback prescribed by the R-Codes.

Council is requested to consider this application for a Single House which proposes development within the 9m street setback area from the current street alignment of Aberdare Road.

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

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

The proposed development is seeking a design principle assessment pathway for parts of this proposal. Council is requested to consider the design principles relating to street setbacks, lot boundary setbacks, outdoor living areas, 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.

**Clause 5.1.2 – Street setbacks:**

The application seeks a design principle assessment for the setbacks proposed to the common property driveway. For grouped dwelling developments such as this, the common property driveway is considered a secondary street.

The design principles require the development to be consistent with the established streetscape and not visually imposing from the street. The application meets the design principles for the reasons outlined below:

* The setbacks provided to the internal common property driveway do not directly face the primary street (Aberdare Road). The development presents appropriately to the public realm and achieves deemed-to-comply setbacks to Aberdare Road. The setbacks seeking discretion to the common property driveway will have a negligible impact on the existing or future streetscape or character of Aberdare Road.
* Only a 3m length of the wall, comprising the balcony and the contrast rendered wall on the western side of the upper floor, is setback closer to the common property driveway. The remainder of the wall is setback from the driveway in accordance with the deemed-to-comply provisions. The balcony and rendered wall are minor projections which do not detract from the character of the streetscape (common property access leg).
* The development proposes windows from habitable rooms facing the common property driveway, which provides effective passive surveillance whilst also being setback appropriately for visual privacy.
* The common driveway streetscape is not dominated by building services, vehicle entries, blank walls, or infrastructure.
* The site is able to accommodate parking, landscaping and utilities.

**Clause 5.1.3 – Lot boundary setbacks:**

The following lot boundary setbacks seek a design principle assessment:

* The hall to the ensuite wall on the upper floor proposes a 2.1m setback (east).
* The ensuite wall on the upper floor proposes a 1.1m setback (south).
* The boundary wall proposed by the garage occupies 79% of the boundary (south).
* The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation, minimising overlooking and allowing effective use of space for privacy and outdoor living areas.

**East:**

The application seeks discretion for setbacks for the wall length from the hallway to the ensuite on the first floor. The remainder of the eastern elevation on the first floor achieves the deemed-to-comply setback. The application achieves the design principles for the reasons outlined below:

* The eastern elevation is well articulated with varying setbacks from 1.5m to 2.1m, multiple openings and a variety of materials such as contrasting renders which assist in breaking up the building bulk. The setbacks proposed will not negatively impact the adjoining property in relation to bulk.
* Ventilation is maintained by the setbacks provided on the ground and upper floors.
* Solar access is ensured as the subject site is orientated north – south. Overshadowing for the entire proposal achieves the deemed-to-comply provisions.
* There are no major openings to habitable rooms on the first floor. There is no overlooking to the eastern lot.
* The portion of wall seeking discretion is located towards the rear half of the lot, away from the Jacaranda on the adjoining property, and is unlikely to affect the Jacaranda.

**South (ensuite wall):**

The application seeks discretion for the setback from the ensuite on the upper floor which proposes a 1.1m setback to the south. The application achieves the design principles for the reasons outlined below:

* The portion of the wall is 5.3m in length, which is not likely to negatively impact the adjoining property in relation to bulk.
* Ventilation is maintained by the setbacks provided on the ground and upper floors.
* Solar access is ensured as the subject site is orientated north – south. Overshadowing for the entire proposal achieves the deemed-to-comply provisions.
* There are no major openings to habitable rooms on the first floor. There is no overlooking to the southern lot.

**South (garage):**

The application proposes a garage along the southern boundary. The application achieves the design principles for the reasons outlined below:

* The location of the boundary wall to the south allows the development to maximise solar access to habitable rooms and the balcony to the north.
* The boundary wall allows for more effective use of space for the privacy of the occupants and the outdoor living area which can be located central to the lot. maximise solar access to habitable rooms and the balcony to the north. The
* The boundary wall is typical in dimension for a garage, being 5.9m in length. The majority of the elevation of the boundary wall will be screened by dividing fencing between the properties.
* The boundary wall of the garage does not adversely impact on the amenity of the adjoining properties, given the single storey nature and the overall dimensions proposed by the boundary wall.

**Clause 5.3.1 – Outdoor living areas:**

The design principles provide for outdoor living areas which provide sufficient space and northern orientation for entertaining, leisure and connection to the outdoors. The application meets the design principles for the reasons outlined below:

* The dwelling is provided with two outdoor living areas. One area is provided on the ground floor, which is capable of use in conjunction with the primary living area. The other is provided by the balcony on the upper floor.
* The outdoor living areas are considered to be functional and usable to accommodate outdoor seating, with additional remaining space available for outdoor pursuits, including landscaping and planting trees.
* The outdoor living area provided by the balcony is north facing, which will allow for winter sunlight exposure.

**Clause 5.4.1 – Visual privacy:**

The western elevation of the balcony facing the common property driveway 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. The application meets the design principles for the reasons outlined below:

* The majority of the cone of vision from the balcony falls within the common property area. Only a small portion of the cone of vision (1m2) falls behind the front setback area of the western lot at 61B Aberdare Road, Nedlands. The extent of overlooking is minor.
* 61B Aberdare Road, Nedlands is currently vacant. The overlooking does not currently fall over any major openings to habitable rooms or outdoor living areas.
* The majority of overlooking is confined to the street setback area and the communal driveway. The passive surveillance to the street and communal driveway is a positive outcome for safety.
* The design of the building, the internal layouts, screening and highlight windows 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 advertised in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals to four adjoining properties. The application was advertised for a period of 14 days from 11 February 2022 to 25 February 2022. At the close of the advertising period, one submission was received objecting to the proposal.

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

1. Concerns relating to the upper floor setback to the east and impact upon the existing mature Jacaranda tree on the neighboring eastern property.

The portion of wall which is adjacent to the Jacaranda tree on the neighboring lot achieves the deemed-to-comply setbacks prescribed by the R-Codes.

The portion of wall seeking a merit based assessment comprises the rear half of the upper floor, from the ensuite to the end of the hallway, located towards the southern half of the site. The length of the wall seeking an assessment of merit for setbacks is unlikely to impact upon the Jacaranda tree. Please see above for the Design Principles assessment on lot boundary setbacks.

1. Preference for upper level to be setback closer to the common property driveway instead of the eastern lot boundary.

Noted. The eastern setback meets the design principles as discussed above. No further changes are proposed to the plans.

1. Concerns regarding the lack of landscaping.

The R-Codes (Volume 1) outline the deemed-to-comply provisions for landscaping for Single and Grouped Dwellings. The landscaping provision recommends one tree to be provided per dwelling, with a planting area of 2m x 2m.

The application proposes one tree with a planting area of 2m x 2m and additional planting of vegetation within the street setback area as prescribed by Clause 5.3.2 – Landscaping of the R-Codes (Volume 1). The proposal meets the deemed-to-comply provisions for landscaping. In order to ensure landscaping is well-integrated into the development, a condition is recommended requiring a more detailed landscape plan be provided prior to the issue of a building permit.

1. If the development is granted with approval, the submission requests the following to be considered:
2. Re-survey of the development site to ensure that the boundary wall is located within the lot boundary
3. Provision of temporary fencing during construction
4. An arborist report to be submitted to demonstrate that any pruning of mature vegetation will not have a detrimental impact to the health or safety of the vegetation.

Administration provides the following response relating to the respective points above:

1. The owner and builder are legally required to ensure all works are wholly located within the lot boundaries of the subject site.
2. The provision of temporary fencing during construction is at the discretion of the builder and is a civil matter between landowners. Dividing fencing is not governed under planning legislation and therefore cannot be conditioned.
3. The City has advised the applicant of the submissions received and an arborist report has not been provided. The portion of building seeking discretion is unlikely to affect the tree. There is no legislative ability to protect vegetation on an adjoining lot for the portion of building that meets the deemed-to-comply provisions.

Further discussions on these matters will occur between the City, the applicant and the neighbor.

**Strategic Implications**

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

**Values** **Healthy and Safe**

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

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

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

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

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

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

**Conclusion**

The application for a single house has been presented for Council consideration due to 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 in relation to being consistent with the immediate locality and streetscape character.

The objections received relate primarily to setbacks, landscaping and the impact of the development on the adjoining Jacaranda Tree. An assessment against the relevant design principles has identified that the proposal can be supported given the characteristics and location of the site.

It is noted that the development is located within the 9m road widening alignment provided by the 1978 By-Law relating to street alignment. However, Council is able to approve the development as proposed because the former scheme controls in place to protect the widening have been removed. Further, the site has previously ceded the 4m widening required by the Metropolitan Region Scheme.

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

**Further Information**

Nil.

# PD28.05.22 Consideration of Development Application for Temporary Change of Use (Display House) and Signage at 20 Curlew Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | Webb & Brown-Neaves |
| **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** | 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 determine a development application for a temporary change of use from single house to display house and an associated sign at 20 Curlew Road, Dalkeith.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 12 April 2022 for a temporary change of use from a single house to a display house and signage at 20 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval is valid for 12 months from the date of determination. The sign is to be removed, and the use of the site as a display house will revert to a single house at the end of the approval period.**
2. **This approval relates only to a temporary change of use from a single house to a display house and one sign. It does not relate to any other development on this lot.**
3. **The operation of the display house is limited to the following:**

* **Wednesdays 2pm to 5pm**
* **Saturdays and Sundays 12pm to 5pm.**

1. **Signage associated with the land use is to be limited to one (1) A-frame sign visible within the hours of operation only and removed at the close of the operating period daily.**
2. **A maximum of 6 customers are permitted on site at any one time.**

**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 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** | Display House |
| **Use Class** | Use Not Listed |

The site is located at 20 Curlew Road, Dalkeith, approximately 300m east of the Dalkeith Village shopping centre. The site is a corner lot and has dual frontage to Curlew Road and Waratah Avenue. On 22 November 2019, the City approved a development application for a two storey, single house on the site.

The application seeks development approval for a temporary change of use from a single house to display house for a period of 12 months, after which the site will revert back to a single house.

The proposed management plan for the display house outlines the following details:

* Hours of operation:

Wednesday – 2pm to 5pm

Saturday and Sunday – 12pm to 5pm

* Employees on site:

One employee will be on site during operating hours.

* Signage:

A sign 2m in height, 0.8m in width is proposed to be placed on site for the duration of the display house use. Administration does not support a permanent sign and includes a condition on any approval deleting the sign from the plans to be replaced with a temporary A-frame sign.

**Discussion**

**Existing Streetscape Amenity**

The site has frontage to two streets: Curlew Road and Waratah Avenue. The display house’s built form is consistent with the established development in the area as it relates to an approved two storey single house. Curlew Road is a relatively open streetscape as lots feature visually permeable fencing or no fencing. The display house site complements this characteristic as it does not include a front fence.

Waratah Avenue is a local distributor road and features higher volumes of traffic relative to Curlew Road. Several properties along Waratah Avenue feature solid fencing to ensure privacy and help screen traffic noise. The display house site also features an approved solid fence to Waratah Avenue.

**Planning and Development (Local Planning Schemes) Regulations 2015**

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, and the impact on the local amenity will be minimal for the reasons discussed in the below section.

**Local Planning Scheme 3 – Land Use**

A display house is not a use that is listed within the City’s Scheme. As per clause 18(4)(b) of Local Planning Scheme 3 (LPS 3), uses that are not specifically listed may be considered for approval having regard to the objectives of the zone. The relevant objectives are:

* To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
* To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.

The display house meets the objectives of the Residential zone for the following reasons:

* The proposed development is compatible with the character of the area as it pertains to an already-constructed single house that does not physically alter the low-density residential streetscape appearance of Curlew Road.
* Display houses are complementary to the residential zone as they can typically be found in suburban areas and are used by real estate agencies and building companies to facilitate the sale or design of houses.
* It is recommended the proposed display house be operational for 12 months. After the display house use lapses, the land use will default back to a single house.
* The use will be limited in operational hours and number of visitors to eliminate detrimental impact to neighbourhood amenity.
* Four parking bays are provided on site to accommodate visitors and staff.

**Parking**

The Parking Local Planning Policy (Parking LPP) does not include a display house as a listed use. The parking demand is based on the condition that no more than 6 customers are permitted to visit the house at any one time.

The proposal uses the double garage and the front driveway to provide four car parking bays on site.

The parking is appropriate to the land use for the following reasons:

* A condition of approval is recommended limiting the number of customers to 6 at any one time to minimise impacts on the neighbourhood.
* The display house will only operate 3 days a week for a total of 13 hours each week. At all other times the use will generate no traffic.
* There is unrestricted parking on Curlew Road and Waratah Avenue abutting the subject site.
* Visitors to the display house are unlikely to stay for more than approximately 20-30 minutes, which is not likely to result in excessive parking demand on the street.

**Signage**

The proposal includes a monolith sign on site that is 2m in height and 0.8m in width. The sign is proposed to be on site for the entirety of the 12-month approval period. The suitability of the sign is considered against the objectives of the Signs Local Planning Policy and the Residential zone. The relevant objectives area:

* To ensure that commercial signs are generally located in non-residential areas.
* To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.

