

Planning and Development Reports

Committee Consideration – 7 December 2021

Council Resolution – 14 December 2021

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| **PD40.21 Tree Retention and Provision on Private Land - Scheme Amendment and Local Planning Policy** |

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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 of the Local Government Act 1995** | Nil. |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Detail and justification for the proposed scheme amendment and local planning policy 2. Maps of properties subject to proposed scheme amendment. |

**Executive Summary**

The purpose of this report is for Council to consider the merits of preparing a scheme amendment to require a development application to remove trees that meet specific criteria. The report also discusses a local planning policy that provides the discretion and process for the determination of such an application. Both planning instruments have been proposed in response to the 27 July 2021 Notice of Motion relating to the retention of trees on private land.

Following background research into the planning framework and other local governments, the City has identified the gaps in the planning framework and recommends the preparation of a scheme amendment and local planning policy as well updating the City’s Urban Forest Strategy.

**Recommendation to Committee**

**Council:**

1. **instructs the Chief Executive Officer to:**
2. **revise the City of Nedlands Urban Forest Strategy 2018 – 2023 to include trees on private land, in order to provide the overarching strategic framework for the proposed Scheme Amendment and Local Planning Policy;**
3. **provide a report to Council for the purpose of preparing an amendment to Local Planning Scheme No. 3 to require development approval for the removal of trees that meet certain criteria and;**
4. **provide a report to Council for the purpose of preparing a local planning policy that outlines the application process and the afforded discretion in support of the proposed amendment to Local Planning Scheme No. 3.**

**Voting Requirement**

Simple Majority.

**Overview/Discussion**  
**Background**

At the 27 July 2021 Ordinary Meeting of Council, the following notice of motion was carried:

That Council requests that the Chief Executive Officer provide a report to Council detailing the options available to Council to amend its Local Planning Scheme or other means to protect significant trees on private property, subject to landowner agreement in order to address the heat island effect, enhance biodiversity and ensure that the “leafy green” character of Nedlands is maintained.

This report has been prepared in response to this resolution.

**Discussion**

Tree-lined streets and green, leafy gardens form a vital component of the character of the City of Nedlands. The City’s Strategic Community Plan, *Nedlands 2028*, includes the following vision: “Our gardens, streets, parks and bushlands will be clean, green and tree-lined and we will live sustainably within the natural environment”. *Nedlands 2028* also identifies reduced tree canopy as a strategic issue facing the community.

Tree retention was identified as a priority in recent community engagement activities for the City’s Broadway, Waratah Village, Nedlands Stirling Highway Activity Corridor and Hampden-Hollywood precincts. Between 2009 and 2016, there was a net increase in canopy cover in public parks and road reserves. However, during this time there was a 58% decline in canopy cover on the 244 private lots which had undergone significant development or subdivision. Protection of tree canopy on private property forms an essential part of maintaining the overall urban forest canopy within the City.

Tree canopy loss is not unique to Nedlands. State and local governments have developed a range of statutory mechanisms to address the issue, with varying success. This report outlines the City’s existing framework, and what is proposed to fill the policy gaps to ensure tree canopy is maintained. The City’s recommended approach incorporates:

1. Expansion of the City’s Urban Forest Strategy to include trees on private land.
2. Proposed Scheme Amendment to require a development application be lodged for tree removal in certain circumstances.
3. Proposed Planning Policy to support the Scheme Amendment.

**Expansion of the City’s Urban Forest Strategy**

An Urban Forest Strategy is critical in understanding local issues and trends facing the urban forest within the City. Local governments with such strategies in place can show canopy cover change by land use, density and suburb, and can identify locality-specific threats to the canopy cover. This information forms the basis for tailored visions, strategies, and targets for the urban forest.

The City’s Urban Forest Strategy 2018-2023 only considers trees in the public realm, such as those within parks and road reserves. Noting the importance of protecting tree canopy on private development sites, it is recommended that the City’s Urban Forest Strategy be expanded to include trees within the private realm. By including the vision, strategies and targets relating to tree canopy on private land, the Urban Forest Strategy would provide the strategic justification for the proposed scheme amendment and LPP. It would also allow the City to review, measure and evaluate the implementation of the proposed measures.

**Existing statutory framework**

The Residential Design Codes Volume 1 (R-Codes Volume 1) applies to all single houses and grouped dwellings, as well as multiple dwellings (apartments) in areas coded less than R40. The Residential Design Codes Volume 2 – Apartments (R-Codes Volume 2) applies to apartments, including those forming part of mixed-use developments, in areas coded R40 and above.

The R-Codes Volume 1 and 2 have been reviewed and updated in recent years to include tree retention and replacement measures to better protect the urban tree canopy.

**Proposed changes to statutory framework**

In November 2020, the Department of Planning, Lands and Heritage (DPLH) released for public comment State Planning Policy 7.3 Residential Design Codes Low & Medium Density (Draft Medium Density Code), as a proposed amendment to R-Codes Volume 1. The Draft Medium Density Code applies to single houses and grouped dwellings in areas coded R30 and above, and apartments in areas coded R30-R60. There are no proposed changes for single houses and grouped dwellings in areas coded less than R30. The Draft Medium Density Code may be gazetted in 2022, although the timing of this is uncertain.

**Gaps in existing planning framework**

Within the Nedlands context, the City has identified the following gaps in the R-Codes Volume 1:

1. Tree retention

Existing trees greater than 3m in height are to be retained on site as a deemed to comply requirement. However, this only applies to grouped dwelling and apartment developments. There is no requirement for existing trees to be retained where a single house is proposed. Trees can also be legally removed from these sites, prior to an application being lodged for development or subdivision.

1. Tree provision

New tree planting is required at a rate of one tree per dwelling, as well as one tree per four uncovered car parking spaces. While this requirement would result in multiple trees on site for a grouped dwelling or apartment development, it would result in the provision of only one new tree for a single house development. There is also no guidance provided on the size of tree required, and there is no requirement for the tree to be retained once it is planted.

**Proposed approach – scheme amendment and local planning policy**

In response to the 27 July 2021 Notice of Motion, the existing gaps in the planning framework relating to tree retention were reviewed. This included approaches to tree retention at other local governments. Eleven local governments were included in this review, and information was gathered via either desktop review and meetings with the relevant planning teams. A significant finding from this research was that voluntary tree retention measures, such as landowner nominations for significant tree registers, did little to protect tree canopy on a City-wide level. Significant tree registers play an important role from a social and cultural perspective of assisting to tell the story of the local area.

Based on this research, the recommended approach to address the 27 July 2021 Notice of Motion is for Council to initiate an amendment to the City’s Local Planning Scheme No. 3 (the Scheme) and adopt a supporting local planning policy (the Policy).

1. Amendment to the Scheme

It is proposed that an amendment to the Scheme be prepared, which would introduce the requirement for the submission of a development application for the removal of trees meeting certain criteria and in certain areas. The intent of this scheme amendment is to allow consideration of whether tree removal is appropriate.

The scheme amendment would also apply where development is exempt from requiring development approval under Clause 61 of the Planning and Development (Local Planning Schemes) Regulations 2015 (2015 Regulations), such as the development of a Single House meeting the deemed-to-comply provisions of the R-Codes Volume 1.

The key elements of the scheme amendment are outlined below.

Tree meeting certain requirements:

The scheme amendment is only intended to apply to trees which, due to the nature of their size and species, contribute significantly to the urban forest. The criteria, included in **Attachment 1** (See the first page of the attachment).

The tree criteria has been modified after the Councillor briefing session held on 16 November. It is proposed that the tree criteria be that the tree have a:

* height of at least 8 metres or
* canopy diameter of at least 5 metres

The final tree criteria can be resolved in the next council report.

A lot size criteria of 1,000m2 or greater has been applied to limit the scope of the amendment to those lots which are of sufficient size to feasibly retain existing trees without unreasonably limiting development. While the City has small pockets of land coded Residential R25 and R30, the lots in these areas are generally smaller than 1,000m2. The criteria in the scheme amendment is therefore Residential R20 and below, with a lot size of 1000m2 or greater. **Attachment 2** illustrates those lots within the City subject to this scheme amendment.

1. Local planning policy

It is proposed that a policy be prepared, to guide the assessment of development applications received for tree removal and guide the provision of new trees within low density residential areas. It will not mandate the retention of all trees.

