

Planning and Development Reports

Committee Consideration – 9 November 2021

Council Resolution – 23 November 2021

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| **PD34.21** | **Consideration of Development Application (Single House) at No. 20B Vincent Street, Nedlands** |
|  | |
| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | Zuideveld Marchant Hur |
| **Landowner** | J Ng and F Wijaya |
| **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** | DA21/66646 |
| **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. Plans |
| **Confidential Attachments** | 1. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development Application received on 29 March 2021 for a two storey single house at 20B Vincent Street, Nedlands.

The application was advertised to adjoining neighbours in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider lot boundary setbacks, open space, garage width and site works against the relevant design principles. At the close of the advertising period, one submission was received objecting to the development proposal. 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 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 21 July 2021 in accordance with amended plans date stamped 5 October 2021 for a Single House at 20B Vincent Street, Nedlands, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **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. Any modifications to the plans are subject to further approval by the City of Nedlands.**
3. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**
4. **Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**
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.**
9. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
10. **Prior to occupation of the development, privacy screens to the side of Bedroomroom 2 located on the east elevation and Bedroomroom 3 located on the north elevation as shown on the approved plans shall be provided to prevent oblique overlooking in accordance with the Residential Design Codes by either:**
11. **Fixed obscured or translucent glass to a height of 1.60 metres above finished floor level; or**
12. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
13. **A minimum sill height of 1.60 metres as determined from the internal floor level; or**
14. **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

1. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 174m2 |
| **Land Use** | Existing – Vacant Land  Proposed – Single House |
| **Use Class** | ‘P’ Permitted Use |

**2.2 Locality Plan**

The subject lot is located at 20B Vincent Street, Nedlands and is approximately 200m south of Stirling Highway. The property is currently vacant and has a slope of approximately 1.2m upwards from the street (west) to the rear (east).

The parent lot of 20 Vincent Street has been granted conditional subdivision approval by the WAPC, and a two-storey house was recently approved by Council on the lot immediately to the north (20A Vincent Street).

1. **Application Details**

The application seeks development approval for the construction of a two-storey single house with a direct frontage to Vincent Street.

On 5 October 2021, amended plans were submitted reducing the upper floor footprint and reducing the size of several windows to habitable rooms. This had the effect of mitigating any visual privacy impacts, and reducing the minimum deemed-to-comply setbacks.

1. **Consultation**

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

* Lot Boundary Setback
* Open Space
* Garage Width
* Site Works

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 11 adjoining landowners.

The application was advertised for a period of 14 days from 13 July to 27 July 2021. At the close of the advertising period one objection was received.

The objection asks for the development to be made to comply with the deemed-to-comply provisions of the R-Codes in relation to:

* Lot boundary setbacks;
* Open space;
* Visual privacy to east from Bedroomroom 2; and
* Site works.

In relation to the concerns about visual privacy, it is noted that the east facing window of Bedroomroom 2 window is less than 1 sqm in area. Therefore, it is not considered a major opening under the R-Codes and meets the deemed-to-comply criteria for visual privacy.

Bedroomroom 2 and 3 also include screening adjacent to each window to prevent oblique overlooking to the adjoining sites. This screening is included as a condition of planning approval.

In relation to the other areas of concern raised in the submission, an assessment against the design principles of the R-Codes has been conducted. This is outlined below.

1. **Assessment of Statutory Provisions**

**5.1 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.

**5.2 State Planning Policy**

**5.2.1 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 for lot boundary setback, open space, garage width and site works. 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 5.1.3 – Lot Boundary Setback**

The northern upper floor wall comprising the 4.0m wide linen-to-robe section (see Figure 1 below) proposes a 1.9m setback.

The setback is considered to meet the design principles as:

* A house on the adjoining northern lot (20A Vincent Street) was recently approved with a garage boundary wall and a driveway adjoining the subject site. The adjoining accessway will be used for the purposes of bin storage and air conditioning equipment. The proposed wall of the subject development will be located 1.9m from the future driveway and will have minimal impact on the amenity of the adjoining lot due to the obscured glazed window set in the accessway wall, as the narrow accessway functions as a service corridor and does not comprise active outdoor living space.
* The proposed wall is not adjacent to major openings or outdoor living areas and will not detrimentally impact ventilation to the northern lot.
* The wall is located to the north and will not impact overshadowing to adjoining lots.
* The wall forms part of solely non-habitable spaces that do not present any visual privacy impacts to the adjoining lot.
* The upper floor wall is articulated with varying setbacks, and with the other portions of wall meeting the deemed-to-comply criteria.