The monolith sign is not supported for the following reasons:

* The sign does not satisfy the objectives of the Signs LPP as it is a large, permanent sign in a residential area that pertains to a non-residential use.
* The sign does not satisfy the objectives of the Residential zone as the size and permanent nature of the sign are not compatible with the established residential streetscape. Only temporary construction and real estate transaction signs are viewable in the locality.

It is recommended a condition be imposed which alters the signage to be a temporary, portable sign that is removed at the end of the operating period daily. This type of sign has minimal impact on the amenity of the locality as it is only visible for a total of 13 hours each week.

**Consultation**

The development application was advertised in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 and the City’s Consultation of Planning Proposals Local Planning Policy. The application was advertised for a period of 28 days from 14 February 2022 to 14 March 2022. A sign was placed on site and letters inviting comment were sent to all 190 properties within a 200m radius of the site. At the close of the advertising period, 17 submissions and 1 petition with 16 petitioners was received.

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

1. The display house use will result in parking and traffic issues. More parking should be provided on site and parking should not be permitted on the verge.

The development proposal provides sufficient parking using onsite parking bays and satisfies the objective of the Parking LPP.

1. Display house is not listed within the City’s Local Planning Scheme and should not be permitted.

As per clause 18(4)(b) of LPS 3, an unlisted use can be considered for approval through a development application. The development application will be determined having regard to the objectives of LPS 3, the objectives of any relevant local planning policy and the submissions received during advertising. In this case, the proposal satisfies all relevant local planning framework provisions.

1. The display house use is a commercial business in a residential neighbourhood and will set an undesirable precedent.

LPS 3 allows for some non-residential uses within the Residential zone provided they are complementary to the area and do not have a detrimental impact on amenity. The determination of future applications will be assessed on individual merit.

1. The proposed signage is not inconspicuous and will have a detrimental impact on the amenity of the locality.

It is recommended the sign be temporary and portable. The sign satisfies the objectives of the Signs LPP as it is related to the display house use and will only be visible during the display house operational times.

1. A cap on visitors to the display house should be imposed and enforced. Proposed use duration of 24 months is too long and operating hours on the weekends are too long.

It is recommended a condition is imposed which limits the approval period to 12 months. It is also recommended a condition be imposed which restricts operating times to 3 hours per weekday and 5 hours per weekend day.

1. The approval of the display house use may result in ongoing works or operation outside of permitted operational hours.

Any structural works must satisfy the provisions of the LPS 3, the *Building Act 2011* and any other relevant legislation, including additional planning approval if required. Display house use outside of the approved hours of operation is not permitted.

1. There is no public health management with respect to COVID-19. The display house use will result in excess noise. Visitors to the display house may be inclined to view other neighbouring houses which poses a safety and security risk.

The applicants have provided a COVID-19 management plan. The above issues cannot be addressed through the planning framework and are not included in this application but may be covered by other legislation.

**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 for Business**

Our City has a strong economic base with renowned Centres of Excellence and is attractive to entrepreneurs and start-ups.

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

If Council resolves to approve the proposal, the display home can commence operation in accordance with the conditions of approval.

If the application is refused, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the objectives and provisions set out in the local planning framework. 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 temporary change of use is presented to Council for consideration due to objections being received. The proposal is considered to meet the objectives of the Residential zone and relevant local planning policies, specifically in relation to parking and amenity. The development is unlikely to have a significant adverse impact on the locality’s amenity. The proposal is recommended for a temporary approval of 12 months and does not involve any works.

It is recommended that the application be approved by Council, subject to the recommended conditions.

**Further Information**

Nil.

# PD29.05.22 Consideration of Development Application for Temporary Change of Use (Display House) and Signage at 60 Philip Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | Prestige Homes WA |
| **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** | 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 determine a development application for a temporary change of use from single house to display house and an associated sign at 60 Philip Road, Dalkeith.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 13 April 2022 for a temporary change of use from a single house to a display house and signage at 60 Philip Road, Dalkeith, subject to the following conditions:**

1. **This approval is valid for 4 months from the date of determination. The signage is to be removed and the use of the site as a display house is to revert to a single residential house at the end of this approval period.**
2. **This approval relates only to a temporary change of use from a single residential house to a display house, and associated signage as shown on the approved plans. It does not relate to any other development on this lot.**
3. **The operation of the display house is limited to the following:**

* **Wednesdays 2pm to 4pm.**
* **Sundays 1pm to 3pm.**

1. **Signage associated with the land use is to be installed within the hours of operation only and removed at the close of the operating period daily.**
2. **A maximum of 6 customers are permitted on site at any given time.**

**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 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** | 1163m2 |
| **Land Use** | Display House |
| **Use Class** | Use Not Listed |

The site is located at 60 Philip Road, Dalkeith, approximately 400m west of the Dalkeith Village shopping centre. The site has dual frontage to Philip Road and Gerygone Lane from the rear. A development application for a single storey, single house on the site was approved by Council at the Ordinary Council Meeting of 27 October 2020.

The application seeks development approval for a temporary change of use and signage from a single house to a display house for a period of 3 months, after which the site will revert back to a single house.

The proposed management plan for the display house outlines the following details:

* Hours of operation:

Wednesday & Sunday – 2 hours per day

* Employees on site:

Two employees will be on site during operating hours.

* Visitors:

There will be a maximum of 6 customers on site at any given time.

* Signage:

A temporary sign will be placed on site during operational hours and removed at the end of each day.

**Discussion**

**Existing Streetscape Amenity**

The existing streetscape of Philip Road is characterised by existing single and double storey houses. The streetscape is heavily vegetated by landscaped verges and front gardens, characteristic of properties with a low-density code.

The subject site features a recently constructed single storey single house on the lot. The development proposal does not include any changes to the built form of the existing house and will remain consistent with the existing streetscape.

**Planning and Development (Local Planning Schemes) Regulations 2015**

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, and the impact on the local amenity will be minimal for the reasons discussed in the below section.

**Local Planning Scheme 3 – Land Use**

A Display House is not a use that is listed within the City’s Scheme. Uses that are not specifically listed may be considered for approval having regard to the objectives of the zone. The relevant objectives are:

* To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
* To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.
* The display house meets the objectives of the Residential zone for the following reasons:
* The proposed development is compatible with the character of the area as it pertains to an already-constructed single house that does not physically alter the low-density residential streetscape appearance of Philip Road.
* Display houses are complementary to the residential zone as they can typically be found in suburban areas and are used by real estate agencies and building companies to facilitate the sale or design of houses.
* The proposed display house will be operational for 4 months. After the display house use lapses, the land use will default back to a residential single house.
* The use will be limited in operational hours and number of visitors so as to eliminate detrimental impact to neighbourhood amenity.
* Six parking bays are provided on site to accommodate visitors and staff. Of these, the two in the garage would likely be used by employees.

**Parking**

The Parking Local Planning Policy (Parking LPP) does not include a display house as a listed use. The parking demand is based on the condition that no more than 6 customers are permitted to visit the house at any one time.

The development uses a double garage and driveway to provide 4 parking bays at the front of the lot, with an additional double garage attached to a Studio off the rear laneway. A total of 6 bays are provided on site.

The parking is appropriate for the land use for the following reasons:

* A condition of approval is recommended limiting the number of customers to 6 at any one time to minimise impacts on the neighbourhood.
* The display house will only operate 2 days a week for a total of 4 hours each week. At all other times the use will generate no traffic.
* Vehicles can use on-street parking as Philip Road does not have any on-street parking restrictions.
* Visitors to the display house are unlikely to stay for more than approximately 20-30 minutes, which is not likely to result in excessive parking demand on the street.

**Signage**

An A-frame sign is proposed for the display house. The sign will be placed on site during the hours of operation two times per week and removed at the close of the operating period daily. The sign meets the objectives of the Signs Local Planning Policy for the following reasons:

* It is related solely to the display house use and will not be visible outside of limited operation hours.
* The sign will not impact vehicle or pedestrian safety as it will be placed on site within the front setback area.
* As the sign needs to be temporary and portable, it will be an appropriate scale relative to the single storey house.

**Consultation**

The development application was advertised in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 and the City’s Consultation of Planning Proposals Local Planning Policy. The application was advertised for a period of 28 days from 14 February 2022 to 14 March 2022. A sign was placed on site and letters inviting comment were sent to all 197 properties within a 200m radius of the site. At the close of the advertising period, 3 submissions were received.

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

1. The display house use will result in parking and traffic issues.

The development proposal provides sufficient parking using onsite parking bays and the crossover to the site. The display house satisfies the objective of the Parking LPP. It is recommended a condition is imposed which limits the display house use to a maximum of 6 customers at any given time.

1. ‘Display House’ is not listed within the City’s Local Planning Scheme and should not be permitted.

As per clause 18(4)(b) of LPS 3, an unlisted use can be considered for approval through a development application. The development application will be determined having regard to the objectives of LPS 3, the objectives of any relevant local planning policy and the submissions received during advertising. In this case, the proposal satisfies all relevant local planning framework provisions.

1. The display house use is a commercial business in a residential neighbourhood and will set an undesirable precedent.

LPS 3 allows for some non-residential uses within the Residential zone provided they are complementary to the area and do not have a detrimental impact on amenity. The determination of future applications will be assessed on individual merit.

**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 for Business**

Our City has a strong economic base with renowned Centres of Excellence and is attractive to entrepreneurs and start-ups.

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

If Council resolves to approve the proposal, the display home can commence operation in accordance with the conditions of approval.

If the application is refused, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the objectives and provisions set out in the local planning framework. 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 temporary change of use is presented to Council for consideration due to objections being received. The proposal is considered to meet the objectives of the Residential Zone and relevant local planning policies, specifically in relation to parking and amenity. The development is unlikely to have a significant adverse impact on the locality’s amenity. The proposal seeks a temporary approval of 3 months and does not involve any works.

It is recommended that the application be approved by Council, subject to the recommended conditions.

**Further Information**

Nil.

# PD30.05.22 Consideration of Development Application for Temporary Change of Use (Display House) and Signage at 60 Beatrice Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 24 May 2022 |
| **Applicant** | Coastview Australia Pty Ltd |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff and the proponents or their consultants. |
| **Report Author** | Roy Winslow - Manager Urban Planning |
| **Director** | Tony Free - Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT - Submission |

**Purpose**

The purpose of this report is for Council to determine a development application for a temporary change of use from single house to display house and an associated sign at 60 Beatrice Road, Dalkeith.

**Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* approves the development application in accordance with the plans date stamped 31 January 2022 for a temporary change of use from a single house to a display house and signage at 60 Beatrice Road, Dalkeith, subject to the following conditions:**

1. **This approval period concludes on 11 December 2022. The signage is to be removed and the use of the site as a display house is to revert to a single residential house at the end of this approval period.**
2. **This approval relates only to a temporary change of use from a single residential house to a display house, and associated signage as shown on the approved plans. It does not relate to any other development on this lot.**
3. **The operation of the display house is limited to Saturdays and Sundays between the hours of 1:00pm and 4:00pm.**
4. **Signage associated with the land use is to be installed within the hours of operation only and removed at the close of the operating period daily.**
5. **There are to be no more than 6 customers on site during the operation of the display house.**

**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** | 1098m2 |
| **Current Land Use** | Residential Single House |
| **Proposed Land Use** | Display House |
| **Proposed Use Class** | Use Not Listed |

The site is located at 60 Beatrice Road Dalkeith, 120m east of David Cruickshank Reserve. The site is located on the southern side of Beatrice Road and has an approved two-storey single house on the lot which is nearing completion. The lot is rectangular in shape, has a 21m frontage and a total area of 1,098m2.

The application seeks development approval for a temporary change of use from a Residential Single House to a Display House for a period of 8 months. The use of the site as a Display House is to revert to a Single House after 11 December 2022.

The proposed management plan for the Display House outlines the following details:

* Hours of operation
  + Saturday & Sunday – 1:00-4:00pm.
* Employees on Site
  + 1 employee will be on site during the operating period.
* Visitors
  + There will be a maximum number of 6 customers visiting the site at any one time.
* Signage
  + A portable A-Frame sign will be placed at the front of the property during opening hours and removed outside of these operating hours.

**Discussion**

**Existing Streetscape Amenity**

The existing streetscape of Beatrice Road is characterised by existing single and double storey houses. The streetscape is heavily vegetated by landscaped verges and front gardens, characteristic of properties with a low density code.

The subject site has a recently constructed two storey single house on the lot. The development proposal does not include any changes to the built form of the existing house and will remain consistent with the existing streetscape.

**Assessment of Statutory Provisions**

**Planning and Development (Local Planning Schemes) Regulations 2015**

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 and the impact on the local amenity will be minimal for the reasons discussed in the below section.

**Local Planning Scheme No.3**

A Display House is not a use that is listed within the City’s Scheme. Clause 18 (4) of Local Planning Scheme No. 3 determines that uses which are specifically listed may be considered for approval having regard to the objectives of the zone. The relevant objectives of the Residential Zone are:

* To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
* To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.

The development meets the objectives of the Residential Zone for the following reasons:

* The development is compatible with the character of the area as the proposal is confined within an existing single house.
* The proposal relates only to a change of use and does not include any works.
* The use being sought is a display house and is complementary to the residential zone and established land use. Display houses are consistent with the expectations of a residential zone as they can typically be found in suburban areas and are used to display homes to prospective builders.
* The use of the site is considered to be of low scale, operating twice weekly for a period of 3 hours per day. The application seeks a temporary change of use for a time limited period until 11 December 2022. After this time, the use of the site will revert to a single residential house.