The key elements of the Policy (see **Atttachment 1**, pages 2 to 5) are as follows:

* Guidance on what is classified as removal, destruction or damage of a tree;
* Requirement for an arboriculture report to be provided with an application for tree removal;
* Criteria against which development applications for tree removal will be assessed;
* Requirements for replacing existing trees, where removal is supported by the City;
* Additional requirements for the provision of new trees for single house and grouped dwelling developments;
* Guidance on the size and associated root protection area for new trees planted;
* Requirements for the protection of retained and planted trees; and
* Guidance on assessing subdivision referrals where there is an existing tree of significance on site.

If adopted via this report, prior to Council considering a further report on the policy (and Scheme Amendment), a further briefing session with Councillors will occur.

**Consultation**

Via a future report if Council adopts the scheme amendment, the required advertising period will range from 42 to 60 days depending on whether it is considered a standard or complex scheme amendment under the Regulations. If adopted in a future report to Council, the Policy will be advertised for a minimum of 21 days in accordance with the Regulations.

**Strategic Implications**

**How well does it fit with our strategic direction?**

The proposed approach aligns with the following vision statements:

Nedlands 2028 - Strategic Community Plan:

* Vision: ‘our gardens, streets, parks and bushlands will be clean, green and tree-lined and we will live sustainably within the natural environment’.
* Reduced tree canopy has been identified as a strategic issue facing the community.

**Who benefits?**

The community benefits associated with increased urban tree canopy include managing urban heat island effect, creating wildlife habitats, aesthetics benefits and neighbourhood amenity.

**Does it involve a tolerable risk?**

A requirement to retain a tree would not prevent an owner from later applying to remove or prune the tree if it became apparent that it had the potential to become dangerous.   Therefore, the preliminary view is that the proposed approach would not make the City liable if a retained tree were to become dangerous.

**Do we have the information we need?**

This report has been informed by a review of the gaps within the existing planning framework, as well as research of other local governments with tree retention measures in place.

**Budget/Financial Implications**

**Can we afford it?**

If Council were to proceed with the scheme amendment and LPP, there would be no immediate cost to the City other than those associated with advertising.

If the scheme amendment and LPP were to be approved, implementation costs associated with staff resourcing would depend upon the number of development applications received for tree removal. Staff resourcing would include planning officers to assess development applications, technical services officers for assisting with arboriculture aspects of development applications and compliance officers for enforcing tree retention and provision requirements. Quantifying additional staff resources required at this stage is not feasible.

If Council resolves to update the Urban Forest Strategy to include trees on private land, this will also have budgetary implications. This can be considered through the yearly budget review.

**How does the option impact upon rates?**

The proposal has no direct impact upon rates.

**Conclusion**

Tree-lined streets and green, leafy gardens form a vital component of the character of the City of Nedlands. To address the gaps within the planning framework relating to the retention and provision of trees on private land, it is proposed that Council support the preparation of a scheme amendment and local planning policy. The intent of these measures is to prioritise tree retention within lower density residential areas that have not been considered in the recent updates to the planning framework and to outline requirements for the provision of new trees. It is also recommended that the City’s Urban Forest Strategy be updated to extend to trees in the private realm as this will provide the strategic basis for the amendment and Policy. The scheme amendment and policy are considered to address Council’s Notice of Motion and its primary objective to maintain tree canopy within the City.

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| **PD41.21 Consideration of Submissions on Draft Local Planning Policy – Existing Laneway Requirements** |

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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 of the 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. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia”. |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Draft Local Planning Policy – Existing Laneway Requirements  2. Community Engagement - Schedule of Submissions  3. Community Engagement - Outcomes Report |

**Executive Summary**

The purpose of this report is for Council to consider submissions and then to resolve on the draft Local Planning Policy – Existing Laneway Requirements (the Policy) included as **Attachment 1**. The Policy details the proposed requirements relating to the widening and upgrade of existing laneways.

The draft Policy was presented to Council at the 25 August 2020 Council Meeting. At this meeting Council resolved to adopt the Policy for advertising.

The Policy received limited community support during consultation and lacks a foundation in robust strategic analysis. The proposed application of the Policy is not supported by the relevant state planning legislation as it does not adequately demonstrate or establish ‘need’ and ‘nexus’ for the ceding of land without compensation within the City’s local planning framework.

Therefore, the recommendation of this report is for Council to not proceed with the Policy.

**Recommendation to Committee**

**Council:**

**1. notes the submissions received and the outcomes from the community engagement activities conducted in relation to the draft Local Planning Policy – Existing Laneway Requirements;**

**2. does not proceed with draft Local Planning Policy – Existing Laneway Requirements, as set out in Attachment 2, in accordance with the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4(3)(b)(iii); and**

**3. does not pursue the ceding of land and widening of existing laneways as a policy position at this time.**

**Voting Requirement**

Simple Majority.

**Overview/Discussion**  
**Background**

Following the gazettal of Local Planning Scheme No. 3 (the Scheme) in April 2019, many of the lots abutting laneways in Mount Claremont, Hollywood East and Dalkeith became capable of higher intensity development. Clause 5.3.5 Vehicular Access of the Residential Design Codes - Volume 1 stipulates that, where available, a laneway should provide the primary vehicular access to a property. Given the increased development potential on these lots, and the associated intensification of use of their adjacent laneways, many of the laneways are now undersized to accommodate an increased rate of two-way traffic. Many of these laneways also require sealing, drainage and widening to ensure that they are of a trafficable standard in accordance with the relevant Australian Standard.

The Scheme facilitates the ceding of land for the purpose of laneway widening through Clause 32.3, although it requires a statutory mechanism such as a structure plan, local development plan, activity centre plan or local planning policy to identify the laneway as requiring widening.

The City has no approved statutory mechanism to impose a laneway ceding condition as part of a subdivision or development application process. To address this, the Policy was prepared detailing a process for the City to activate Clause 32.3.

The Policy was presented to Council at the 25 August 2020 Council Meeting, where Council resolved to adopt the Policy for advertising. The Policy was advertised for a period of 79 days from the 23 January 2021 to the 12 April 2021. Overwhelmingly, the majority of community members engaged were not supportive of the draft Policy. A summary of the submissions received, and the Community Engagement Outcomes Report, is now presented to Council for its consideration and included as **Attachment 2 and 3** respectively.

**Discussion**

**Strategic Planning Program of Works**

It is recommended that Council resolves not to support the Policy. The City is currently progressing through a strategic planning program endorsed at the February 2021 Council Meeting. By providing their support for this program, Council agreed to focus on work that consolidates the City’s strategic framework. In accordance with this agreed direction, considerable community engagement and investigations have since been undertaken to inform the City’s overarching strategic framework.

Included within this framework is the Integrated Transport Strategy (ITS). To inform the ITS, Traffic Impact Assessments (TIAs) will evaluate the impact of the projected population growth on traffic for each up-coded area. From this analysis, recommendations will be made to properly manage vehicle traffic over the next thirty years. One such recommendation may be a Laneway Strategy that investigates upgrading under-width or poorly surfaced laneways.

In the absence of such a strategy, it is recommended that Council does not proceed with adopting the draft Policy as the outcomes of the traffic analysis are yet to be finalised. It would be premature to adopt the Policy prior to the delivery of this detailed analysis.

**Ceding as part of Subdivision and Development Approval**

Ceding land for laneway widening can occur through both the subdivision and development application processes. When issuing either a development or subdivision approval, a condition may be validly imposed on the approval if it:

1. is for a planning purpose and not for any ulterior purpose;
2. reasonably and fairly relates to the development permitted; and
3. is not so unreasonable that no reasonable planning authority could have imposed it.

In accordance with the WAPC’s draft State Planning Policy 3.6 Infrastructure Contributions, contributions for infrastructure (including laneway widening) must be levied in accordance with a ‘need’ and a ‘nexus’. The need for laneway widening must be clearly demonstrated and its connection with the nexus, being the development or subdivision, should be clearly established. There must also be a clear and sound basis for the proposed laneway widening, with linkages to the City’s strategic and financial planning processes clearly outlined in a strategic document. A condition of approval requiring the landowner to cede a portion of private land without compensation is unlikely to satisfy the accepted test for validity, as the need for land to be ceded may not arise from the nexus of a development, but rather from public road management requirements. The Policy lacks a basis to reasonably compel the ceding of land without compensation as it does not demonstrate the need and nexus required under state planning legislation. As the Policy does not establish this vital link with the legislation it is unlikely to be given due consideration within a judicial environment. Therefore, it is recommended that Council does not proceed with adopting the draft Policy.