**Clause 5.1.4 - Open Space**

The development proposes 30% open space. Open space is considered to meet the design principles as:

* The development reflects the existing and potential future streetscape character of the area, in that it is located within a block having a density code of R60. The corner property directly to the south, as well as the property on the opposite corner, have been subdivided into five blocks of dimensions roughly equal to the subject site. The scale and form of those future developments will therefore be consistent with that proposed in the subject application.
* A two-storey house immediately north of the subject site at No. 20A Vincent Street has recently been approved and presents a similar built form as that proposed within the subject application.
* The house includes an outdoor living area and landscaping in the north-eastern corner of the site, which will allow sufficient solar access into the rear yard and the internal primary living area.
* On the upper storey, there are north-facing windows to Bedroomrooms 2 and 3, and a west-facing window and balcony to Bedroomroom 1 for indoor natural light.
* The development includes landscaped areas in the front and rear areas of the site to soften the appearance of the building mass as viewed from the street and adjoining properties. A detailed landscaping plan has been provided, which will be required to be implemented as a condition of approval. This includes a new tree to be planted in the northeast corner.

**Clause 5.2.2 - Garage Width**

The garage width and supporting structures comprise 69% (5.9m) of the lot frontage. The garage width is considered to meet the design principles as:

* The lift shaft is located forward of the garage and provides articulation of the front wall to break up the massing of the house.
* Landscaping is provided forward of the house adjoining the driveway and pedestrian entrance, which will soften the appearance of the garage doors.
* The upper floor balcony extends forward of the garage, which serves to reduce the dominance of the garage doors on the streetscape.

**Clause 5.3.7 - Site Works**

The site works propose an excavation and retaining walls of up to 1.4m. The site works and retaining walls meet the Design Principles as:

* The site works respond to the topography of the lot and are located to the rear of the site so as to make the house consistent in floor level and height with adjoining houses when viewed from the street.
* The excavation reduces the perceived height and scale of the building as viewed from adjoining properties.
* The excavation reduces natural ground level and therefore does not introduce any visual privacy concerns.

1. **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 single house has been presented for Council consideration due to objections 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 of Administration’s recommendation.

|  |  |
| --- | --- |
| **PD35.21** | **Consideration of Development Application – Additions to a Single House (Covered walkway, Retaining and Front Fence) at 30 Watkins Rd, Dalkeith** |
|  | |
| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | Hatch Roberts Day |
| **Landowner** | A & C Alder |
| **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** | DA21/66766 |
| **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. Streetscape Images 3. Plans 4. Architectural Renders |
| **Confidential Attachments** | 1. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application for additions to a single house (Covered Walkway, Site Works and Front Fence) at No.30 Watkins Rd, Dalkeith.

The application was advertised to adjoining neighbours in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider lot boundary setbacks, site works and primary street fencing. At the close of the advertising period, two submissions were received objecting to the development proposal. 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 26 July 2021 in accordance with the plans date stamped 26 July 2021 for a single house at Lot 142 (No.30) Watkins Rd, Dalkeith:**

1. **This development approval only pertains to additions to a single house including the construction of a covered walkway, site works and front fence as indicated on the plans attached.**
2. **Prior to the lodgement of a Building Permit, a detailed Landscaping Plan, prepared by a suitably qualified person, shall be submitted to and approved by the City of Nedlands.**
3. **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. Any modifications to the plans are subject to further approval by the City of Nedlands.**
4. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**
5. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
6. **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.**

**Voting Requirement**

Simple Majority

1. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 1315m2 |
| **Land Use** | Residential – Single House |
| **Use Class** | ‘P’ Permitted Use |

**2.2 Locality Plan**

The subject lot is located at No.30 Watkins Rd, Dalkeith and is approximately 250m north-west of the Waratah village shopping precinct.