**Parking**

The Parking Local Planning Policy (Parking LPP) does not include a display house as a listed use. The parking demand is based on the condition that no more than 6 customers are permitted to visit the house at any one time.

The development uses a double garage and driveway to provide 4 parking bays on site.

The parking provision is supported due to the following:

* A condition of approval is recommended limiting the number of customers to 6 at any one time to minimise impacts on the neighbourhood.
* The display house will only operate 2 days each week for a total of 6 hours each weekend. At all other times the use will generate no traffic.
* Beatrice Road does not have any on-street parking restrictions.
* Visitors to the display house are unlikely to stay for more than approximately 20-30 minutes, which is not likely to result in excessive parking demand on the street.

**Signage**

A portable sign will be placed within the boundaries of the subject site during operating hours and removed outside the hours of operation. The sign is small and portable, and meets the objectives of the City of Nedlands Signs Local Planning Policy.

**Consultation**

The development application was advertised in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 as a ‘use not listed’ within the Scheme.

The application was advertised to a radius of 200m from the subject site for a period 28 days. Consultation commenced 17 February 2022 and closed 17 March 2022. 159 letters were sent to adjoining landowners inviting comment on the development proposal and a sign was installed on site. At the close of the advertising period, 1 submission was received from a property 190 metres from the subject site.

A summary of the submission received and Administration’s response is provided below:

1. The use of a Display House is not listed within the City’s Local Planning Scheme and should not be allowed.

Clause 18 (4) of Local Planning Scheme No. 3 states an unlisted use can be considered for approval through a development application. The development application will be determined having regard to the objectives of LPS 3, the objectives of any relevant local planning policy and the submissions received during advertising. In this case, the proposal satisfies all relevant local planning framework provisions.

1. The display house would result in an increase in traffic and parking.

The development proposes to operate for a three-hour period on Saturdays and Sundays weekly, with a maximum of 6 visitors attending site concurrently. The development satisfies the parking provisions of the City’s Parking LPP, providing 4 onsite parking bays. There is unrestricted street parking on the north and south of Beatrice Rd immediately adjacent to the subject site. The expected increase in traffic and parking impact is unlikely to be perceivable considering the short operating period.

1. The signage should not be allowed.

The development proposes the use of a single A-Frame sign to be installed on site during the operating period (1:00pm to 4:00pm Saturdays and Sundays). The sign is proposed to installed within verge of the subject site during operating hours and removed outside of these operating hours. The proposed signage is categorised as a Portable Sign and satisfies the provisions of the City of Nedlands Signs Local Planning Policy.

1. Approval of a display house would result in approval of a number of future display houses.

The determination of this development will have no bearing on the determination of future applications, with all applications being assessed on individual merit.

**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 for Business**

Our City has a strong economic base with renowned Centres of Excellence and is attractive to entrepreneurs and start-ups.

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

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

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

**Decision Implications**

If Council resolves to approve the proposal, the display house can commence operation in accordance with the conditions of approval.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. 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 temporary change of use is presented to Council for consideration due to an objection being received. The proposal is considered to meet the objectives of the Residential Zone and relevant Local Planning Policies, specifically in relation to signage and parking. The development is unlikely to have a significant adverse impact on the amenity on the locality. The proposal seeks a temporary approval only and does not involve any works.

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

**Further Information**

Nil.

# PD31.05.22 Consideration of Adoption of Local Planning Policy for Advertising – Draft Broadway Precinct Design Response

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning & Development |
| **Attachments** | 1. Draft Broadway Precinct Design Response Local Planning Policy 2. Summary of changes – Broadway Precinct Design Response Local Planning Policy Relationship to SPP7.3 R-Codes |

**Purpose**

The purpose of this report is for Council to adopt for advertising the draft Broadway Precinct Design Response Local Planning Policy (the Policy), found in **Attachment 1**.

**Recommendation**

**That Council:**

1. **adopts the Draft Broadway Precinct Design Response Local Planning Policy for advertising in accordance with Clause 4 of the Deemed Provisions of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015;**
2. **notes that the advertising period will be for a minimum of 28 days;**
3. **requests the Mayor to send a letter to the Minister for Planning requesting coordinated planning be undertaken at State level for the full length of the Stirling Highway Activity Corridor; and**
4. **requests the CEO to prepare a Discussion Paper to consider the merits and implications of the Policy’s proposed star rating for building sustainability, which is to be discussed at a concept Forum prior to the Policy being further considered.**

**Voting Requirement**

Simple Majority.

**Executive Summary**

The Policy seeks to nuance the built form guidance of State Planning Policy 7.3 - Residential Design Codes (R-Codes), providing localised and contextually appropriate built form controls and design guidance for the Broadway Precinct. This report provides an overview of the process the City undertook to create the Policy, a breakdown of the Policy structure and its strategic intent.

The Policy process began with research into the context and character of the Precinct and built form modelling for future development provisions in consideration of this character and context. Key character drivers for the Broadway Precinct were identified as open, leafy streetscapes within the Residential zone, landscaping in the form of deep soil and trees, and areas, or ‘nodes’, of activity along Broadway.

The research and modelling phase was followed by an extensive community engagement program and review of the Policy provisions by industry experts. This report provides detail on the results of community engagement, and how the outcomes of this engagement have influenced the provisions of the Policy.

The Policy breaks the Broadway Precinct into four sub-precinct areas, each having its own existing and desired future character statement. The sub-precincts are detailed in a Precinct map included as Figure 1 at the end of this report. Each sub-precinct also has provisions written specifically for them that are consistent with these character statements, as well as their density code, zoning and lot orientation. The report discusses the specific aspects of the character and context research, built form modelling and engagement outcomes that have influenced these provisions.

Each modification to the planning framework is justified and assessed against the provisions of the R-Codes. This report includes information on the state planning documentation, and how this Policy relates to these documents. This report also details the legislative requirements of creating and processing the Policy, which aspects of the Policy require approval from the WAPC, and guides Council on the next steps in the policy adoption process.

**Background**

**Built Form Modelling**

In accordance with State Planning Policy 7.2 – Precinct Design Guidelines (SPP 7.2), the intent of precinct planning policies is to promote the contextually appropriate development of the areas identified for an increase in density under the Scheme. In January 2020 the City engaged consultants to undertake built form modelling for the Broadway, Nedlands Town Centre, and Waratah precincts.

The built form modelling work included the following deliverables:

1. Local distinctiveness study
2. Context analysis
3. Modelling and built form controls

**Community Engagement**

The final deliverables of the built form modelling work were provided to the City in April 2021. The City then proceeded to the community engagement phase of the precinct planning work, using key elements of the built form modelling completed to engage with the Community Reference Group (CRG) at workshops. Broader community engagement was also carried out in the form of an Open House (drop-in session) and a community survey. These methods allowed all residents within the City to comment on the desired future character of the Broadway Precinct. Further details of community engagement activities for this project are outlined below in the Consultation section.

The provisions within the Policy have been formulated by incorporating the outcomes of the built form modelling work and character study, community engagement outcomes, and technical input. Taking on board the community’s feedback, the provisions also align with the strategic intent of the R-Codes, SPP 7.2 and the State Government’s strategic plan for population growth, Perth and Peel@ 3.5 million. The Policy has been reviewed internally and externally, to ensure that the provisions translate effectively into quality built form outcomes.

**Discussion**

**State Planning Policy 7.2 – Precinct Design Guidelines**

SPP 7.2 sets out the criteria an area should meet to require precinct planning work, and the process a local government should follow to prepare the precinct plan or policy. The Broadway Precinct is located within the UWA/QEII Specialised Activity Centre, and so is considered an Activity Centre Precinct under SPP 7.2. The precinct plan or policy for an Activity Centre Precinct should focus on the following key objectives:

* Providing an appropriate mix of land uses to enable business activity, service provision and employment opportunities.
* Guiding zoning and subdivision to achieve desired densities and land use mix to support well located and designed higher-density residential and commercial development.
* Integrating local and regional transport infrastructure and networks to ensure strong linkages between the activity centre and surrounding areas.
* Incorporating a network of streets and public spaces in a compact urban form defined by a pedestrian-dominant streetscape where the primary focus of activity is on key public streets.

The City followed the process set out in SPP 7.2 to create the Policy, including identifying the precinct area, engaging with the local community, creating a vision, ensuring the development proposal is feasible, and investigating how the precinct plan can result in benefit to the communities they are developed within. A Precinct Plan for the entirety of the UWA/QEII Specialised Activity Centre is currently being prepared by the City of Perth, in collaboration with the City of Nedlands and the Department of Planning, Lands and Heritage (DPLH).

**Local Planning Strategy**

The Strategy identifies the Broadway and Stirling Highway portions of the Precinct as Urban Growth Areas, which are intended to provide for the most intense forms of development within the City. Development heights within the Urban Growth Areas should be sufficient to accommodate substantial residential components. The Strategy states that for Broadway, compatible development should be focused around identified residential and non-residential pockets, acknowledging that the intensity of development will vary in response to the predominant land use. Development controls within Urban Growth Areas are to reflect the local context and be sympathetic to the existing character of the area. Noting the location of the Broadway Precinct within the UWA/QEII Specialised Activity Centre, the Strategy highlights the need for the Precinct to provide development outcomes compatible with the Health/Education/Research function of the centre, on a scale that will not detract from other centres in the hierarchy.

The areas adjoining Broadway and Stirling Highway are identified as Transition Zones, which are intended to create a buffer between high intensity and low intensity development. This buffer will visually smooth the differences in built form (such as height and bulk) and help mitigate land use conflict.

The Policy responds to the Strategy’s vision for the precinct by supporting a nodal approach to development along Broadway, with preferred land uses which can support the function of the UWA/QEII Specialised Activity Centre. For the Residential sub-precinct, the Policy respects the existing character of the area by setting controls for large front setbacks, detached building frontages and increased requirements for deep soil areas and tree provision.

**Local Planning Scheme No. 3**

Under the Scheme, Broadway and Stirling Highway are zoned Mixed Use (R-AC3 and R-AC1 respectively), with the surrounding residential area having a density of R40 – R160.

The Policy has been prepared in accordance with clause 9 – Aims of the Scheme, in particular:

(a) Protects and enhances local character and amenity;

(b) Respect the community vision for the development of the district;

(c) Achieve quality residential outcomes for the growing population; and

(d) To develop and support a hierarchy of activity centres.

The Policy is consistent with the objectives of the relevant Zones:

Residential Zone

* Encourages a range of housing types to meet the changing needs of the community;
* Encourages high quality design and streetscapes;
* Proposes preferred land uses within the Mixed Use Zone that are complimentary to the surrounding residential development;
* Provides street specific requirements for development to be compatible with the future desired character of the area in terms of bulk, height, scale and setbacks.

Mixed Use Zone

* Encourages well-designed, high-quality development that considers the existing new development, and the future desired character of the area;
* Includes a list of preferred active uses, to be located at ground level, which provides for a mix of varied but compatible land uses that will assist in activating the streetscape and support the function of the Specialise Activity Centre.

**Draft Broadway Precinct Design Response – Local Planning Policy**

Informing Studies

The drafting of the Policy is the culmination of the findings of the Context and Character and Built Form Modelling studies, which have provided a sound basis for the creation of the existing future character statements. The Built Form Modelling studies have provided examples of forms of development, detailing them in a manner that informs the choices made for appropriate setbacks and massing.

The outcomes of the Community Reference Group and broader community engagement undertaken as part of this project have directly influenced and guided the built form provisions included in the Policy. These provisions have then undergone thorough testing by internal and external stakeholders to ensure that they are able to be applied effectively in a real-world development scenario.

Strategic Intent

The intent of the Policy is to nuance the requirements of the R-Codes so that they are more contextually appropriate to the existing and desired future character of the Broadway Precinct. The Policy seeks to:

* Define the future character of the area
* Facilitate high-quality design
* Facilitate land uses that support the Specialise Activity Centre
* Reinforce the existing commercial areas along Broadway
* Promote key landscape and streetscape elements from the established character
* Maintain the amenity of the area, consistent with the relevant density code
* Manage density interfaces

Character Statements

An existing character statement has been provided for each sub-precinct within the Policy. Building on these existing character statements and community vision from workshops with the CRG, survey and Open House, the Policy also defines the desired future character statement for the sub-precincts. The Design WA policy suite refers to ‘desired future character’ as an important aspect of determining whether a development meets certain objectives and, therefore, whether a development should be approved. The Policy’s character statement outlines the strategic intent of the Policy, and the expectations for new development.

Sub-Precincts

The precinct has been analysed on a street-by-street basis. Considering the zoning, density coding, lot orientation and existing landscape and streetscape characteristics, the City identified four distinct sub-precincts within Broadway Precinct. The Policy includes a map that breaks the precinct into:

* Residential Sub-Precinct
* Broadway Nodes Sub-Precinct
* Broadway Frame Sub-Precinct
* Stirling Highway Sub-Precinct

These sub-precincts are detailed in Figure 1, included in this report.

**Policy Scope**

Single House and Grouped Dwellings

Pursuant to clause 7.3.1(a) of the R-Codes Volume 1, the Policy amends:

* c5.1.2 – Street setbacks;
* c5.1.3 – Lot boundary setback (C3.2-3.3); and
* c5.1.6 – Building height.