**Consultation**

The Policy was advertised for a period of 79 days from the 23 January 2021 to the 12 April 2021. During this advertising period community information sessions were held in Hollywood East, Dalkeith and Mount Claremont.

A total of 70 submissions were received (2 in support, 59 objections and 9 comments). The Schedule of Submissions is included as **Attachment 2**. Key objections include:

* The ceding of land by the City without compensation;
* The potential loss of mature trees in the laneway;
* The loss of the natural feel of the laneways, negatively impacting upon the wildlife in the area that is often found in the laneways;
* A negative impact on resident’s capacity to utilise the laneways for recreation purposes, including as a safe environment for children to walk and play;
* Sealing and bituminizing of the laneways resulting in an increased urban heat island effect.

Based on the submissions received, many community members that were engaged do not support the Policy. The feedback received from the community engagement activities suggests that residents would support an upgraded one-way laneway network, eliminating the need for widening. The outcomes of the community engagement events relating to the Policy have been collated into an Engagement Outcomes Report, included as **Attachment 3**. However, further localised engagement is recommended as part of any additional work commencing on the resurfacing or widening of laneways.

**Strategic Implications**

**How well does it fit with our strategic direction?**

A plan for laneway upgrading and widening must form part of an appropriate hierarchy of strategic documents, including the ITS, TIA, Laneway Strategy and Policy.

**Who benefits?**

If a Policy is adopted that is premature neither the community nor the City will benefit, as it will result in poor planning outcomes and may be contested at the SAT.

**Does it involve a tolerable risk?**

In its current form there is a risk that the Policy will lead to poor planning outcomes. The Policy lacks foundation in a robust local planning framework. Therefore, the Policy is likely to be considered reactive by the State and have limited weight within a judicial setting.

**Do we have the information we need?**

The City has conducted the appropriate process for proposing a Local Planning Policy as per the requirements of the *Planning and Development (Local Planning Schemes) Regulations 2015.* Given the feedback received from the community and in consideration of the State strategic planning framework, the City has the information required to proceed with making a decision.

**Budget/Financial Implications**

**Can we afford it?**

The proposal involves no cost to the City. However, it would incur considerable cost for affected landowners required to cede land without compensation.

**How does the option impact upon rates?**

The impact of the draft Policy on rates has not been investigated.

**Conclusion**

In accordance with Clause 4(3)(a) of the Deemed Provisions within the Planning and Development (Local Planning Schemes) Regulations 2015, Council is required to review the Policy considering the submissions made during the community engagement period. Upon considering the submissions, in accordance with Clause 4(3)(b) of the Deemed Provisions, Council must then resolve to:

(i) proceed with the Policy without modification; or

(ii) proceed with the Policy with modification; or

(iii) not to proceed with the Policy.

Widening laneways within an infill urban environment is a sensitive and complex process and should be treated as such within the policy framework. In its current form the Policy is premature, and lacking in the appropriate strategic consideration, to act as a mechanism for this complex task.

The City’s strategic planning program of works includes completing an ITS, which will provide the City with the required detail to make an informed decision regarding the future of the existing laneways. The ITS may result in the requirement for a City-wide Laneway Strategy, out of which it is then appropriate for a Laneways Policy to be produced. For these reasons, it is recommended that Council not proceed with the Policy and endorse Administration’s advised course of action as set out in the Recommendation.

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| **PD42.21** | **Consideration of Development Application – Two Grouped Dwellings at 31 and 31A Robinson Street, Nedlands** |
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| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | BGC Housing |
| **Landowner** | F Kit Fong Ng |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21/67432 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application as an objection has been received. |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans |
| **Confidential Attachments** | 1. Submission |

**Executive Summary**

The purpose of this report is for Council to determine a development application for two grouped dwellings at 31 and 31A Robinson Street, Nedlands.

The application was advertised to adjoining neighbours in accordance with Council’s Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider lot boundary setbacks under the design principles. At the close of the advertising period, one submission was received objecting to the development proposal. As an objection has been received regarding visual privacy, lot boundary setbacks and overshadowing, this application is presented to Council for determination.

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

**Recommendation to Committee**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 17 August 2021 in accordance with the plans date stamped 30 August 2021 for two grouped dwellings at 31 and 31A Robinson Street, Nedlands and subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation of the development the parapet walls are to be finished externally to the same standard as the rest of the development or in:**
4. **Face brick;**
5. **Painted render;**
6. **Painted brickwork; or**
7. **Other clean material as specified on the approved plans;**

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

1. **Prior to the lodgement of Building Permit, a revised Landscaping Plan shall be submitted and approved by the City of Nedlands.**
2. **Landscaping shall be installed and maintained in accordance with the approved Landscaping Plan for the lifetime of the development thereafter, to the satisfaction of the City.**
3. **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.**
4. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**

**Voting Requirement**

Simple Majority.

**Background**

**Land Details**

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| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 696m2 (Parent Lot) (31 -293m2, 31A – 295m2) |
| **Land Use** | Residential Grouped Dwellings |
| **Use Class** | ‘P’ Permitted Use |

**Locality Plan**

The subject sites are located at 31 and 31A Robinson Street, Nedlands and is 250m north of Stirling Highway. The site is located on the west side of Robinson Street and one lot south of Bedford Street.

The sites are orientated east west and are serviced by a common property driveway located to the south of the parent lot. The site is vacant and is relatively flat with a minor slope to the street. The area is surrounded by predominantly single houses ranging between one to two-storeys. The properties in this area are coded R60 (Attachment 1).

**Application Details**

The application seeks development approval for the construction of two grouped dwellings. Both dwellings have direct vehicle access from the common property driveway, located south

**Consultation**

The applicant is seeking assessment under the design principles of the R-Codes for lot boundary setbacks.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to five adjoining properties. The application was advertised for a period of 14 days from 14 September 2021 to 28 September 2021. At the close of the advertising period, one objection was received.

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

1. The site plan does not accurately reflect the surrounding context of the development site.

The contextual site plan relates to a description of features surrounding the subject site, including fences and neighbouring properties. These inaccuracies do not affect the proposed development. Following receipt of the submission, the site plans have been updated to reflect the development context of the subject site.

1. The submitted plans do not provide for the planting of trees on site.

The development satisfies the deemed-to-comply provisions of the R-Codes in relation to landscaping. Each dwelling has provided a tree planting area within its lot boundaries. As part of Administration’s recommended conditions, (Condition 4) a revised landscaping plan is to be submitted prior to the lodgement of a Building Permit providing additional detail in relation to proposed landscaping within the subject site.

1. The development will negatively impact the visual privacy of neighbours.

The upper floors of the development make exclusive use of obscure glazing and highlight windows to protect the visual privacy and amenity of neighbouring properties. The development is considered to satisfy the deemed-to-comply provisions of the R-Codes in relation to visual privacy addressing all neighbouring properties.

1. Setbacks are insufficient.

The development proposal is seeking a judgement of merit for the setbacks proposed. Administration has completed a ‘design principle’ assessment of the areas seeking discretion.

1. Sound insulation has not been shown on the plans.

Noise attenuation measures are not assessed or approved as part of a development application, and do not form part of a planning approval. Noise restrictions are outlined under Environmental Protection (Noise) Regulations 1997 and are assessed independently to a planning approval.

1. The development will overshadow the neighbouring properties.

The impacts of shadow cast by the development on neighbouring properties has been reduced due to the location of the common property driveway, located to the south of the subject site. The proposed shadow cast of 19% to the adjoining southern property satisfies the deemed-to-comply provisions of the R-Codes.

1. The proposed development is two storeys whist the surrounding streetscape is only single storey.

The development proposal is considered to satisfy the deemed-to-comply provisions in regard to building height. The prevailing streetscape of Robinson Street is characterised by both single and two storey housing typologies along its length.