The site has a lot area of 1,315m2, with a north-south orientation. Vehicle access is obtained from the southern laneway, Tree Martin Lane. A single house is currently being constructed. The area is surrounded by predominantly two-storey single houses. The properties in this area are coded R10 (Attachment 1).

1. **Application Details**

The application seeks development approval for additions to the previously approved single house including:

* A covered walkway;
* Site works; and
* Primary street fencing

1. **Consultation**

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

* Lot boundary setback
* Site works
* Primary street fence

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 8 adjoining landowners. The application was advertised for a period of 14 days from 8 September 2021 to 22 September 2021. At the close of the advertising period, 2 objections were received.

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

1. *The proposed works should be completed within the confines of the subject lot.*

Condition 4 of Administration’s recommendation requires works to be wholly located within the confines of the subject site.

1. *Lot boundary setbacks should be complied with.*

The development proposal is seeking discretion for setbacks. Administration has completed a ‘design principle’ assessment of the areas seeking discretion. This can be found under point 5.2.1 of this report (below).

1. *The front fence should be reduced in height*

The development proposal is seeking discretion for primary street fencing. Administration has completed a ‘design principle’ assessment of the areas seeking discretion. This can be found under point 5.2.1 of this report (below).

1. *The site works should be reduced*

The development proposal is seeking discretion for site works. Administration has completed a ‘design principle’ assessment of the areas seeking discretion. This can be found under point 5.2.1 of this report (below).

1. **Assessment of Statutory Provisions**

**5.1 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 regards to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**5.2 State Planning Policy**

**5.2.1 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 setback, site works and primary street fencing. 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 development proposes a covered walkway abutting the western lot boundary. The covered walkway has proposed a minimum 1.0m setback to the western lot boundary.

The setback of the covered walkway is considered to meet the design principles as:

* The covered walkway is considered to be setback far enough from the western lot boundary to provide satisfactory areas of open space and landscaping which help to reduce the overall impact of building bulk. A detailed landscaping plan is conditioned to be provided prior to the lodgement of a building permit to the satisfaction of the City.
* The western lot boundary setback is considered to maintain the adjoining property’s access to natural light and ventilation. Shadow created by the covered walkway wall is contained wholly within the confines of the subject site. Overall, the development meets the deemed-to-comply provisions of element 5.4.2 – Solar access to adjoining properties.

**Clause 5.3.7 – Site Works**

The proposed development is located upon a site with an approximate 3.0m fall located towards the front of the lot. The proposed site works are considered to meet the design principles as:

Western Fill

* The modification of natural ground level is proposed to provide a covered walkway surrounding a future tennis court, facilitating pedestrian access throughout the site and a more effective use of the site.
* The modification of natural ground level is considered to provide a more effective use of the subject site, through facilitating pedestrian access throughout the site.
* The proposed earthworks do not modify natural ground level at the street boundary.
* The proposed modification of natural ground level does not result in any overlooking of neighbouring properties or contribute to a loss of visual privacy, access to natural light and ventilation or impose additional building bulk on adjoining lots.

Eastern Cut

* The modification of natural ground level is considered to provide a more effective use of the subject site, appropriately integrating with the site’s outdoor living area and future tennis court.
* The proposed earthworks do not modify natural ground level addressing the street. Natural ground level at the street boundaries has been respected.
* The proposed modification of natural ground level does not result in any overlooking of neighbouring properties or contribute to a loss of visual privacy, access to natural light and ventilation or impose additional building bulk on adjoining lots.
* The proposed modification of natural ground level is confined to cut only.
* All associated retaining is required to be accommodated wholly within the confines of the subject site.

**Clause 5.2.4 Street Walls and Fences**

The development proposes a fence addressing Watkins Rd. The proposed primary street fence has a solid height of 1.8m and visually permeable infill panels above, to a maximum height of 2.6m.