The City will seek approval from the WAPC for amendments to the deemed to comply provisions for lot boundary setbacks, vehicle access and landscaping. The Policy provides further Design Guidance, which are intended to act as Housing Objectives, for developments within the Broadway Precinct.

Multiple Dwellings

In accordance with clause 1.2.2 of the R-Codes Volume 2 the Policy amends:

* Element 2.2 - Building Height;
* Element 2.3 - Street setback; and
* Element 2.4 – Side and rear setback.

The City will also seek approval from the WAPC for amendments to the Acceptable Outcomes for Element 3.3 – Tree Canopy and Deep Soil Areas and Element 3.8 Vehicle Access. Design Guidance has been developed for each modified element.

**Sub-Precincts**

Residential Sub-Precinct

A key component of the existing character within the Residential sub-precinct is the open, leafy streetscapes. In response, the Policy proposes increased street setbacks and increased deep soil and tree requirements. The Policy also requires boundary walls to be located away from the street, to maintain the appearance of a detached streetscape character. Rear setbacks have also been increased throughout the Residential sub-precinct.

To incentivise further provision of deep soil areas, above the already increased requirements, the Policy proposes that increased building height be supported for grouped dwellings in R60 areas (from two storeys to three storeys), and boundary walls for multiple dwellings be supported to both side boundaries, where additional deep soil area is provided. The additional one storey for R60 grouped dwellings is considered appropriate, given that the draft building heights for R60 in the Medium Density Codes is three storeys. If Council is not supportive of this approach, the following resolution may be made:

1. Requests the CEO to modify the Draft Broadway Precinct Design Response Local Planning Policy by removing the option for three storey grouped dwellings (where 20% deep soil area is provided) in the Residential R60 zone.

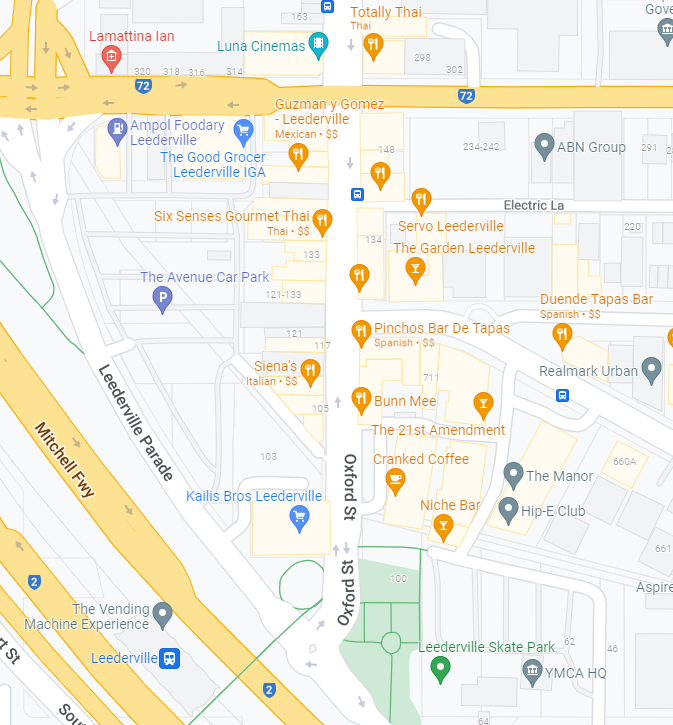
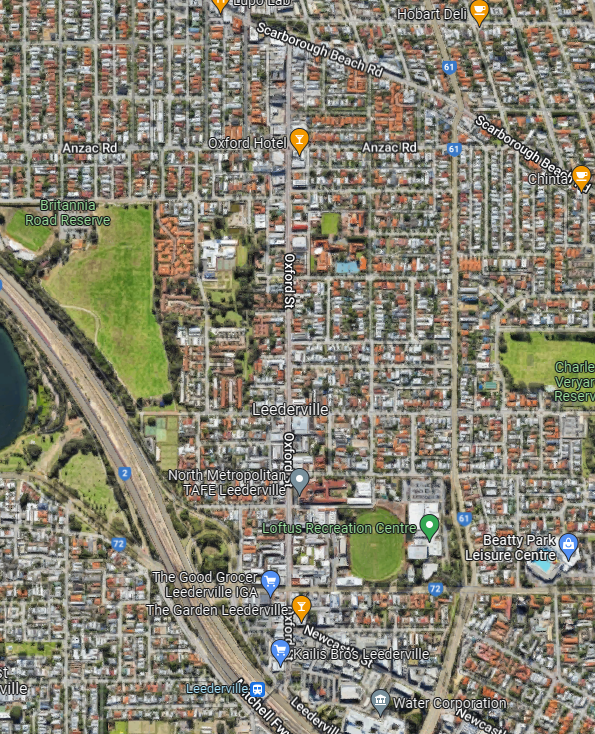
Broadway Nodes and Frame Sub-Precincts

The entire length of Broadway is zoned Mixed Use. Clause 32.4(2) of the Scheme requires all new development within the Mixed Use zone to comprise of non-residential uses at ground level. The Scheme allows for this requirement to be varied through an approved local planning policy. The Policy identifies specific mixed-use areas of activity along Broadway (identified as ‘Broadway Nodes’ in Figure 1), where the Scheme requirement for non-residential land uses at ground floor is upheld. The identification of the Broadway Nodes has been informed by the City’s Local Planning Strategy, City of Perth Draft Local Planning Strategy and a review of existing commercial areas on either side of Broadway.

The Policy also identifies pockets between the nodes (Broadway Frame), where non-residential uses are not required at ground level. Instead, development can provide non-active uses (e.g. office or consulting room/medical centre) or residential use (with adaptable design) at ground level. Where such development is proposed, the building height is to be reduced to five storeys, and the building is to have increased street setbacks at lower levels (similar to R160 built form). This nodal approach to development strongly aligns with the following CRG engagement outcomes:

* Support for focusing mixed-use development around existing commercial nodes on Broadway, with differing intensity of built form between node and non-node locations.
* No support for continuous ‘wall’ of 6 storey development along Broadway.

The nodal approach is also supported by research of other urban corridors in the Perth metropolitan area of similar length to Broadway (being 1.4km). Oxford Street (see image below), for example, runs for 1.8km from Scarborough Beach Road in Mt Hawthorn to Leederville Parade in Leederville. While there is a mix of land uses along Oxford Street, comprising both active and non-active land uses (including solely residential), there are three distinct nodes of activity (shown in blue in the image below). The southern-most node, adjacent to Leederville Trainstation, is approximately 280m in length. The proposed approach for Broadway reflects this nodal pattern of existing urban corridors. Within the Broadway Frame sub-precinct, landowners and applicants will have a choice as to whether they provide an active use at ground level. If no active use is provided, requirements for adaptable design will ensure that this sub-precinct is capable of future transition to active uses.



280m

If Council are not supportive of this nodal approach, the following resolution may be made:

1. Requests the CEO to modify the Draft Broadway Precinct Design Response Local Planning Policy by removing provisions for the Broadway Frame sub-precinct, and having the full length of Broadway subject to the provisions for the Broadway Node sub-precinct.

For all development along Broadway, the Policy provides for a two-storey podium, with increased setbacks to the street and side boundaries for development above the podium. Together with the node and frame approach, this will reduce the perception of building bulk and enclosure that new developments will have on the street. A consistent rear setback is also proposed for all development on Broadway, being 6m up to the third storey and 9m for all storeys above. This will provide space for deep soil areas and tree plantings at the rear of development, providing a buffer to the lower-coded properties to the rear.

Stirling Highway Sub-Precinct

The Policy proposes to increase the rear setback for lots fronting onto Stirling Highway, to create sufficient separation from R160 lots to the south, which accommodate existing residential development. Above the podium level, increased side setbacks are also proposed to provide space between buildings. Together, these rear and side setbacks will significantly reduce the impact of bulk and overshadowing on the properties to the rear. A consistent, increased rear setback will also allow for future two-way vehicle access connecting to Bruce Street, reducing crossovers, and resulting conflicts with pedestrians, on Stirling Highway.

The Policy proposes increased setbacks from Stirling Highway, to allow for deep soil and tree plantings within the street setback area.

The Policy introduces acceptable outcome building heights for Stirling Highway, ranging from 7 to 12 storeys. The greatest building height is proposed on the corner of Stirling Highway and Broadway, to allow for a landmark development at the entrance of both the Precinct and the City of Nedlands.

The Broadway Precinct incorporates a small portion of the Stirling Highway Activity Corridor. The remainder of the highway, and surrounding residential transition areas, within the City of Nedlands, will be planned for through the Nedlands Stirling Highway Activity Corridor (NSHAC) Design Response Local Planning Policy, which will be presented to Council separately. Care has been taken to develop provisions for the Broadway Precinct portion of the highway in line with the broader planning for NSHAC. Under SPP 7.2 the NSHAC precinct would be designated an Urban Corridor, which requires:

Understanding the existing and future function of the corridor from both a transport and land use perspective, to guide development outcomes that support the intended vision of the corridor

There is an identified need for coordinated planning of the full length of Stirling Highway, from Perth to Fremantle. This report includes a recommendation for the Mayor to write to the Minister for Planning, formally requesting that they facilitate this coordinated approach across the local government areas that the highway intersects.

**General Provisions**

Sustainability

The outcomes of community engagement suggested that the community expects all built form policies to incorporate sustainability measures. This outcome relates directly to a motion of Council from the 28 September 2021, when Council endorsed a Notice of Motion relating to the instigation of planning instruments that can reduce the use of non-renewable energy sources through development approvals. The Policy is a planning instrument that can be utilised to reduce non-renewable energy use via development approvals. The Policy’s General Provisions include the requirement for all multiple, grouped and mixed-use developments to provide a sustainability report that demonstrates water and energy efficiency measures. The Policy also proposes to exceed the number of electric vehicle charging stations required by the R-Codes and provides incentives for the provision of electric vehicles for shared use. Design elements that encourage sustainability have also been included, such as discouraging dark roofs and encouraging elements including eaves and verandahs that contribute to passive cooling.

A second motion of Council was made on the 21 October 2021, where Council endorsed a Notice of Motion relating to the protection of existing and future solar panels. The R-Codes have existing provisions that protect solar panels. Under R-Codes Volume 1 (Single and Grouped Dwellings), there is a maximum proportion of overshadowing that is permitted for each density code. The calculation is based on a worst-case scenario, being 12pm June 21st. Further, Design Principle P2.2 considers the impact of development on solar collectors. Under the R-Codes Volume 2 (Apartments), the form of development is constrained by its impact on adjoining properties’ solar panels via Element Objective 3.2.2. There is also a maximum proportion of overshadowing permitted for each density code, under Acceptable Outcome 3.2.3. Given this, the City has not identified a need, specific to the Broadway Precinct, that would reasonably require provisions relating to solar panels, over and above those in the R-Codes.

Landscaping

The Policy requires all new developments to follow the principles of Water Sensitive Urban Design, including use of permeable surfaces and onsite water filtration and detention systems. The Policy defines tree sizes (small, medium and large) in line with the R-Codes Volume 2 and states a preference for the use of endemic species, especially ones which are drought tolerant. Where planting on structure is proposed, a landscaping plan is to be provided with development applications, detailing the design, water supply, species suitability and ongoing maintenance measures.

Facades and materials

The Policy includes an appendix which details the existing facades and materials, and key design elements, for each sub-precinct. For example, the key design elements for the Residential sub-precinct include the presence of verandahs, eaves, balconies and awnings, as well as low or open style front fencing. New development within each sub-precinct will be required to reference the existing facades and materials, and key design elements outlined in the appendix. This will facilitate new development which reflects the existing character of the Precinct.

Subdivision and public open space

The Policy states a preference for lot amalgamation to create development efficiencies and to facilitate the retention of existing trees. Where a subdivision is proposed which would create six or more residential lots, the Policy highlights the requirement for contributions (either land or cash-in-lieu) towards public open space under the WAPC’s Development Control Policy 2.3 – Public Open Space in Residential Areas.

Vehicle access and parking

The Policy proposes to keep vehicle accessways to a functional minimal width to maximise space in the street setback area and verge for deep soil areas and tree retention and provision. The Policy classifies the Broadway Precinct as ‘Location A’ for the purpose of car parking assessments under the R-Codes Volume 1 and 2, for which reduced parking provision may be supported. This classification reflects the presence of the high frequency Purple CAT (Central Area Transit) bus route along Broadway, and the Broadway Precinct being located within the UWA-QEII Specialised Activity Centre. The Policy also provides parking ratios for preferred non-residential land uses within the Mixed Use zone.

**Consultation**

**Community Engagement Program**

The City established a Community Reference Group (CRG) for the Broadway Precinct in 2020. The 12 members of the CRG were selected from expressions of interest and were stakeholders from within the specified precinct area and surrounds, and represented a cross-section of age, gender and interest. The objectives of the CRG were to:

* Foster stakeholder and community awareness and understanding of the precinct planning and local planning policy process;
* Foster the City’s awareness of community concerns and aspirations for the Broadway Precinct; and
* Obtain local input and knowledge for the development of the Broadway Precinct from a range of diverse perspectives

This CRG initially met in August 2020. The next CRG workshop was held in August 2021, after the built form modelling report was finalised in April 2021. The final workshop was held in September 2021. The Broadway community was afforded two opportunities to join the CRG, as there was a drop in CRG participation between the 2020 and 2021 workshops. The CRG considered background information, built form considerations and a vision for the Precinct. The workshop structure is detailed below.