**Assessment of Statutory Provisions**

**Local Planning Scheme No.3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application.  Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy**

**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 part of this proposal, relating to lot boundary setbacks. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setback**

The front dwelling of the development proposes a 1.3m ground floor setback from the kitchen, meals and family room to the northern lot boundary. The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed Unit 1 setbacks to the northern lot boundary are considered to meet the design principles as:

* Both the ground floor and the first-floor elevations addressing the northern lot boundary of the front dwelling feature setback articulations. The use of setback articulations reduces the impact of building bulk addressing the northern adjoining landowner by breaking up the length of the proposed walls and providing visual interest within the development when viewed from external lots.
* The proposed northern lot boundary setbacks do not prejudice the northern neighbour’s solar access or ventilation. The shadow cast from the development is mainly over the common property driveway. The development satisfies the deemed-to-comply provisions of the R-Codes in relation to shadow cast.
* The development satisfies the deemed-to-comply provisions of the R-Codes in relation to visual privacy. The development proposes the use of highlight windows and obscure glazing for the first floor addressing the northern lot boundary.
* The northern elevation of Unit 1 addresses the neighbours front garden, garage and walkway. The northern elevation interfaces with an existing boundary wall to a garage, a driveway and a partially landscaped pedestrian walkway located to the south of the neighbouring lot at No. 29 Robinson Street.

The rear dwelling of the development proposes a 1.2m first floor setback to the wall of the walk-in wardrobe to the northern lot boundary. The proposed setback is considered to meet the design principles as:

* The use of setback articulations along the northern elevation reduces the impact of building bulk by breaking up the length of the proposed walls and providing visual interest within the development.
* The proposed northern lot boundary setback does not prejudice the northern neighbour’s solar access or ventilation. Shadow cast from the northern wall is contained wholly within the confines of the subject site. The development satisfies the deemed-to-comply provisions in relation to solar access.
* The development satisfies the deemed-to-comply provisions of the R-Codes in relation to visual privacy. There are no openings to habitable rooms proposed along the first-floor northern elevation. Windows on the northern elevation to the toilet and ensuite are proposed to be obscure glazed.

The rear dwelling of the development proposes a 1.1m ground floor setback to the western lot boundary from the kitchen. The proposed setback is considered to meet the design principles as:

* The ground floor of the development has a wall height of 2.7m, projecting between 0.6 and 0.9m above the existing dividing fence.
* The proposed northern lot boundary setback does not prejudice the western neighbour’s solar access or ventilation. Shadow cast from the western wall is contained wholly within the confines of the subject site, due to the site’s orientation. The development satisfies the deemed-to-comply provisions in relation to solar access.
* The development satisfies the deemed-to-comply provisions of the R-Codes in relation to visual privacy.

**Conclusion**

Council is requested to make a decision in accordance with clause 68(2) of the Deemed Provisions. Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

The application for two grouped dwellings has been presented for Council consideration due to an objection being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes and being consistent with the immediate locality and streetscape character.

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

|  |  |
| --- | --- |
| **PD43.21** | **Consideration of Street Tree Removal at 96 Webster Street, Nedlands** |
|  | |
| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | D Robinson |
| **Landowner** | G Thom & M Plunkett |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**  Quasi Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21/69231 |
| **Previous Item** | Nil |
| **Delegation** | The application may require a recommendation for refusal where discretion exists for Council to approve the variations under the City’s Local Planning Scheme No. 3, policies and/or the Residential Design Codes. |
| **Attachments** | 1. Aerial Image 2. Streetscape Images 3. Existing Site Plan 4. Proposed Site Plan 5. Applicant Justification 6. Alternate Crossover Location |
| **Confidential Attachments** | Nil |

**Executive Summary**

The purpose of this report is for Council to consider the removal of four street trees located at 96 Webster Street, Nedlands.

A development application submitted to the City proposes a new single house on the site. Council is not required to consider the approval of the house itself at this stage. The application proposes a 5m crossover to Webster Street which requires the removal of four street trees.

The crossover location has requested as preference is to retain an existing Eucalypt tree, which sits inside the property boundary. The proposed crossover location is setback to maintain sightlines from the limestone pillars and landscaping to the south.

Council is requested to consider two options:

1. Approve the alternate crossover location (Attachment 6) and planting of an additional two trees; or
2. Approve the proposed crossover location (Attachment 4) and planting of an additional two trees.

It is recommended that Council choose option 1. This is recommended to ensure the Yellow Box tree is retained. All other trees to be removed are either in decline or pose a maintenance issue. Applying this option will result in a re-design of the garage to facilitate the modified crossover and driveway location.

**Recommendation to Committee**

**Council:**

1. **grants approval for the alternate location of the crossover (as annotated on Attachment 6); and**
2. **requires prior to occupation, the owner shall plant a minimum two (2) 500L trees located on the verge, in front of 96 Webster Street, Nedlands at the expense of the applicant and to the satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority.

**Background**

**Locality Plan**

The site is located 96 Webster Street, Nedlands, 110m north of the Melvista Park - Nedlands Golf Course. The site is located on the eastern side of Webster Street, Nedlands and has an existing two storey house. The lot is regular in shape and has a 20m frontage with a total area of 1,012m².

There is an existing mature Eucalypt tree north of the site, inside the property boundary. Outside the property boundary, there are four existing street trees:

* Tree 1 – Queensland Box (Lophostemon connfertus);
* Tree 2 – Kurrajong (Brachychiton populneus);
* Tree 3 – Yellow Box (Eucalyptus melliodora); and
* Tree 4 – Southern Mahogany (Eucalyptus botryoides)

These are shown in Attachments 2, 3 and 4.

**Application Details**

The application proposes a 5m crossover to Webster Street which requires the removal of four street trees as shown in Attachment 2. This is in order to accommodate a new double garage in this location. Attachment 3 illustrates the existing and proposed crossover location.

The purpose of this report is solely for Council to consider the crossover location removal of the street tree as it relates to the development.

**Assessment of Statutory Provisions**

**Street Trees Council Policy**

Administration can consider the removal of street trees in certain circumstances, as guided by the Street Trees Council Policy. This can include if the tree poses a hazard or if not considered reasonable to redesign or amend the development proposal to enable the retention of the street tree.

An assessment of the existing streets identify that:

* Tree 1 is in severe decline with low prospect of recovery, poor overall form and very low retention value;
* Tree 2 has a large canopy and due to its proximity to the neighbouring property can result in the release of seed pods;
* Tree 3 is sound in terms of structure and form and is in good condition generally and is likely to benefit from Trees 1,2 & 4 being removed; and
* Tree 4 species is very large at maturity. There is a risk of safety as it is prone to a ‘sudden branch drop’ and makes it unsuitable for the location;

On this basis, Administration considers that Trees 1, 2 & 4 could be removed and replaced, with Tree 3 to be retained. This would result in a modified crossover design which could be accommodated due to the lot’s 20m frontage. This is shown in Attachment 6.

The Street Trees Council Policy guides that where a street tree is to be removed, it should be replaced by the replacement of a minimum 500L pot size tree at the expense of the applicant. The planting of an additional two street trees is recommended.

**State Planning Policy**

**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.

An assessment is sought under the design principles for the R-Codes for Vehicle Access. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions.

**Clause 5.3.5 – Vehicle Access**

The proposal, which involves either removing and replacing the existing street trees, is considered to meet the design principle as:

* The proposed crossover location is designed to be perpendicular to the street and is legible.
* The proposed crossover does not intersect with any pedestrian paths on the verge.
* The number of crossovers proposed on site is one. This is the minimum amount required and accordingly will have minimal impact on the streetscape.
* The proposal will replant the removed street trees to retain Webster Street’s ‘leafy green’ character and local street amenity.

**Options**

In considering the above information, there are two options that can be pursued. These options are as follows:

1. Approve the alternate crossover location (Attachment 6) and planting of an additional two trees; or
2. Approve the proposed crossover location (Attachment 4) and planting of an additional two trees.

**Conclusion**

There are several things to consider regarding the removal of the street trees at the front of 96 Webster Street, Nedlands. These matters include the location of the existing crossover, the availability of other crossover locations and the value of the trees to the locality.

There are two options for Council consideration. Approving the proposed crossover location – this would result in the removal of all street trees, or, approving the alternate crossover location – this would result in the removal of 3 trees that are in decline and retain one healthy tree. In both options, Administration recommends the replanting of an additional two trees at the cost of the applicant.

Resolving not to support the removal of the street trees will result in the refusal of the development application or require a redesign of the vehicle access arrangements.