The proposed primary street fence is considered to meet the design principles as:

* The approved single house features a first floor which contains multiple major openings to Bedroomrooms, living areas and a study which overlook the primary street (Watkins Rd) providing passive surveillance of the public realm. This passive surveillance of the street from the dwelling is not compromised by the proposed primary street fence. The proposed front fencing is designed to act and integrate with a retaining wall, allowing maximum usable space for landscaping and outdoor living areas within the front setback area, namely a proposed tennis court.
* The proposed primary street fence is considered to respond the established and existing primary street interface of adjoining properties. Namely existing solid fencing located at the immediate neighbouring properties, 28 Watkins Rd and 32 Watkins Rd. These immediate neighbouring properties feature solid primary street fencing to a maximum height of 2.2m and visually permeable fencing to a maximum height of 3.6m. (see attachment 2 – Existing Streetscape Images).
* The development proposes a significant landscaping component be installed within the verge at the front of the subject site, to provide a soft interface of the fence to the street. This is consistent with the immediate neighbouring properties. Administration have recommended Condition 4, requiring a detailed landscaping plan be prepared and lodged with the City prior to the lodgement of a Building Permit.

1. **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 to a 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 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.

|  |  |
| --- | --- |
| **PD36.21** | **Consideration of Development Application (Temporary Lighting) at St Johns Wood Playing Fields No. 68 Stephenson Avenue, Mt Claremont** |
|  | |
| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | Perth Glory Football Club |
| **Landowner** | Christ Church Grammar School |
| **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** | DA21-63805 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the Instrument of Delegation the application is determined by Council due to objections being received |
| **Attachments** | 1. Location Plan & Zoning Plan 2. Development plans 3. Site visit photos |
| **Confidential Attachments** | * + - 1. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine the development application, for temporary lighting on St Johns Wood playing fields, located at 68 Stephenson Avenue, Mount Claremont.

The application was advertised to adjoining neighbours in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals. At the close of the advertising period six submissions were received. Objections were raised relating to impacts from the light spill, noise, amenity and use of the site.

As objections have been received and refusal is recommended, this application is presented to Council for determination. It is recommended that Council refuse the application on the basis of impacts on amenity.

No technical reports have been received to support the application.

**Recommendation to Committee**

1. **That in accordance with Clause 68(2)(c) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015,* Council refuse the development application received on 4 May 2021 for Temporary Lighting at Lot 816 (No. 68) Stephenson Avenue, Mt Claremont** **for the following reasons:**
2. **The proposed development is inconsistent with the objectives of the “Private Community Purposes” zone in accordance with City of Nedlands Local Planning Scheme No. 3, as the proposal will result in a detrimental impact on the amenity of the surrounding residential development in relation to noise and light spill, thereby being incompatible with surrounding development.**
3. **The proposed development is inconsistent with Clause 67(2)(d) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as the application has not demonstrated that it is capable of compliance with the *Environmental Protection (Noise) Regulations 1997*.**
4. **The proposed development is inconsistent with Clause 67(2)(m) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as the proposal is not considered compatible with its setting in considering the relationship to the abutting adjoining residential development.**
5. **The proposed development is inconsistent with Clause 67(2)(n) of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* as the proposal is considered to result in undue adverse impact to the amenity of the locality in relation to noise and light spill.**
6. **In accordance with Section 214(3) of the *Planning and Development Act 2005,* Council directs the applicant to remove the Temporary Lighting from No. Lot 816 (No. 68) Stephenson Avenue, Mt Claremont** **within 60 days of the date of this direction. The site is to be restored as nearly as practicable to its condition immediately before the temporary lighting was placed on site, to the satisfaction of the City of Nedlands.**

**Voting Requirement**

Simple Majority

1. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Private Community Purposes |
| **R-Code** | N/A |
| **Land area** | 8.6 ha |
| **Use Class** | Current – Recreation Private  Proposed – Recreation Private |

**2.2 Locality Plan**

The subject site is located at 68 (Lot 816) Stephenson Avenue, Mt Claremont and is zoned ‘Urban’ by the Metropolitan Region Scheme and ‘Private Community Purposes’ by the City of Nedlands Local Planning Scheme No.3 (LPS3).

There are 21 residential dwellings which directly abut the site to the south and south-west, which are zoned ‘Residential’ R20. To the north is HBF stadium and to the west is Bold Park. Refer to Attachment 1 – Aerial & Zoning Plan.