**Workshop 1:** Background to the planning system, key urban design concepts, parameters of a policy and development of a vision.

**Workshop 2:** CRG rotated through activities on each theme (land use, streetscape, built form, access, parking and landscape) to provide informed and detailed feedback on their desired future character for the precinct.

**Workshop 3:** Communicating the collated feedback from the previous CRG workshops and ensuring that the CRG agreed with the summarised version of the feedback.

A summary of the key outcomes of the CRG workshops is provided below.

Broadway streetscape

* Support for focusing mixed-use development around existing commercial nodes on Broadway, with differing intensity of built form between node and non-node locations.
* No support for continuous ‘wall’ of 6 storey development along Broadway.
* Preference to ‘push towards street’ at ground and upper levels if this facilitated larger rear setbacks and provided street activation.

Interfaces

* Consensus that building height should be located away from lower density transitions.
* Key transitions needing further consideration were R-AC3-R60 and R160-R60.
* Communal open space to be designed and located to minimise amenity impacts on surrounding properties, and for collocating with deep soil areas.

Lot boundary setbacks

* R-AC1 – the greatest setback on the site should be to adjoining R160 lots.
* R-AC3 – the greatest setback on the site should be to the adjoining R60 lots.
* R60 and 160 – the greatest setback on the site should be to the street.
* A detached streetscape character (separation between buildings as viewed from the street) is preferred for R40, R60 and R160.
* An attached streetscape character (boundary to boundary buildings as viewed from the street) more appropriate in R-AC1 and R-AC3.
* Residential zone – street setbacks to be reflective of existing development.

Architectural elements

* Broadway
  + Developments to incorporate a high-quality palette of materials and finishes.
  + Maintain eclectic mix of architectural styles, colours and materials.
  + Awnings and canopies are important in reinforcing Broadway’s function as a ‘main street’.
* Residential areas
  + Verandahs, carports and pitched roofs are encouraged.
  + Dwellings to be orientated towards the street.

Land use

* Support for preferred land uses on Broadway to encourage uses that activate the street and policy settings that require active frontages.

Access and Parking

* It was generally agreed that basement parking was preferred for commercial, mixed-use and apartment developments in R-AC1 and R-AC3 locations.
* Where parking is located above ground, it should be ‘sleeved’.
* Generally, less concern was raised around controlling parking outcomes for R60 and R40 developments.
* Access was generally preferred from secondary streets for corner lots.
* Concern was raised around the use of car stackers – noise, aesthetics, traffic management.
* Design of parking areas should consider existing trees on-site – trees to be retained wherever possible.
* Crossovers should be consolidated.

Survey and Open House

The broader community were provided the opportunity to review feedback gathered from the CRG and provide their own input on the precinct vision and key design considerations through a survey and open house. These engagement exercises were advertised via postcards sent to all owners and occupiers within the precinct area, plus a 200m buffer on the City of Nedlands side, as well as social media, Nedlands News, emails to local schools and P&Cs, and posters put up within, and surrounding, the precinct. Emails were also sent to members of the UWA/QEII Precinct Plan Community Advisory Panel, a group of 43 community members from both City of Nedlands and City of Perth tasked with providing input into the development of the UWA/QEII Precinct Plan.

The survey was available both online and in hard copy form between 1 – 24 October 2021. In total, 66 surveys were completed by community members.

The open house was held on 4 October 2021 from 5.00pm – 7.00pm. In total, 13 community members attended the open house.

The following documents will be made publicly available during the advertising period, to support the Policy’s proposed provisions:

* Broadway Precinct Local Distinctiveness Study and Context Analysis;
* Broadway Precinct Built Form Modelling Report;
* Community Engagement Outcomes Report – encompassing all the community engagement undertaken to-date; and
* Justification Table – providing detailed analysis and justification of the changes that were made to the R-Codes provisions.

Broadway Landowners

During the policy development process, provisions were contemplated which would potentially vary built form along Broadway. Some portions of Broadway (Broadway Frame) were being considered for reduced intensity, in between existing nodes of higher intensity/mixed use development. Landowners within the potential reduced intensity areas were invited to meet with the City to discuss. Invitation letters were sent to landowners within these areas in November 2021, with notice of a meeting date set December 2021. No invited landowners were in attendance for the meeting.

**Consultation**

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

* 28-day advertising period
* Letters to notify owners and occupiers within the precinct
* Notice in the local newspaper
* Notice on the City’s Notice board
* Notice on the City’s Your Voice engagement portal
* Social media
* Community engagement session

**Strategic Implications**

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

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

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

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

**Reflects Identities**

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

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

Encouraging sustainable building

**Budget/Financial Implications**

The remaining expenses for the Policy work relate to public advertising. No additional budget is required to complete the work for the Policy.

The Policy will facilitate infill development within the Broadway Precinct. This is likely to result in a rate revenue increase.

**Legislative and Policy Implications**

Clause 3(1) of the Deemed Provisions of Schedule 2 of the [*Planning and Development (Local Planning Schemes) Regulations 2015*](https://www.wa.gov.au/government/document-collections/planning-and-development-local-planning-schemes-regulations-2015)allows the City to prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area. Once Council resolves to prepare an LPP, in accordance with Clause 4 of the Deemed Provisions it must publish a notice of the proposed policy in a newspaper circulating the area for a period of not less than 21 days and seek submissions. Advertising will also include details being posted on the City’s website and Your Voice engagement portal. Following the advertising period, the policy will be presented back to Council to consider any submissions received and to:

* Proceed with the policy without modification; or
* Proceed with the policy with modification; or
* Not to proceed with the policy.

**Decision Implications**

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

If Council resolves not to endorse the recommendation, the Policy will not be advertised, or progressed.

At its May 2020 meeting, Council adopted the Draft Local Planning Policy – Interim Built Form Design Guidelines – Broadway Mixed Use Zone. Though the policy was adopted, it is not currently being given weight in the assessment of development applications on Broadway, because:

* The City has received legal advice casting significant doubt over many aspects of the policy and whether they can be upheld through an appeal.
* The policy was not based on built form modelling, as recommended by the State Design Review Panel.
* The policy is considered to be inconsistent with the Scheme as it undermines the intent of the Mixed Use zone and is inconsistent with the Scheme provisions and density coding.

Therefore, if Council resolves not to endorse the recommendation of this report, there will be no viable Policy in place with specific built form controls for the Broadway Precinct.

**Conclusion**

As a result of extensive research and consultation, the Broadway Precinct Design Response Local Planning Policy provides contextually appropriate built form outcomes for the Broadway Precinct. The Policy is the most appropriate planning instrument for influencing the built form outcomes in the Broadway Precinct. It is recommended that Council adopt the recommendation and formally advertise the Policy.

**Further Information**

N/A

**Figure 1 – Broadway Precinct and Sub-Precincts**

Diagram, engineering drawing

Description automatically generated

# PD32.05.22 Consideration of Repeal of By-law Relating to New Street Alignment (Aberdare Roads By-law)

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Employee disclosure required where there is an interest in any matter of which the employee is providing advice or a report. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director** | Tony Free, Director Planning and Development |
| **Attachments** | 1. 1978 By-law 2. Department of Planning, Lands and Heritage advice 2016 3. Draft Repeals Amendment Local Law 2022 |

**Purpose**

The purpose of this report is for Council to consider repeal of the 1978 By-law Relating to New Street Alignment through the making of the City of Nedlands Repeals Amendment Local Law 2022.

The first part of the local law-making process is for Council to resolve that a proposed local law be advertised for public consultation. At that meeting, it is necessary under section 3.12(2) of the Local Government Act 1995for the Presiding Member to read aloud the purpose and effect of the proposed local law.

The **PURPOSE** of the local law is to repeal superfluous, defunct and obsolete local laws.

The **EFFECT** of the local law being more efficient and effective local government by removing outdated local laws from the public record.

**Recommendation**

**Council:**

1. **makes the proposed City of Nedlands Repeals Amendment Local Law 2022 as detailed in Attachment 3 for the purposes of public advertising;**
2. **advertises the proposed City of Nedlands Repeals Local Law 2022 in accordance with section 3.12(3)(a) of the Local Government Act 1995;**
3. **forwards a copy of the proposed City of Nedlands Repeals Amendment Local Law 2022 to the Minister for Local Government in accordance with section 3.12 (3)(b) of the Local Government Act 1995;**
4. **requests the Chief Executive Officer to prepare a further report at the conclusion of the public advertising period to enable Council to consider any submissions made; and**
5. **places no weight on the due regard in planning determinations for the road widening arrangements contained in the City of Nedlands By-law Relating to New Street Alignment for Aberdare Road, as the instrument no longer reflects the current road widening requirements for Aberdare Road.**

**Voting Requirement**

Absolute Majority.

**Background**

**Overview**

There is a conflict between two instruments used by the City to identify and protect future road widening requirements on Aberdare Road, Nedlands.

The first instrument, gazetted in 1978, is a By-law that protects from development a 9m-wide portion of private land on the southern side of Aberdare Road, unless otherwise approved (**Attachment 1**). The By-law is a relatively simple instrument that nominates a new ‘street alignment’ 9m behind that existing at the time. It then provides for a penalty to any person developing without approval in front of the new alignment. The By-law itself does not create a head of power for the taking of the land, nor does it act as a development control.

The second instrument is the City’s Local Planning Scheme No.3 (LPS3), gazetted in 2019. This instrument reserves a 4m wide portion of private land for the purpose of Other Regional Roads. This reserve is a Metropolitan Region Scheme reserve with the land acquired by the State at the time of subdivision. Recent acquisition of the widening area has included the State purchasing the required land rather than it being ceded free-of-cost. Unlike the By-law, which can be considered a ‘passive’ instrument, the MRS reserve is an ‘active’ instrument in that it acts as a head of power to prohibit development and to allow for acquisition of the 4m widening area. Effectively, the MRS reservation can be used to refuse development within the widening area, whereas the By-law cannot.

Whereas the State in 1963 identified a 9m wide portion of land as necessary for future road purposes, this was reduced in 1995 to the current 4m. The WAPC has advised that it does not require more than 4m for the widening of Aberdare Road (**Attachment 2**). The City has been continuing to acquire the additional 5m over time for landscaping and greenway purposes. Until 2015, the approach of the City has been to support a ’density bonus’ on properties that agree to cede the land free-of-charge, although the last examples of this appear to have occurred in the 1990’s. This density bonus allowed for a second dwelling on a property. However, a 2015 decision of the Minister for Planning to refuse such an amendment removed this form of compensation. In 2019, all properties abutting Aberdare Road with the exception of the former Hollywood High School area were ‘upcoded’ from R10 or R25 to R60, regardless of whether the widening area had been ceded or not.

Until April 2019, scheme controls included a setback of 12m for development along Aberdare Road. This was enabled under the former Residential Design Guidelines incorporated into Appendix V of former Town Planning Scheme No.2 (TPS2). Upon gazettal of LPS3 in April 2019, these controls ceased, with the default R60 setback of 2m applying from the southern edge of the MRS reserve (i.e. 6m from the original ‘street alignment’). From this date, the City’s ability to enforce through its Scheme controls a setback that allowed for the 9m widening was removed.

Should Council wish to continue to acquire the 5m portion of widening behind the 4m wide MRS reserve, it is recommended that the land be appropriately reserved for a public purpose (parks and recreation or local road). The City will also need to provide compensation to property owners for the loss of the land, in the same manner as currently provided for the MRS reserve. In 2016, the cost of acquiring the land was estimated at $186,000 per property, with 9 properties affected. However, given the current state of the market and the R60 density coding, this cost is likely to be higher.

Notwithstanding Council may wish to continue with the 9m widening approach from 1978, the current By-law instrument is no longer consistent with orderly and proper planning. Reservation in LPS3 is the most appropriate instrument to allow for the acquisition of additional land through purchase at the time of development or subdivision. Providing compensation through a density bonus on individual properties is no longer available to the City.

Repeal of the By-law will require the making of the City of Nedlands Repeals Amendment Local Law 2022 (**Attachment 3**). Should Council by absolute majority make the local law, advertising of it will be required in accordance with section 3.12(3)(a) of the Local Government Act 1995.

**1963 – 1995**

The Metropolitan Region Scheme (MRS) was gazetted in 1963 with Aberdare Road shown as an “Important Regional Road” (also known as a “Blue Road”).

In the mid 1970’s, the future road widening requirements for Aberdare Road called for an overall 40m wide reserve, which was a generic width applied to a number of blue roads. A 9m wide portion of this reserve was located within private property on the southern side of Aberdare Road, between Gairdner Drive and what was then the Hollywood Senior High School site, west of Kitchener Street.