It is recommended that the three smaller street trees are removed and replaced at the applicant’s cost, and the largest tree (Tree 3 - Yellow Box - Eucalyptus melliodora) is retained to the satisfaction of the City.

|  |  |
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| **PD44.21** | **Consideration of Development Application (Digital Roof Sign) at 178 Stirling Highway, Nedlands** |
|  | |
| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | Kang Leading Group |
| **Landowner** | Western Australian Planning Commission (WAPC) |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21/61628 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received and the recommendation for refusal. |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans |
| **Confidential Attachments** | 1. Submissions |

**Executive Summary**

The purpose of this report is for Council to consider a development application for an electronic billboard which includes third party advertising at 178 Stirling Highway, Nedlands.

The sign is located entirely within the Metropolitan Region Scheme ‘Primary Regional Road Reserve’ of Stirling Highway and was referred to Main Roads for comment. Main Roads supports the sign subject to conditions relating primarily to luminance levels and display content for driver safety purposes.

The application was advertised to adjoining neighbours in accordance with Council’s Local Planning Policy (LPP) – Consultation of Planning Proposals. At the close of the advertising period, seven submissions were received. One submission was a statement of non-objection while the other six raised objections to the proposal. Objections revolved around potential for driver distraction and third-party advertising.

The land is not zoned under the City of Nedlands Local Planning Scheme No. 3 so the City’s Scheme and policies are used in this report only as a guide in assessing the application.

The sign is located entirely within a Primary Regional Road Reserve, which means that the determining authority is the Western Australian Planning Commission (WAPC). The WAPC has delegated their decision-making ability to local government only where a development is located within a Primary Regional Road Reserve and the local government’s decision is consistent with Main Roads advice. Main Roads has provided conditional approval for the sign. Therefore, Council has two options for this application:

1. Conditionally approve the electronic billboard, and include all conditions recommended by Main Roads along with any other conditions Council decide are necessary; or
2. Refer the application to the WAPC with a recommendation for refusal (Council does not have ability to refuse the application and may only recommend that the WAPC do so).

It is recommended that the application be referred to the WAPC with a recommendation for refusal as the sign will have an adverse impact on the amenity and character of the area.

**Recommendation to Committee**

1. **In accordance with Clause 13 of the Metropolitan Region Scheme*,* Council recommends that the Western Australian Planning Commission refuse the development application received on 19 March 2021 for a digital roof sign at 178 Stirling Highway, Nedlands, for the following reasons:**
   1. **The sign is inconsistent with the objectives of the City’s Local Planning Policy – Signs in that it contributes to the proliferation of advertising signs, and is detrimental to the amenity and character of the nearby residential neighbourhood; and**
   2. **The land use of third party advertising and the placement of the digital sign introduces a commercial intrusion into the nearby residential area. The sign is incompatible with its setting and the desired future character of the area, in accordance with clause 67(1)(m) of the *Deemed provisions.***
2. **In the event that the Western Australian Planning Commission approves the digital roof sign, Council recommends the following conditions, without prejudice:**
3. **Prior to the lodgement of a Building Permit, an Operation and Content Management Plan for the sign shall be submitted to and approved by the City of Nedlands. The plan shall be adhered to for the life of the development and include the following:**
   1. **The sign is not to contain discriminatory or offensive content;**
   2. **The sign shall be turned off between the hours of 10pm and 6am;**
   3. **The sign shall be in accordance with Main Roads conditions and the Main Roads Guide to Roadside advertising, including a lighting assessment, and annual lighting audit (at the applicant’s cost); and**
   4. **Specifying the terms of not-for-profit messages, including a minimum 20% of advertising time be donated to not-for-profit and/or community benefit organisations.**

**Voting Requirement**

Simple Majority.

**Background**

**Land Details**

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| --- | --- |
| **Metropolitan Region Scheme Zone** | Primary Regional Road Reserve |
| **Local Planning Scheme Zone** | Not zoned |
| **R-Code** | n/a |
| **Land Use** | Existing – Use not listed  Proposed – Use not listed |
| **Use Class** | n/a |

**Locality Plan**

The subject lot is located at 178 Stirling Highway, Nedlands and currently contains a single storey commercial building. The site is located on Stirling Highway directly south of Loch Street near the boundary of the Town of Claremont.

There are currently two back-to-back billboards on the roof of the building, both with dimensions of 6 metres by 3 metres. Each billboard displays third party advertising and are controlled by different operators. The west-facing billboard does not form part of this application and will remain in situ.

**Application Details**

The plans are lacking in detail but show that the eastern billboard is to be removed and replaced with a digital billboard. The location and dimensions of the new billboard match those of the existing billboard on site (6m x 3m).

The application included no lighting impact assessment or visibility assessments to consider how it may impact nearby residences. The applicant has stated that they will allocate more than 20% of the advertising time to the local community to allow community organizations to advertise for free.

**Consultation**

**Community**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to adjoining landowners within 100 metres of the site. The application was advertised for a period of 14 days from 10 May to 24 May 2021. At the close of the advertising period six objections and one statement of non-objection were received. The objections are summarised as follows:

* Digital signage is distracting and not appropriate for residential suburbs outside the CBD.
* The light from the screen and the changing ads will impact nearby residential units, particularly those on upper floors of nearby buildings which will look out onto the sign.
* Digital signs are unattractive and contrary to the streetscape.
* Digital signs are a distraction to drivers, and this area of Stirling Highway is already oversaturated with signage.

MRWA has assessed the proposal in relation to driver distraction and safety along Stirling Highway and provided their conditional approval.

**Main Roads WA (MRWA)**

MRWA has provided the following comment:

Main Roads has no objections subject to the following conditions being imposed:

1. In the event the site where the sign has been erected is needed for future roadworks, the applicant shall upon receipt of a notice from Main Roads, relocate or remove the sign at their own expense.
2. The minimum dwell time for any advertisement on the device shall be at 120 seconds.
3. The maximum luminance level during dawn/dusk and night-time to be 150 cd/m2.
4. The display content shall not be predominantly red, green or amber at all times.
5. The display content shall exclude colours and shapes that may be mistaken for a traffic signal, traffic signs or instruction signs during all hours.
6. The display content shall not flash, pulsate or chase during all hours.

**Assessment of Statutory Provisions**

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

**Local Planning Scheme No.3**

City Officers consider that third party advertising signs (ie: signs advertising a business or service that does not directly relate to the lot on which the sign is located) constitute a distinct land use within the City’s scheme. As the land use is not listed in the zoning table, it is classified as a ‘Use not listed’ and has been treated the same as an ‘A’ use. This means that the City must give notice to adjoining residents and assess the proposal against the objectives of the zone within the Scheme before making a decision.

The sign is attached to a building which is located partly within a Mixed use zone and partly within the road reservation. Were it not for the road reservation, the lot would be located within a Mixed use zone of the Scheme. The objectives of the Mixed use zone have been used as an assessment guide. The relevant objective of the Mixed use zone is:

To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres and eating establishments which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.

The sign is not considered to meet the above objective for the following reasons:

* The digital sign will be clearly visible to some of the residential lots along the east side of Rockton Road, and most pedestrians and vehicles travelling north along Rockton Road.
* A digital roof sign facing east, particularly at evening, will stand out and be a nuisance within the nearby residential area.
* Residents in a purely residential area should be somewhat shielded from the nearby commercial areas. The digital sign represents a commercial intrusion into a residential area and is detrimental to the amenity of the area.

**LPP – Signs**

The application has been assessed as a roof sign as defined by the policy, which states that roof signs:

1. Shall have regard to the amenity of any nearby residential zoned properties;
2. Shall comply with the building heights which are applicable for the property; and
3. Roof signs, should not exceed a maximum area of 5m2 and a maximum height of 2m above roof level.

The roof sign exceeds the maximum size as well as the maximum height above roof level. Further, the sign is detrimental to the amenity of the residential zone for the reasons stated in section 5.1 above.

Variations to the above development requirements are to be assessed against the objectives of the policy, which are, *inter alia*:

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

3.2 To avoid the proliferation of signs nor signage which are not relevant to the business.

3.3 To ensure that commercial signs are generally located in non-residential areas.

3.4 To ensure that signs do not detract from the level of safety for drivers, cyclists and pedestrians.

The digital sign does not meet the objectives of the policy for the following reasons:

* The sign adversely impacts the amenity of the nearby residential area as discussed above.
* The digital sign proposes a proliferation of signage (ie: third-party advertising) which is not relevant to the existing businesses on-site.
* Approval of the subject east-facing sign is likely to result in the adjoining west-facing sign applying to become digital as well, resulting further proliferation of signage.
* The cumulative effect of the roof signs will result in visual clutter that will be detrimental to the character of the area.

**Conclusion**

**Recommendation**

Because the sign is located entirely within a Primary Regional Road Reserve, the determining authority is the Western Australian Planning Commission (WAPC). The WAPC has delegated decisions to local government only where a development is located within a Primary Regional Road Reserve and the local government’s decision is consistent with Main Roads advice. Main Roads has provided conditional approval for the sign. Council may therefore do one of the following with this application:

1. Approve the electronic billboard including all conditions recommended by Main Roads along with any other conditions Council decide are necessary; or
2. Refer the application to the WAPC with a recommendation for refusal (Council does not have ability to refuse the application and may only recommend that the WAPC do so).

The application for a digital roof sign has been presented for Council consideration due to the objections received and the Administration’s recommendation for refusal. The proposal is contrary to the City’s Scheme and policies and is likely to have an adverse impact on the character and amenity of the area.

Accordingly, it is recommended that Council refer the application to the WAPC with a recommendation for refusal.

**Without Prejudice Conditions**

Should Council recommend the application be refused, the WAPC will be the determining body for the application. The WAPC may opt to approve the sign despite Council’s recommendation and without any further involvement from the City in the decision-making process. It is therefore recommended that the following condition (along with Main Roads conditions) be provided ‘without prejudice’ so that the City may have some input in the design and operation of the sign should it be approved. This condition is loosely based on the conditions imposed on the electronic billboards erected within the road reserve in Claremont Quarter further to the west.

1. Prior to the issue of a building permit, an Operation and Content Management Plan for the sign is to be submitted to and approved by the City of Nedlands. The plan shall be adhered to for the life of the development and include the following:
   1. Confirmation that the sign is not to contain discriminatory or offensive content.
   2. The sign shall be turned off between the hours of 10pm and 6am.
   3. Confirmation that the signage will be in accordance with Main Roads conditions and the Main Roads Guide to Roadside advertising, including a lighting assessment, and annual lighting audit (at the applicant’s cost).
   4. Specifying the terms of not-for-profit messages, including a minimum 20% of advertising time be donated to not-for-profit and/or community benefit organisations.

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| **PD45.21** | **Consideration of Development Application – Additions to Single House at 86 Watkins Road, Dalkeith** |
|  | |
| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | Ashley Richards & Associates |
| **Landowner** | C & S Fatouros |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**    Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21/66858 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans |
| **Confidential Attachments** | * + - 1. Submission |

**Executive Summary**

The purpose of this report is for Council to determine a development application for additions to a single house at 86 Watkins Road, Dalkeith.

The application was advertised to adjoining neighbours in accordance with Council’s Local Planning Policy (LPP) – Consultation of Planning Proposals. At the close of the advertising period, one submission was received objecting to the rear setbacks, building height and visual privacy. As an objection has been received, this application is presented to Council for determination.

If a proposal does not satisfy the deemed to-comply provisions of the R-Codes, Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (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.

**Recommendation to Committee**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 29 July 2021 in accordance with the plans date stamped 5 November 2021 for additions to a single house at 86 Watkins Road, Dalkeith and subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**
3. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
4. **Prior to occupation of the development the finish of the parapet walls is to be completed externally to the same standard as the rest of the development or in:**
5. **Face brick;**
6. **Painted render;**
7. **Painted brickwork; or**
8. **Other clean material as specified on the approved plans;**

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

1. **Prior to occupation of the development, all visual privacy screens and obscure glass panels to major openings and unenclosed active habitable areas, as annotated on the approved plans, shall be screened in accordance with the Residential Design Codes by either:**
2. **Fixed obscure or translucent glass to a height of 1.6 metres above finished floor level;**
3. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
4. **A minimum sill height of 1.6 metres as determined from the internal floor level; or**
5. **An alternative method of screening approved by the City.**

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

1. **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.**

**Voting Requirement**

Simple Majority

**Background**

**Land Details**

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| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R12.5 |
| **Land area** | 991m2 |
| **Land Use** | Residential – Additions to Single House |
| **Use Class** | ‘P’ Permitted Use |

**Locality Plan**

The subject lot is located at 86 Watkins Road, Dalkeith and is 100m east of the Swan River foreshore reserve.

The site is orientated north – south and obtains vehicle access from Watkins Road to the north. The site is currently occupied by a three-storey single house. The area is surrounded by single houses ranging between one to three-storeys. The properties in this area are coded R10 and R12.5 (Attachment 1).

**Application Details**

The application seeks development approval for additions and alterations to the existing house. There are internal changes proposed to the design of the house and the addition of a mezzanine level for storage. The proposed additions to the ground floor and upper floor to the south and west of the dwelling result in an overall decrease in height from 9.9m to 9.7m. The development plans are contained in Attachment 2.

**Consultation**

The applicant is seeking assessment under the design principles of the R-Codes for the following:

* Lot boundary setbacks
* Building height
* Visual privacy

The development application was advertised in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals to seven adjoining and nearby properties. The application was advertised for a period of 14 days from 28 September 2021 to 12 October 2021. At the close of the advertising period, one objection 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. *Insufficient setbacks proposed to the rear lot boundary (south).*

Administration has completed an assessment of the proposal against the design principles in relation to lot boundary setbacks. Please see section 5.2.1 of this report.

1. *The building height has an adverse impact on the amenity of the adjoining property through building bulk and overshadowing of the outdoor living area.*

Administration has completed an assessment of the proposal against the design principles in relation to building height. Please see section 5.2.1 of this report.

1. *Ground floor windows from the bedrooms will affect the visual privacy of the adjoining property.*

Amended plans were received on 5 November 2021 which propose highlight windows to the bedrooms on the southern elevation. The development now satisfies the deemed-to-comply provisions in relation to visual privacy.

1. *Insufficient setbacks and building height will overshadow the outdoor living areas of the southern adjoining property.*

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

**Assessment of Statutory Provisions**

**Local Planning Scheme No.3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application.  Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy**

**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 a part of this proposal. An assessment is sought under the design principles for the R-Codes for lot boundary setbacks and building height. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setback**

The ground floor proposes a 3.4m setback to the southern lot boundary. The upper floor proposes a 4.0m setback to the southern lot boundary. The existing ground floor and upper floor are setback 5.9m from the southern lot boundary.

It is noted that within the street block of Watkins Road and Adams Road, there is a prevailing context of greater setbacks to the west (facing the Swan River) and 9m primary street setbacks. It can be considered that the prevailing character of the area displays large setbacks to the west and to the primary street, with the majority of the development situated within the rear setback area and to the eastern portion of the site. This can be seen in the aerial image contained as Attachment 1.

The design principles provide for buildings to be setback to reduce impacts of building bulk, provide direct sunlight and ventilation and minimise the extent of overlooking. The setbacks to the south are considered to meet the design principles for the following reasons:

* The use of multiple setback articulations on the ground floor and upper floor reduces the impact of building bulk addressing the southern adjoining landowner by breaking up the length of the proposed walls and providing visual interest within the development when viewed from external lots.
* The proposed setbacks do not prejudice the southern property’s solar access or ventilation. The development proposes an additional shadow of 5% of the neighbouring property. With the additional shadow onto the southern adjoining lot, the development still satisfies the deemed-to-comply provisions in relation to solar access.
* There are no visual privacy issues or overlooking caused by the setbacks proposed.

**Clause 5.1.6 – Building Height**

The design principles provide for building height that does not create an adverse impact on the amenity of adjoining properties or the streetscape. The subject site has a fall of 2m from east to west. Considering the fall of the site, the proposed building height is considered to meet the design principles for the following reasons:

* The proposed additions to the ground floor and upper floor to the south and west of the dwelling result in an overall decrease in height from 9.9m to 9.7m. The reduction in height ensures that the adjoining eastern property maintains access to the view of the Swan River.
* The wall height creates no adverse impact on the amenity of the adjoining properties or the streetscape as the adjoining properties are still afforded with adequate direct sun to the building, its major openings and the open spaces.
* The development still satisfies the deemed-to-comply provisions in relation to solar access.