Consistent with what is understood to have been the practice of the time, in 1978 the City created a By-law relating to street widening in order to protect the 9m portion of the blue road reserve that was located on private land on the south side of Aberdare Road. The By-law was made under the Local Government Act 1960 and was also consistent with section 364 of the Local Government (Miscellaneous Provisions) Act 1960. Section 364 relates to the setting of new street alignments using by-laws (now known as local laws). The practice of using by-laws or local laws in this way appears to have ceased after creation of the Aberdare Road By-law in 1978 with land acquisition occurring directly through the provisions of the Metropolitan Region Scheme and Land Administration Act 1997. The By-law does not provide a head-of-power for the ceding of the land. Rather, it protects the road widening area from development, unless this development is approved by the local government. It is a simple “call-in” mechanism that ensures any development within the widening area is considered by the City and approval granted. The By-law is not a development control mechanism.

In 1991, a review of all MRS road reserves was commenced, with the Western Australian Planning Commission and Main Roads WA identifying for the first time the future road reserve requirements for each road based on traffic modelling and concept planning. This allowed for the road reserve requirements for Aberdare Road to be reduced from 40m to 24-27m. The widening required on the southern side of Aberdare Road reduced from 9m to 4m. The MRS reserve was amended in 1995 to require only the 4m.

**1995-2019**

After rationalisation of the MRS reserve in 1995, the City continued to retain the By-law, with it re-confirmed in 2000. No longer required to protect land for the Aberdare Road MRS widening, the additional 5m widening was to provide a landscaped entry into the City. This was reflected in the City’s 2001 Greenways Policy.

In order to obtain the 9m widening, the City facilitated a density bonus arrangement as compensation. Effectively, should a property give up the widening land free of charge, the City would amend its Scheme to increase the density from the base R10 to R25. This allowed these properties to be developed with a second dwelling entitlement. This arrangement appears to have been used by 7 properties over time. There appears to have been no ceding of land post-2005, with most activity having occurred in the 1980’s and 1990’s.

In 2005, a detailed area plan was prepared and incorporated into former TPS2. This plan included an effective 12m setback for buildings from the unwidened Aberdare Road boundary. This allowed for the future 9m widening, plus 3m future front setback.

The detailed area plan remained in place until TPS2 was revoked in April 2019. From this date, the R60 density applied to all properties fronting Aberdare Road, regardless of whether the widening had been taken or not. With the gazettal of LPS3, the ability to provide a density bonus to offset the loss of land to the 9m widening was removed. Critically, LPS3 provides for a deemed-to-comply primary street setback of 6m (inclusive of the 4m MRS reserve) instead of the former 12m setback of TPS2.

**Discussion**

At the time of writing this report, the By-law remains in place. However, it is in conflict with LPS3. The Scheme reserves the first 4m behind the original Aberdare Road boundary as ‘Other Regional Roads’. The next 5m of land currently in private ownership but subject to the By-law is zoned ‘Residential R60’.

When approving subdivision of land on Aberdare Road, the WAPC is currently requiring the 4m MRS reserve to be ceded to the Crown. It is understood that this is not ceded free of cost, with the State purchasing the 4m widening area by private treaty. The state is purchasing the land as the need for the road widening is not caused by the subdivision, but by a larger need.

Consistent with the objective of the By-law, the City has requested the additional 5m (9m in total) to be ceded free of cost at the time of subdivision. This request was denied as the WAPC was not satisfied that a need and nexus existed for the land to be given up without compensation. Any further ceding of the 5m of widening outside of the MRS reserve at the time of subdivision will require the City to purchase the land in the same manner as the state is undertaking with the 4m MRS widening. Further, in order to ensure orderly and proper planning of the City’s public land requirements, the placement of a reservation in LPS3 is required in order to satisfy the WAPC that a planning ‘need’ exists.

Applications for development and subdivision under the controls set out by LPS3 have started to be received by the City and WAPC. The subdivision of 61 Aberdare Road was approved by the WAPC in 2020 without requiring the 5m additional widening. Development applications for these new lots have started to be received by the City, proposing a 2m minimum primary street setback in accordance with the deemed-to-comply provisions of the Residential Design Codes. A multiple dwelling development at 47 Aberdare Road is currently being assessed for consideration by the Joint Development Assessment Panel. This development also proposes a primary street setback that will see building within the 5m additional widening area.

**2013 consideration**

Council has previously considered the By-law on at least two occasions. In 2013, consideration focused on the matter of compensation for the road widening. In 2016, consideration was given to the repeal of the By-law.

Council has previously resolved to maintain the By-law and to continue to acquire land for landscaping and potentially future road widening. This position has become problematic with the gazettal of LPS3 and the removal of the previous density bonus arrangement.

In December 2013, Council resolved in part as follows:

2*.* Where the designated road widening is voluntarily surrendered free of charge by the landowner, the City will initiate rezoning the balance of land adjoining Aberdare Road affected by the City of Nedlands By-Laws relating to New Street Alignment gazetted 20 October 1978, to allow two dwellings;

This resolution appears to have triggered a scheme amendment as outlined below.

**Density Bonus 2015 Test**

Whilst ‘spot’ rezonings of land in Aberdare Road had occurred in the 1980’s and 1990’s, more recently the approach has been unsuccessful.

In 2014, Council initiated a rezoning amendment to TPS2 to recode 61 Aberdare Road from R10 to R25. It did this having entered into agreement to obtain the road widening without compensation (other than the density bonus). This amendment was subsequently refused by the Minister for Planning for the following reasons:

1. The subject lot and surrounding land require broader strategic planning, implemented through the City’s Local Planning Strategy and Local Planning Scheme, to determine suitable, possibly higher, residential densities due to its location near the University of Western Australia – Queen Elizabeth II Medical Centre Specialised Centre.
2. The proposed recoding will create a precedent for further individual lot recoding proposals in the locality, prior to the broader strategic planning referred to in point (a) above.

The actions required by reason a) above have now been completed with the endorsement of the City’s Local Planning Strategy in 2017 and gazettal of LPS3 in 2019. Reason b) is a general presumption against so-called ‘spot’ rezonings.

**Need for 9m widening**

The need for a 9m widening of Aberdare Road on the southern side was based on the MRS road reservation requirements of the 1963-1995 era. Since 1995, the link between the MRS road reservation requirement and the 9m widening set by the By-law has been broken.

It is understood that the City has maintained the 9m widening in part to allow for future road widening options, as well as for landscaping. The 2001 Greenways Policy reflects this by identifying Aberdare Road as a local greenway linking Kings Park to larger areas of bushland to the west. It appears that the reduced width required for road purposes provided an opportunity to acquire land for landscaping, or a greenway link.

**Suitability of existing road reserve**

Officers have liaised with the Department of Planning, Lands and Heritage, which is the agency responsible for the planning of “blue roads” in the metropolitan region. Advice received in 2016 identified that the current 24-27m wide MRS reserve is suitable for current and envisaged road requirements (**Attachment 2**). This advice has been reiterated by the Department in recent months.

The Department, as the responsible authority, is satisfied that the current MRS reserve is sufficient. Consequently, any additional road widening required by the City would be outside of the MRS reservation process and not covered by compensation paid by the state.

It is noted that the ‘ideal’ road reserve width for a 4-lane road with median and service corridors is 30-35m. This width is typically seen in outer suburban areas where road planning precedes the creation of subdivided land. In inner areas, it is common to see narrower road reserves. In 1995 when the Aberdare Road reserve was reduced, other roads were similarly treated, including Fitzgerald Street and Walcott Street, North Perth and Scarborough Beach Road. At the time of the 1995 changes, the then-Minister for Planning stated the original 1963 reservations could be reduced given there was a clearer picture of which regional roads need to be upgraded and to what extent.

**Contemporary Mechanisms**

The By-law is a relatively simple instrument. In effect, it defines a new street alignment for the southern side of Aberdare Road. The By-law does not provide guidance on when the land should be taken, nor does it detail any compensation. The By-law is a simple protection mechanism against unapproved development within the designated road widening area.

The By-law is no longer considered the most appropriate mechanism for protecting land for a public purpose. Further, its main purpose to protect land for future road widening has been superseded by the current MRS reserve.

The most appropriate form of protecting land for future acquisition for public purposes is Council’s LPS3. This provides for land to be reserved for a range of purposes, including Other Regional Roads (MRS blue roads) and local roads. The acquisition of land is then accommodated through the Land Administration Act 1997.

The effect of the By-law to protect land from inappropriate development has been weakened by subsequent zoning schemes, firstly in 1985 (TPS2) and more recently 2019 (LPS3). From 1995, the schemes did not reserve more than 4m of private land. The remaining 5m was zoned Residential, firstly R10 and since 2019, R60. Where the additional 5m had been ceded, this land has been reserved for local roads.

Since at least 2015, there has been no compensation available through a density bonus. The City is now faced with the need to provide compensation through purchase of the widening area in the same manner as the WAPC is undertaking with the 4m wide MRS reserve.

Should Council resolve to continue to obtain the additional 5m widening, it is recommended that a parks and recreation reserve or local road reserve be placed over the affected land via scheme amendment. This will be subject to identifying a strategic justification for the amendment. This strategic justification is normally based upon an endorsed local planning strategy, which identifies the ‘need and nexus’ for the proposed reservation. The City’s current Local Planning Strategy, endorsed in 2017 does not identify the opportunity for a widened Aberdare Road reserve to accommodate landscaping, Greenways or other purpose. Given this, a strategic justification will be required to be established before a scheme amendment process can be initiated.

**Effect on current applications**

LPS3 does not recognise the additional 5m widening. The 4m MRS reservation is shown on the scheme maps and is taken into account in planning determinations (development or subdivision). Whilst a by-law or local law is not explicitly listed as a ‘matter for consideration’ in clause 67(2) of the deemed provisions, decision makers can have ‘due regard’ to it as an ‘any other planning consideration’. By providing due regard, a decision maker must weigh the level of significance the By-law should take based on its legislative strength. Whilst still in effect, the role the By-law plays has been replaced by more contemporary mechanisms. Further, the By-law relates only to identifying a new street alignment and stating that no development should take place within the widening area without approval. Given this, the By-law does not prohibit development, nor does it remove a decision maker’s discretion to allow development.

As the By-law is not explicitly a matter to be considered in a planning determination and that the By-law does not in itself prohibit development, the weight to be provided to it is reduced. Another consideration is that the stated purpose of the By-law to increase the road reserve by 9m was replaced in 1995 by a 4m mandate. Since this time, there has been a conflict between the strategic intent of the Metropolitan Region Scheme and the By-law prepared to implement the MRS.

The By-law cannot be used as a reason to refuse development as it does not explicitly prohibit development. Until April 2019, development controls existed that effectively provided for the 9m widening. The Design Guidelines contained in Appendix V of former TPS2 provided for a setback of 12m from the original street alignment. This accommodated a 9m widening and 3m future primary street setback. Until this date, the City had the legal ability to require the setback of buildings to accommodate the 9m widening area.

As of April 2019, there has been no primary street setback control in place to ‘protect’ the road widening area. Rather, the normal deemed-to-comply provisions of the R-Codes for the R60 density have applied. Accounting for the 4m MRS widening, the practical setback has reduced from 12m to 6m for properties that have not previously ceded the 9m widening area.

With the 2020 approval of the subdivision at 61 Aberdare Road, obtaining a uniform 9m widening along the entire section of Aberdare Road is no longer practicable. Any refusal to grant development approval to development on the grounds that the 9m widening has not been provided will not be supported by provisions in LPS3.

**Repeal of By-law**

Repeal of the By-law is recommended on the following grounds:

* The By-Law is not a statutory development control mechanism and does not provide an enforceable setback or trigger a land acquisition process. Instead, the By-law simply states that local government approval is required for any development within the 9m widening area. The By-law is not a replacement for a scheme reserve or development setback incorporated into a local planning scheme;
* There is currently no reservation in LPS3 that provides a “head of power” to the By-law, in the same manner as that which existed in 1978 when gazetted; and
* There is currently no strategic “need and nexus” for the widening, such as identification in a local planning strategy.

Repeal of the By-law will require the making of the City of Nedlands Repeals Amendment Local Law 2022 (**Attachment 3**).

**Reservation of land**

In the event that Council wishes to continue to pursue the acquisition of the 5m wide portion of land outside of the MRS reserve, the following is recommended:

1. Creation of a strategic planning justification for the corridor. This can be based on Council’s Greenways Policy, appropriately updated.
2. Preparation of a scheme amendment to reclassify the 5m widening area from Residential zone to an appropriate local reserve (local road or parks and recreation). A scheme amendment will be considered a ‘complex’ amendment for the purposes of the Planning and Development (Local Planning Schemes) Regulations 2015. This amendment will incorporate the strategic planning justification identified at Point 1. As a complex amendment, the certification of the WAPC will be required prior to advertising.
3. Engagement with affected landowners and the wider community, both during preparation of the Scheme amendment and during the public consultation phase.
4. Approval of the scheme amendment by the Minister for Planning and gazettal of the new reservation.
5. Acquisition of land via purchase over time. This could occur either at subdivision or development of affected land, or as a standalone process.
6. Development of the acquired land in accordance with an overall landscaping plan.

Given the By-law has no development control or acquisition ability, repeal of it is recommended notwithstanding Council may elect to reserve the land.

**Consultation**

Should the proposed City of Nedlands Repeals Amendment Local Law 2022 be supported the City is required to advertise the proposal to make the new local law by statewide public notice, make copies available for inspection and invite submissions on the proposed local law. The submission period is required to be at least six weeks in compliance with Section 3.12(3) of the Local Government Act 1995.

**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**

Repeal of the By-law will not create a significant budget implication as costs associated with advertising and making the Real Local Law are relatively minor.

In the event that Council resolves to undertake strategic planning and subsequently reserve the widening area in LPS3, moderate costs associated with staff resources and advertising costs can be expected. Ultimately, costs associated with land acquisition and development of the corridor will be significant and will need to be considered in future budgets and long-term financial planning.

The Department of Planning, Lands and Heritage is responsible for the purchase of land affected by a MRS reservation. The Department has advised that it is unable to purchase land outside of a MRS reserve. Consequently, any future reservation of the land as a ‘local reserve’ will require the City to pay compensation, normally through purchase of the affected land.

**Legislative and Policy Implications**

**Procedure for repeal of local law**

The By-law is a “local law” for the purposes of Part 3, Division 2, Subdivision 1 of the [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a465.html) (sections 3.11-3.17). Repeal of a local law is undertaken by ‘making’ a repeal local law under section 3.12 of the Act.

The first part of the local law-making process is for Council to resolve that a proposed local law be advertised for public consultation. At that meeting, it is necessary under section 3.12(2) of the Act for the Presiding Member to read aloud the purpose and effect of the proposed local law.

The **PURPOSE** of the local law is to repeal superfluous, defunct and obsolete local laws.

The **EFFECT** of the local law being more efficient and effective local government by removing outdated local laws from the public record.

**Procedure for amending the Scheme**

Part 5 of the [Planning and Development (Local Planning Schemes) Regulations 2015](https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_s46246.html) outlines the procedure for amending a local planning scheme. As a complex amendment, the procedure outlined at Division 2 will apply.

**Decision Implications**

It is recommended that Council repeals the By-law for the reasons outlined above. Repeal of the By-law will have no impact on Council’s ability to administer its local planning scheme or to acquire the widening area should it wish to pursue this.

In the event that Council elects to prepare a scheme amendment to reserve the widening area for future acquisition, repeal of the By-law is also recommended.

Maintenance of the By-law will have no effect on protecting the widening area given the conflict with Council’s development controls (LPS3). The By-law cannot be used as a reason for refusal of planning applications as it does not explicitly prohibit development.

**Conclusion**

It is recommended that Council repeal the By-law on the grounds that it has little effect on the ability for the City to control development or to acquire land. The presence of the By-law is insufficient to “protect” the road widening area except for the first 4m located within the MRS “blue road” reserve. Should Council wish to protect and acquire the widening area over time, it is recommended that a scheme amendment to reserve the land is undertaken. This will require the development of a strategic planning justification.

Refusal of development applications based on the presence of the By-law is not recommended.

**Further Information**

Nil.

# PD33.05.22 Foreshore Reserve 28307 Concept Plan

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 22 May 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Jessica Bruce – Acting Manager Health and Compliance |
| **Director** | Tony Free - Director Planning and Development |
| **Attachments** | 1. Foreshore Reserve 28307 Concept Plan |

**Purpose**

This report is being presented to Council to seek endorsement of a rehabilitation concept plan for Foreshore Reserve 28307. The final concept plan has been produced following the conclusion of engagement activities.

**Recommendation**

**That Council endorses the concept plan for Foreshore Reserve 28307 as detailed in attachment 1.**

**Voting Requirement**

Simple Majority.

**Background**

**Objective of the Concept Plan**

The City’s Administration developed a concept plan for Foreshore Reserve 28307 to address foreshore erosion and to guide future rehabilitation and access for residents and wider foreshore users.

Reserve 28307 is degraded and suffers excessive environmental weed invasion. Prior to 2021 the Reserve had no formal maintenance activities and over the years the City in collaboration with the Department of Biodiversity Conservation and Attractions (DBCA) have investigated several unauthorised native vegetation removal events. Furthermore, accelerated erosion is occurring along foreshore areas as a result of increased storm intensity and tidal surges as shown in the photo below.

A body of water with grass and trees around it

Description automatically generated with low confidence

Photo: Tidal surge along foreshore 28307 May 2020

The development of the concept plan was initiated in response to repeated unauthorised removal of vegetation events, ongoing complaints from residents and foreshore users of the poor condition of the Reserve, and the City’s need to consider changing climatic conditions that are resulting in increased erosion along foreshore areas.

In order to address these issues, the City sought funding through the DBCA 2020/21 Riverbank Program for the project Foreshore Reserve 28307 Greenway Corridor Development Stage 1. The grant was approved in 2021 and was joint funded by the City through the 2020/21 Council budget. The grant project nearing completion includes the commencement of initial environmental weed control and the development of a concept plan in the area shown on the below map.

A picture containing text, outdoor

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Figure 1: Foreshore Reserve 28307

**Outcomes of the Concept Plan**

The expected outcomes following the implementation of the concept plan include:

* Reduction in foreshore erosion and protection of infrastructure;
* Reinstatement and connecting native fringing foreshore vegetation;
* Reduction of environmental weeds;
* Improvement of the management and amenity of the Reserve;
* Formalising access for adjacent residents and river foreshore users;
* Provision of a concept design that the local residents will benefit from;
* Enhancement of the river greenway corridor between Bishop Road Reserve and Point Resolution Reserve; and
* Ensuring the foreshore is managed to provide a stable waterfront that best serves the community and environment.

It is anticipated that once the Reserve is actively managed less complaints will be received and unauthorised removal of native vegetation within the Reserve will stop.

A grassy area with trees and buildings in the background

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Photo: Degraded and weed infested foreshore Reserve 28307

**Approval of the Concept Plan**

Reserve 28307 falls within the Swan River Development Control Area (DCA) for which the DBCA is the overarching management authority under the Swan and Canning Rivers Management Act 2006.

As such the City is working closely with the DBCA throughout the project to assist in the development and approval of the concept plan, the community engagement information and feedback from residents on the concept plan. Officers from the DBCA also attended a site meeting with residents during the consultation period to discuss their feedback.

**Discussion**

The concept plan aligns with recommendations contained within the Foreshore Management Plan for the Swan River Estuary in the Western Suburbs of Perth 2016. This Management Plan details foreshore management and adaptation methods recommended by Seashore Engineering a coastal and estuarine engineering consultancy company.

The Foreshore Management Plan for the Swan River Estuary in the Western Suburbs of Perth 2016 was prepared to assist local governments from the Western Suburbs Regional Organisation of Councils (WESROC) to protect and enhance riverbanks. A key recommendation for Foreshore 28307 in the Foreshore Management Plan is to maintain sedges and other vegetation at Bishop Road Reserve and south. The aim of the recommendations in the Foreshore Management Plan are to reduce the reliance on reactive management and improve foreshore resilience in the face of a changing climate.

The concept plan will assist the City to implement the Western Suburbs Greening Plan 2020-2025 which identifies the entire Swan River foreshore as a greenway corridor. A number of WESROC Councils including the City of Subiaco, and the Towns of Mosman Park and Claremont have undertaken greening projects along the Swan River foreshore and therefore this project works to build and connect these projects together.

The development and implementation of the concept plan also assists the City to implement the Greenways Council Policy which designates the river foreshore as a regional greenway where native flora and fauna are to be protected, retained, and promoted. It also builds on previous foreshore greenway projects funded by the City and the DBCA at Point Resolution Reserve and at the river end of Watkins Road and Waratah Place. These greenway projects assist the City to ensure the long-term protection of infrastructure along the river foreshore as well as increasing habitat and biodiversity.

Between the 10 February to the 2 March 2022 the draft concept plan for foreshore Reserve 28307 was open for feedback on the City’s Your Voice community engagement platform. Generally, the feedback received was positive and the majority of engagement responses supported the concept plan and its objective of addressing foreshore erosion.

The most frequent feedback response received was directly relating to the width and location of residential access pathways. There were two submissions that did not support the plan. One of these submissions (on behalf of three residents) did not support the concept plan primarily due to concerns that beach access would be reduced and the amenity of ‘White Beach’ compromised due native vegetation taking over the beach area. The second submission that did not support the plan wanted all the vegetation to remain including environmental weeds due to concerns that the removal of weeds would cause erosion.

In addition to consultation with the local and wider community, the City collaborated with the DBCA throughout all stages of the project including the development and design of the draft concept plan and community engagement information.

As the DBCA have overarching management authority for the Reserve under the Swan and Canning Rivers Management Act 2006 the City’s Administration sought comment from the DBCA on the feedback received. The purpose of seeking comment from the DBCA was to ensure that future work undertaken by the City in Reserve 28307 would align with DBCA requirements under the Swan and Canning Rivers Management Act 2006.

The City has provided a general summary of the feedback received during the consultation period and following the initial consultation letters that were sent to adjacent residents in May 2021. A summary of resident’s feedback and DBCA responses are provided below.

|  |  |  |  |
| --- | --- | --- | --- |
| **No.** | **Feedback** | **City of Nedlands Response/Action to be taken** | **Summary of DBCA Feedback** |
| Multiple Comments | Designated paths do not provide adequate access for residents, locations and size are not suitable. | * The City will collaborate with residents to ensure the location and size of the pathways meets their needs. * The final concept plan was amended to make note of the above point, to change the path photograph on page two of the concept plan and to change the locations of some pathways. | When the proposal is ready for assessment it is likely we may require justification for the location, size and number of access tracks provided in the plan. |
| 1. | Would like the beach to remain a dogs 'off lead' area. | There are no changes proposed to dog control in Reserve 28307. | N/A |
| 2. | * Concerned that the amenity of ‘White Beach’ is being compromised. * The concept plan has not made provision for grassed areas for people to use. * The concept plan has not made provision for access during times of high tide. * Plan needs to provide more thought to future public access and amenity. * Would like vegetation cut back to widen the beach. | * The City has approved Enviro-scape Masterplans for Bishop Road and Point Resolution. These strategic plans guide future development of park precincts including the provision of grassed amenities. Foreshore Reserve 28307 lies directly between Point Resolution and Bishop Road Reserve however it was not included in these Masterplans as the City intends on managing Reserve 28307 in accordance with recommendations contained within the Swan River Estuary in the Western Suburbs of Perth 2016 and as a greenway in accordance with the City’s Greenways policy. * As the DBCA have overarching management authority these requests were referred to the DBCA for comment. | * The provision of mowed grassed areas along this stretch of foreshore is not supported due to lack of available space and ongoing maintenance requirements. * The provision of additional access paths for use during high tides is not supported due to lack of space available for revegetation. * It is unlikely that amenities would be supported due to space constraints and maintenance requirements. * DBCA and Swan River Trust policies do not support the removal of native vegetation in foreshore areas, particularly in narrow areas where vegetation plays an important foreshore stabilisation and erosion control function. * It is acknowledged that residents remember a wider beach/sand area in the past. However, removal of native vegetation is not supported. |

|  |  |  |  |
| --- | --- | --- | --- |
| 3. | Concerned that the concept plan does not show the reserve boundary accurately as some private land is shown as City Reserve. | The boundary line on the concept plan reflects the boundary between private and public land. Revegetating private land is outside the scope of this project. The final concept plan was amended to include the requirement of a boundary survey to ensure the works are retained within Reserve 28307. | N/A |
| 4. | Can the entire area be revegetated including the area between number 152 Victoria Avenue and Point Resolution. | As the DBCA have overarching management authority these requests were referred to the DBCA for comment. | Revegetation of foreshore private land is always encouraged, support can be provided to residents if required. |
| 5. | Concerned there will be vegetation removed which will cause erosion. | There are no plans to reduce vegetation. The objective is to increase vegetation density to reduce erosion. | N/A |

The concerns raised regarding the loss of White Beach and the amenity of the area due rehabilitating the Reserve with native vegetation have been common across residents through the formal and informal submission. The concept plan is to plant native vegetation to helps naturally stabilise the river foreshore as it buffers wave action and river flow which reduces sediment mobility. The widespread clearing that has historically occurred along Nedlands has left the river foreshore and existing remnant vegetation vulnerable to erosion. Once erosion occurs infrastructure such as walls or pathways are also vulnerable to erosion.

The concept plan will work to reinstate the natural system that was in place prior to land clearing, and it will provide long term stability to the foreshore and protect adjacent infrastructure. The beach access for foreshore users will also be protected and maintained.

A picture containing outdoor, nature, shore

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Photo: 1909 family enjoying a day out at White Beach with a buffer of native foreshore

vegetation behind them – Photo City of Nedlands Local Studies Collection, Nedlands Library PIC9867 courtesy State Library of Western Australia

**Consultation**

Initial consultation letters were posted to 17 residents directly abutting Reserve 28307 at the commencement of the stage 1 grant in May 2021. This letter provided information about the development of the concept plan and notified residents that environmental weed control would be commencing onsite during 2021.

The community consultation for the draft concept plan commenced on 10 February 2022 and concluded on 2 March 2022 where letters were sent to 17 residents directly abutting the Reserve. The Letters included a copy of the draft concept plan and invited feedback on the through the City’s Your Voice online engagement platform. Four signs were also erected on the Reserve encouraging feedback to foreshore users via Your Voice. Additionally, during the consultation period one site meeting was held with officers from the DBCA and the City with three residents.