**Conclusion**

Council is requested to make a decision in accordance with clause 68(2) of the Deemed Provisions. Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

The application for the additions to the single house has been presented for Council consideration due to an objection having been 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 Residential Design Codes.

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

|  |  |
| --- | --- |
| **PD46.21** | **Consideration of Development Application – Additions and Alterations to an Existing Single House at 6 Walpole Street, Swanbourne** |
|  | |
| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | D4 Designs |
| **Landowner** | C Kapinkoff |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21-66822 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received. |
| **Attachments** | 1. Aerial image and zoning map  2. Site photos  3. Development plans |
| **Confidential Attachments** | 1. Submission |

**Executive Summary**

The purpose of this report is for Council to determine a development application for ground and upper floor additions to an existing single house at 6 Walpole Street, Swanbourne.

The application was advertised to adjoining neighbours in accordance with Council’s Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider primary street setbacks, lot boundary setbacks and visual privacy. At the close of the advertising period, one submission was received objecting to the garage boundary wall as it would create a sense of bulk and confinement to the outdoor living area of the adjoining lot. As an objection has been received, this application is presented to Council for determination.

If a proposal does not satisfy the deemed to-comply provisions of the R-Codes, Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions.

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (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.

**Recommendation to Committee**

**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 4 November 2021 for additions and alterations to an existing single house at 6 Walpole Street, Swanbourne, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**
3. **Prior to occupation of the development, the walls on or near the boundary 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 maintained thereafter to the satisfaction of the City of Nedlands.**

1. **Prior to occupation of the development, fences within the primary street setback area shall be visually permeable above 1.2m in height from natural ground level, in accordance with the Residential Design Codes and to the satisfaction of the City of Nedlands.**
2. **Prior to occupation or use of the development, the existing vehicular crossover is to be upgraded to the City’s specifications. Any redundant portions of the existing vehicular crossover(s) are to be removed and the kerbing, verge, and footpath (where relevant) reinstated to the specification and satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 1,012 m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ Permitted Use |

**Locality Plan**

The subject lot is located at 6 Walpole Street, Swanbourne, one lot south of Wood Street.

The site has a lot area of 1012m2, with an east-west orientation and contains an existing two storey single house. The natural ground level is relatively flat, rising approximately 1m from front to rear.

The area is surrounded by predominantly two-storey single houses. The properties within this block are coded R10, while across the street the coding is R15 (Attachment 1).

**Application Details**

The application seeks development approval for additions and alterations to an existing two storey house including demolition of the front façade and upper floor. The development proposes a new upper floor, internal alterations, a rear extension, and boundary walls to the outbuildings associated with the pool to the east, as well as a new garage on the northern boundary.

**Consultation**

The applicant is seeking assessment under the design principles of the R-Codes for the following:

* Primary street setback;
* Lot boundary setbacks; and
* Visual privacy.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 16 adjoining and nearby properties. The application was advertised for a period of 14 days from 5 October to 19 October 2021. At the close of the advertising period, one objection was received. The objection is summarised below, followed by comment from City Officers:

1. Objection to the garage boundary wall as it results in unacceptable building bulk against the outdoor living areas to the north and presents a sense of confinement.

Amended plans have been submitted reducing the width and height of the wall. The wall will also be located behind an existing thick screen of vegetation which will hide its bulk. See further discussion in the report below.

1. Objection to the removal of the dividing fence.

The existing fence is a fibre cement fence with a heavy lean and which is less than 1.6m high when measured from the subject site. Dividing fences are a civil matter between landowners and any replacement fence should be discussed between both sides.

In response to the above, the applicant has provided amended plans reducing the garage boundary wall length from 9m to 7.8m and reducing the overall wall height of the garage from a range of 3.5m – 3.7m to a range of 3.4m – 3.3m (due to the sloping topography). The applicant has also shown a portion of the neighbouring lot on the site plan to demonstrate that the bulk of the garage will be located behind a large tree and dense vegetation on the adjoining lot.

**Assessment of Statutory Provisions**

**Local Planning Scheme No.3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application.  Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy**

**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 assessment under the R-Codes can be undertaken 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 a part of this proposal.

An assessment is sought under the design principles of the R-Codes for boundary walls and visual privacy. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.2 – Street setback**

The development proposes a street setback of 8.7m for both the ground and upper floor levels, which is considered to meet the Local Planning Policy – Residential Development and the design principles of the R-Codes for the following reasons:

* The existing house is set back 8.7m from the street at both the ground and upper floor. The proposal retains the bulk of the ground floor and maintains the existing street setback at 8.7m. It is effectively replacing ‘like for like’ in terms of setback and is consistent with the existing development on the lot.
* The proposal provides adequate privacy for adjoining lots and meets the deemed-to-comply provision for open space.
* The new ground and upper floor designs introduce a degree of articulation that does not exist in the current house onsite, thereby reducing the bulk and scale to the streetscape.

**Clause 5.1.3 – Lot boundary setback**

The development proposes a northern boundary wall for the garage, and an eastern boundary wall for the pool house and outbuildings. The setbacks are considered to meet the design principles for the following reasons:

* The garage maintains the existing vehicle access with only slight modifications and the proposal itself retains most of the existing ground floor of the house. This limits the location where garages or carports can be set.
* The garage will be located behind an area of the adjoining lot that contains a large tree and dense vegetation (see Figure 1 below). This vegetation separates and screens the boundary wall from the adjoining outdoor living area to reduce the appearance of building bulk.
* The existing dividing fence is less than 1.8m high and allows views into the adjoining backyard. The new boundary wall will provide more visual privacy to the adjoining lot.



**Figure 1**: View from street along the existing dividing fence showing the vegetation on the adjoining lot. Proposed garage will be forward of the shed shown on the right.

* Several lots within the immediate locality have outbuildings or patios and pools of a similar size located within the rear setback area. The subject proposal for the pool house and outbuildings to the east is therefore in keeping with the expected layout, location and amenity impact of nearby houses.
* The patio, pool pump and outbuilding to the east are a maximum of 3m in height and predominantly located adjoining a large outbuilding on the adjacent eastern lot, resulting in minimal impact to building bulk to adjoining residences.
* Both boundary walls satisfy the deemed-to-comply provisions of the R-Codes.
* Building the garage and the outbuildings to the boundaries makes more effective use of space for the lot.

**Clause 5.4.1 – Visual privacy**

The development proposes a 2m setback from the window seat of the upper floor library to the southern lot. The setback meets the design principles for the following reasons:

* The proposed window predominantly presents views to the driveway and front setback area of the adjoining house. No outdoor living areas or habitable rooms are impacted.
* The window is at an angle to the boundary, such that any views towards the adjoining house itself are oblique rather than direct.
* The window replaces an existing window and balcony that currently have full direct overlooking of the adjoining lot. The privacy is improved by the removal of this balcony.

**Conclusion**

Council is requested to make a decision in accordance with clause 68(2) of the Deemed Provisions. Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

The application for additions and alterations to an existing two storey single house 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 Residential Design Codes.

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

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| **PD47.21** | **Consideration of Development Application - Single House at 15 Greenville Street, Swanbourne** |
|  | |
| **Committee** | 7 December 2021 |
| **Council** | 14 December 2021 |
| **Applicant** | Zazen Building & Design |
| **Landowner** | T Falkner |
| **Director** | Tony Free – Director Planning & Development |
| **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.  Whilst parties may be known to each other professionally,  this relationship is consistent with the limitations placed on  such relationships by the Codes of Conduct of the City and  the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right 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. |
| **Reference** | DA21-66989 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to an objection being received. |
| **Attachments** | 1. Aerial Image and Zoning Map  2. Development Plans |
| **Confidential Attachments** | * 1. Submission |

**Executive Summary**

The purpose of this report is for Council to determine a development application for a two-storey single house at 15 Greenville Street, Swanbourne.

The application was advertised to adjoining neighbours in accordance with Council’s Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider street setback, lot boundary setbacks, garage setback and solar access against the design principles. At the close of the advertising period, one submission was received objecting to the development proposal. The objection raised concerns relating to lot boundary setback and street setback. As an objection has been received, this application is presented to Council for determination.