Below is an overview of the key statistics and feedback from the community consultation.

|  |  |  |
| --- | --- | --- |
| **Engagement Type** | **Responses** | **Key Comments** |
| Letter mail out to 17 properties advising of the grant in May 2021 | One written response | Concerned there would be vegetation removed which would cause erosion. |
| Feedback provided to staff onsite and follow up phone call | Supports the revegetation and would like the area fenced while plants establish. |
| Letter mail out to 17 properties advising of the consultation period and inviting feedback via Your Voice February 2022 | Six written submissions | * Fully supports the plan to revegetate the area however would like the whole area to be revegetated including the area between number 152 Victoria Avenue and Point Resolution. The project fails as it does not connect all the foreshore areas between Point Resolution and Bishop Rd Reserves. * Would a wider pathway. Concerned about rats and snakes and that increased vegetation will compromise the amenity of ‘White Beach'. The concept plan has not made provision for grassed areas or access during times of high tide. Plan needs to provide more thought to future public access and amenity. * Congratulate the Council on the initiative and would like a wider pathway. * Support weed removal. Designated paths do not provide adequate access for residents, locations and size are not practical. * Would like the beach to remain a dogs 'off lead' area. * Concerned about the proposed concept plan. Does not want the weed grasses removed as it will cause erosion and create a sandy area like at Point Resolution. Do not want any vegetation including weeds removed. Do not want a pathway next to their boundary wall. |
| Site meeting at the request of residents | Three residents onsite meeting (also provided written submission) | * Concerned White Beach is being lost. Would like vegetation cut back on the foreshore to increase beach access. Would like a wider pathway to access the river. Concerned that the concept plan does not show the Reserve and private land boundary accurately as some private land is shown as City Reserve. |
| Your Voice | Six written responses | As above |
| 116 total visits | N/A |
| 97 documents downloaded | N/A |

**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.

**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 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.

**Priority Area**

* Urban form - protecting our quality living environment
* Retaining remnant bushland and cultural heritage
* Providing for sport and recreation
* Working with neighbouring Councils to achieve the best outcomes for the western suburbs as a whole

**Budget/Financial Implications**

There is currently $31,550 in the 2021-22 Council budget which includes $12,500 Municipal funds and $19,050 grant funding for stage 2 which will commence implementation of the concept plan once it has been endorsed by Council.

It is expected that two future stages will be required to complete the implementation of the concept plan. These two final stages will require Municipal and grant funding as shown below:

* 2022/23 Stage 3 total $28,500 ($11,000 Municipal and $17,500 grant funding)
* 2023/24 Stage 4 total $29,500 ($12,000 Municipal and $17,500 grant funding)

Once the concept plan has been implemented the Reserve will be managed using operational funding allocated to the river foreshore.

**Legislative and Policy Implications**

The following legislative and policy implications relate to this item:

* Swan and Canning Rivers Management Act 2006
* Rivers and Estuaries Branch Swan Canning River System Development Control Procedures
* Greenways Council Policy
* Unauthorised Damage of Vegetation Council Policy

**Decision Implications**

If Council resolves to endorse the concept plan then the City can move into commencing stage 2 immediately and work towards ensuring the foreshore is managed to provide a stable waterfront. In the event Council refuses to endorse the concept plan then the funding provided for stage 2 will need to be returned to the DBCA and the Reserve will revert back to being unmanaged.

Council may also resolve to delay approving the concept plan on the basis that the City is in the process of appointing a Foreshore Management Steering Committee to oversee the development of a Foreshore Management Plan for the Nedlands Swan River foreshore. Any activities to rehabilitate this Reserve will need to align with DBCA requirements under the Swan and Canning Rivers Management Act 2006. These requirements have been applied to the concept plan and will be required for the Foreshore Management Plan. A delay would require the funding for stage 2 to be returned to the DBCA and the Reserve will revert back to being unmanaged until future funding can be sought.

**Conclusion**

The City has worked collaboratively with the DBCA to develop a concept plan for Reserve 28307 with the aim of improving the amenity of the area and mitigating erosion in the face of a changing climate.

There is funding available in the 2021-22 Council budget to commence stage 2 which will progress the implementation of the concept plan. Council endorsement of the concept plan will enable delivery of the project in accordance with the adopted capital works budget and it will ensure continued support of Council’s and the Community’s strategic priorities for protecting the natural environment and infrastructure.

**Further Information**

N/A

**Figure 1 – Broadway Precinct and Sub-Precincts**

Diagram, engineering drawing

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# Divisional Reports - Corporate & Strategy Report No’s CPS18.05.22 to CPS22.05.22

# CPS18.05.22 New Lease to Nedlands Yacht Club – Portion of Reserve 17391

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 24 May 2022 |
| **Applicant** | Nedlands Yacht Club Inc. |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | David Thomason – Coordinator Land & Property |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | Nil |

**Purpose**

This report is being presented to Council in order to consider a new lease for the Nedlands Yacht Club for a portion of Reserve 17391, the Esplanade, Dalkeith.

**Recommendation**

**That Council:**

1. **approves an exclusive use lease for portion of Reserve 17391 between the City of Nedlands and Nedlands Yacht Club Inc. consistent with the key terms as noted within this report; and**
2. **subject to the Minister for Lands’ Consent, authorises the Chief Executive Officer and Mayor to execute the lease and apply the City’s Common Seal.**

**Voting Requirement**

Simple Majority.

**Background**

The City of Nedlands currently leases the facility known as Nedlands Yacht Club located on portion of Reserve 17931, the Esplanade, Dalkeith (‘the Site’), to the Nedlands Yacht Club Inc. (‘NYC’).

NYC have requested support from the City for a new lease for two reasons.

1. NYC intend to invest significant money into the Site in the coming years, notably to redevelop its training centre. To justify the investment, NYC are seeking an extended period of tenure (the current lease will expire in 2030)
2. The current lease was drafted in 2010 and contains a dated and substandard sketch of the lease premises.

NYC was established in 1952 as a breakaway from the Mounts Bay Yacht Club under the name of Subiaco Yacht Club. The Club has occupied the current Site since 1955 when it was granted use of the land by the Subiaco Council. After removing bamboo and reclaiming the river frontage, a small clubhouse was constructed in late 1955. In 1959, following the establishment of the City of Nedlands as the local authority, the club changed its name to Nedlands Yacht Club Inc.

In 1962, courtesy of a loan of 12,000 pounds from the City, a new brick clubhouse was opened. Extensions to the clubhouse in 1973 increased its original size. Additional bar, change room and associated facilities were installed to increase the accommodation for a growing membership and to cater for larger functions.

In this current request, NYC are seeking the City’s support for a new lease to justify a planned investment into the Site by securing tenure for a greater number of years.

**Discussion**

Reserve 17391 (‘Reserve’) is located on the Esplanade, Dalkeith and is part of the Dalkeith foreshore. The Reserve is vested to the City for care, control and management for the purposes of ‘Recreation’.

On 1 May 2010, the City of Nedlands entered into a lease with NYC for a period of 15-years with an additional 5-year term. This lease is due to expire on 30 April 2030.

A visual representation of the Site which NYC currently lease is shown below.



On 7 February 2022, NYC approached City Officers seeking advice on how to proceed with a redevelopment of the Sailing Training Centre. In their pre-planning, NYC had identified a few issues with the investment:

1. The current lease, drafted in 2010 contained a sketch of the lease premises which is considered substandard. This sketch results in an inability for NYC to lodge the lease on the title with Landgate.
2. Noting the current lease expires in 8-years’ time, to justify the significant planned investment, NYC are seeking an extended period of tenure in accordance with the City’s ‘Use of Council Facilities for Community Purposes Policy’.

To remedy both of these issues, it was proposed that a new lease be entered into in accordance with the City’s *‘Use of Council Facilities for Community Purposes Policy’* and included an updated survey sketch produced in a manner which is acceptable to Landgate.

**New Lease Conditions**

NYC advised their current lease conditions are satisfactory, with the exception of the lease premises sketch and the length of current term. It is proposed that a new lease be prepared to reflect only these changes and any legislative updates where required.

**Survey Sketch**

Currently, the survey sketch identifying the lease premises is considered poor. To improve the sketch, at the cost of NYC, the proposed survey sketch of the lease premises is shown below

Diagram

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**Key Terms and Special Conditions**

Should Council choose to support the recommendation, solicitors engaged by the City can be asked to prepare a lease agreement based on the Key Terms below at the full cost of the tenant. The Key Terms have been negotiated in accordance with the City’s *‘*Use of Council Facilities for Community Purposes Policy’.

On 28 March 2022, NYC agreed to all Key Terms as described below and to the quoted costs.

Table

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**Consultation**

Upon being contacted by NYC to consider the lease of the Site, the following City teams were consulted with;

**Planning Services**

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

**Community Development**

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

**Land & Property**

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

**Strategic Implications**

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

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

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

**Budget/Financial Implications**

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

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

**Legislative and Policy Implications**

Section 3.58 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) (‘Act’) governs how Local Governments can dispose of property.

Given the Reserve is under the City’s care and control, consistent with s3.58 of the Act, an agreement of tenure and Minister for Lands’ Consent is required to formalise the disposal of the land. This will be the lease agreement.

As NYC are a not-for-profit entity, there are exemptions in place meaning the City does not have to advertise the proposed disposition.

The new lease as proposed in the Key Terms has been negotiated in accordance with the City’s [‘Use of Council Facilities for Community Purposes Policy’.](https://www.nedlands.wa.gov.au/sites/default/files/Use%20of%20Council%20Facilities%20for%20Community%20Purposes%20Council%20Policy_0.docx)

**Decision Implications**

Should elected members choose to endorse the recommendation as contained within this report, a new lease would be prepared, and NYC would lease the Site in accordance with the Key Terms as noted above. The new lease would enable NYC to secure tenure for an extended period, lodge the new lease with Landgate, and allow the planning of a redeveloped training centre.

Should elected members choose not to endorse the recommendation as contained within this report, the Site would remain tenanted by NYC until the current lease expiry date of 30 April 2030. NYC would need to re-consider whether the current term is an adequate amount of time to sink significant finances into the redevelopment of the training centre.

**Conclusion**

The proposed new lease as detailed in the Key Terms above has been negotiated in accordance with the City’s *‘Use of Council Facilities for Community Purposes Policy’* and is not significantly different to the current arrangement.

NYC are planning on sinking significant finances into a redeveloped training centre facility and the securing of a new lease will allow this project to move forward.

The inclusion of an updated survey sketch is of benefit to both the City and NYC.

**Further Information**

Nil.

# CPS19.05.22 Procurement of Goods and Services Council Policy Review

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting - 24 May 2022 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Nathaly Alvarez - Coordinator Procurement and Contracts |
| **Director** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Procurement of Goods and Services Council Policy with track changes. |

**Purpose**

The purpose of this report is to seek approval from Council for the revised Procurement of Goods and Services Policy.

**Recommendation**

**That Council approves the revised Procurement of Goods and Services Policy as per attachment 1.**

**Voting Requirement**

Simple Majority

**Background**

The current Procurement of Goods & Services Council Policy was last reviewed in May 2021 and endorsed by Council in July 2021. A review of the Policy has been undertaken to ensure that the Policy is:

* up to date,
* continues to support good governance,
* ensures the achievement of value for money,
* and meets the City’s obligations under the Local Government (Functions and General) Regulations 1996.

**Discussion**

In undertaking the review, the City has taken into consideration the WA Local Government Association’s (WALGA) best practice guidelines, current market conditions, examples from other, similarly sized Local Governments, and upcoming priority areas such as the City’s expanding Capital Works Program.

The review identified several areas for improvement including changes to:

* Procurement thresholds to improve operational efficiency for both the City and potential suppliers, and provide clarity on assessing value for money.
* Form of Quotation section to provide clarity on administration
* Quotation and Tender Exemptions to provide clarity on procedural requirements.
* Anti-avoidance to provide clarity on requirements.
* Quote, tender and Procurement Record Capture to provide clarity on requirements.
* Purchasing non-compliance to outline auditing and compliance requirements.
* Overall presentation and structure.

The revised policy with tracked changes is attached for Council’s consideration.

**Consultation**

Consultation was undertaken internally with City officers and several best practice examples (as outlined previously) were referred to.

The City also sought feedback from KPMG on the proposed changes however, as at the time of preparing this report (29th April 2022), no feedback from KPMG has been received.

**Strategic Implications**

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

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

**Values**

**Great Governance and Civic Leadership**

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

The revised Policy will contribute towards the delivery of good governance, improved operational efficiency and value for money outcomes.

**Budget/Financial Implications**

There are no budget/financial implications to implement the updated policy. Day-to-day support and training on the revised policy will be provided by the Coordinator Procurement and Contracts.

**Legislative and Policy Implications**

The updates made to the revised policy reflect the City’s requirements under the *Local Government (Functions and General) Regulations 1996.*

**Decision Implications**

If Council endorses the recommendation, the revised policy will support improved operational efficiency and achievement of value for money.

**Conclusion**

It is recommended that the Council approves the revised Policy.

# CPS20.05.22 List of Accounts Paid – April 2022

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

# CPS21.05.22 Monthly Financial Report – April 2022

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

# CPS22.05.22 Monthly Investment Report – April 2022

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

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

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

# Urgent Business Approved By the Presiding Member or By Decision

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

# Confidential Items

Confidential items to be discussed at this point.

# CSD03.05.22 CONFIDENITAL Nominations for City Honours

# PD34.05.22 CONFIDENTIAL Planning Compliance Matters

# Declaration of Closure

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