If a proposal does not meet the deemed to-comply provisions of the Residential Design Codes Volume 1 (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, the development will not have a significant adverse impact on the local amenity and character of the locality.

**Recommendation to Committee**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council approves the development application received on 2 August 2021 in accordance with amended plans date stamped 4 November 2021 for a single house at 15 Greenville Street, Swanbourne, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **Prior to occupation of the development, landscaping is to be planted and maintained in accordance with the approved plans, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City of Nedlands**
3. **All building works to be carried out under this development approval are to be contained within the boundaries of the subject lot.**
4. **Prior to occupation of the development the external finish of the parapet walls is to be the same standard as the rest of the development or in:**
5. **Face brick;**
6. **Painted render;**
7. **Painted brickwork; or**
8. **Other clean material as specified on the approved plans**

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

1. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
2. **Prior to occupation of the development, all privacy screens and obscured windows as shown on the approved plans shall be provided to prevent overlooking in accordance with the Residential Design Codes by either:**
3. **Fixed obscured or translucent glass to a height of 1.60 metres above finished floor level; or**
4. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
5. **A minimum sill height of 1.60 metres as determined from the internal 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.**

**Voting Requirement**

Simple Majority.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R15 |
| **Land area** | 474m2 |
| **Land Use** | Existing – Single House  Proposed – Single House |
| **Use Class** | ‘P’ Permitted Use |

**Locality Plan**

The subject site is located west of Greenville Street, Swanbourne and is 100m west of West Coast Highway. All surrounding properties have a density coding of R15. The site has an existing single storey house has a slope of 1.6m from the street to the rear of the property (west).

**History**

Greenville Street has a density code of R15. The overall average of these lots within the street is 474m2. In accordance with the R-Codes, the minimum lot size for an R15 lot is 580m2. The lot sizes along Greenville Street are typical of a higher residential coding, such as an R20 density code, which has an average lot size of 450m2. If the development standards of the R20 code were to be applied to the proposal, street setback, building on boundary, and the rear setbacks would meet the deemed-to-comply provisions of the R-Codes.

**Application Details**

The application seeks development approval for the construction of a two-storey single house at 15 Greenville Street, Swanbourne.

**Consultation**

The applicant is seeking assessment in accordance with the design principles of the R-Codes for the following:

* Street Setback;
* Lot Boundary Setback;
* Setback of Garages; and
* Landscaping

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 17 adjoining and nearby properties. The application was advertised for a period of 14 days from 24 September to 8 October 2021. At the close of the advertising period one objection was received.

On 4 November 2021, amended plans were submitted reducing the length of the boundary wall, increasing the garage setback, obscuring the rear guest suite windows and reducing the length of the southern upper floor wall.

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

* Insufficient setbacks proposed to lot boundaries

An assessment of the proposal has been undertaken against the design principles where a judgement of merit has been sought in relation to lot boundary setback. Please see section 5.2.1 of this report.

* Insufficient setback of the garage to the street

The submission requested the garage align with the street’s setback average of 6m. The setback of the garage is now 6m to Greenville Street.

* Excessive overshadowing of neighbouring property

Overshadowing meets the deemed-to-comply provision.

**Assessment of Statutory Provisions**

**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, appearance and the potential impact it will have on the local amenity.

**State Planning Policy**

**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 a part of this proposal. An assessment is sought through the design principles for street setback, lot boundary setback, setback of garages, landscaping and solar access for adjoining sites. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.2 – Street Setback & Clause 5.2.1 – Setback of Garages**

The house proposes a minimum street setback of 6m to the garage.

The design principles require the development to be consistent with the established streetscape and not visually imposing from the street. The setback meets the design principles as:

* The established streetscape along Greenville Street has houses and garages setback from the street between 5.5m – 9m. The two properties adjacent at 17 and 13 Greenville have an existing or approved minimum setback of 5.4m from the primary street. In this context, the proposed setback of 6m from the garage and 7.5m from the verandah in this proposal are consistent with the established streetscape.
* The 6m setback from the street is an adequate distance that will not interfere with sight lines along the street and footpath, particularly as there is a 3.5m wide verge between the lot and the footpath. The garage will not be the dominant feature visually when approaching the house and the garage setback is consistent with the established streetscape.

**Clause 5.1.3 – Lot Boundary Setbacks**

The dwelling is seeking an assessment against the design principles for setbacks proposed to the northern, western and southern lot boundaries from the ground and upper floor, including a boundary wall.

**Ground Floor – Southern elevation – boundary wall**

The garage wall is 6.8m in length and 3m in height built up to the southern lot boundary. The nil setback has been considered against the design principles of efficient use of space and minimising adverse impact on adjoining neighbours. The proposal meets the design principles as follows:

* The site features an existing boundary wall in a similar location to the one proposed. The current boundary wall is 6.3m in length and 2.3m in height. The boundary wall proposed does not adversely impact the amenity of the adjoining property as it abuts a passageway and bin storage area. The boundary wall will also be screened by established landscaping on the southern lot at 17 Greenville Street.

**

Figure 1 - View of 15 Greenville St from 17 Greenville Street

* The majority of the houses along Greenville Street feature short, single storey walls built to one boundary that are visible from the street. The presence of a single boundary wall will not detract from the established streetscape.

**Upper Floor - Southern elevation – Master Suite to Bathroom**

The wall from the Master Suite to Bathroom of the upper floor is setback 1.5m to the southern lot boundary. The setback has been considered against the design principles related to minimising building bulk and maintaining visual privacy and is assessed as appropriate as follows:

* The wall’s height of 5.8m is typical for a two-storey development. The wall’s height and 1.5m setback collectively minimise the impact of building bulk to the adjoining southern neighbour. Further, the wall abuts an area of the adjoining lot which acts as a bin storage area and a passageway connecting the rear garden with the front garden.
* Ventilation is maintained by the minimum 1.5m setback. Overshadowing meets the deemed-to-comply provision.
* The subject wall length does not contain any major openings, maintaining privacy for the occupants and neighbours.

**Ground Floor – Western elevation – Guest Suite to Alfresco**

The wall from the guest suite to the alfresco of the ground floor is setback 3.2m to 5.7m from the western lot boundary. The proposal meets the design principles as follows:

* The impact of building bulk is minimised for the adjoining neighbour as half the subject wall length is setback 5.7m and is an alfresco area which is not comprised of solid building material. Further, the wall is single storey in height and the upper storey is setback 7.6m from the rear boundary, collectively reducing the perception of bulk. Finally, the lot’s size is more typical of a site in the R20 density code. A large rear setback would not be expected for a lot of this size as there is less space available. Half the houses on the subject street block feature buildings that are setback a short distance from the rear boundary.
* The subject wall length does not contain any major openings, all windows to the guest suite are obscured.

**Upper Floor – Northern elevation – Balcony to Bedroom 3**

The wall from the balcony to bedroom 3 of the upper floor is setback 1.5m to the northern lot boundary. The setback has been considered against the design principles and is assessed as appropriate:

* The wall is 5.8m in height and 12.3m in length. 5.1m of the wall’s length is a balcony, which features solid screening to a height of 1.6m. This maintains a sense of permeability when viewing this elevation. The wall’s composition and 1.5m setback combine to minimise the impact of building bulk to the adjoining northern neighbour.
* Ventilation is maintained by the minimum 1.5m setback. Solar access is ensured for the adjoining neighbours as the wall addresses the northern lot boundary.
* The subject wall length does not contain any major openings, thereby maintaining privacy for the inhabitants and neighbours.

**Clause 5.3.2 - Landscaping**

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

* The site includes 100m2 of outdoor living area to be landscaped with lawn and a covered alfresco area. This provides residents with space for landscape features to offset the hardscaped surface within the front setback area.
* The site currently features four trees in the front setback area. The proposal involves the retention of the three trees located in the northern half of the lot. The inclusion of the trees adds to the sense of greenery when viewing the house from the street and contributes to the streetscape.



Figure 2 – View from Greenville Street

**Clause 5.4.1 – Visual Privacy**

The windows on the upper floor are obscured but openable. Condition 6 requires fixed screening is part of the recommendation for approval. This condition will ensure there is no overlooking of adjoining properties from the windows.

**Conclusion**

Council is requested to make a decision in accordance with clause 68(2) of the Deemed Provisions. Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

The application for a two-storey 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 the R-Codes and will not have an adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes.

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