**2.3 Background**

The site was previously a landfill site and was developed in 2016 by Christ Church Grammar School as playing fields known as the St Johns Wood playing fields.

The general area was covered by an Outline Development Plan (ODP), adopted in February 2014, and later modified in June 2014. The ODP included provision for playing fields, car parking, change room and storage facilities, and a future pavilion. The proposed lighting is located in the portion of the ODP designated for playing fields.

Administration was made aware that the St Johns Wood playing fields was being used as a training ground for Perth Glory Youth Academy for ages between 10 to 16 years. This area has been leased by Perth Glory Football Club from Christ Church Grammar School on a periodic one-year lease.

Perth Glory have four training groups (from 13–16-year-old division) each with 16 footballers and a coach assigned to each group. Training is currently scheduled on Monday – Wednesday and Friday, and alternate Thursdays from 7am to 8:15am and 5:30pm – 7pm. Due to the age bracket, parents are generally in attendance.

Given that the lighting is required for a period of eight months, this does not constitute ‘temporary works’ and requires development approval in accordance with Schedule 2, Clause 61 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations).

1. **Application Details**

The application seeks development approval for ten temporary lighting towers on the St Johns Wood Christ playing fields at 68 Stephenson Avenue, Mount Claremont. It is noted that the application documents indicate nine lighting towers.

Each lighting tower measures 2.5m in height, 4.7m in length and 2.1m in width. The specifications state that the lights are powered by a diesel generator. The lighting towers are proposed to be installed between March and October, and in use from Monday to Friday 4:45pm to 7pm. This application seeks approval for the 2022 season onwards.

1. **Consultation**

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals, to 70 adjoining landowners and occupiers. The application was advertised for a period of 14 days from 4 June 2021 to 18 June 2021. Six submissions were received, five submissions were objections, and one provided provisional support. A summary of the concerns raised and Administration responses is proved below.

**Zoning/Land use**

Objectors raised concerns regarding the manner in which the fields are being used, and that this may be inconsistent with the approved land use and/or zoning. The site is zoned “Private Community Purposes”, and the approved land use is “Recreation – Private”, which is defined in LPS3 as:

*“means premises that are –*

1. *Used for indoor or outdoor leisure, recreation or sport; and*
2. *Not usually open to the public without charge”*

The proposed lighting is to facilitate the use of the oval as a training ground for the Perth Glory Youth Academy. This is consistent with the definition of the “Recreation – Private” land use, and there are no planning concerns with the land use of the site.

**Light spill**

Objectors raised concerns relating to glare and light spill into the adjoining residences, affecting their amenity. This concern is upheld and is one of the reasons refusal of the application is recommended.

**Noise**

Objectors raised concerns relating to noise from both users of the playing fields, and from the lighting generators, affecting their amenity. In relation to noise from the lighting generators, this concern is upheld and is one of the reasons refusal of the application is recommended.

In relation to noise concerns from players, this is reasonably expected to occur as part of the approved land use. In addition, noise from community sports is generally exempt from the requirements of the assigned noise levels of the *Environmental Protection (Noise) Regulations 1997.*

**Anti-social behaviour**

Objectors raised concerns relating to anti-social behaviour of the players, including music and bad language. This is not a matter which can be addressed through the planning framework. Objectors will be advised that Police should be contacted should anti-social concerns arise.

**Leasing**

Objectors raised concerns whether Christ Church Grammar School have the power to lease the playing fields and that Perth Glory is a commercial operation. The management of private leases cannot be addressed through the planning framework. The use of the land under the lease is consistent with the approved “Recreation – Private” land use, and thereby is not of any planning consequence.

**Parking/Traffic**

One objector raised concerns regarding parking and traffic issues associated with the night-time use of the site. Parking and traffic management requirements are based on the land use. As this application does not seek to change or intensify the approved land use, parking and traffic management does not require assessment.

**Visual Impact**

Objectors raised concerns regarding the visual impact of the lighting towers. The lighting towers in isolation are not considered to impact on any views of significance. However, the cumulative impact of the height of the towers and light spill from that height, is considered to result in a loss of amenity to adjoining residential properties.

**Compliance with ODP**

Objectors raise concerns whether the proposal for lighting and associated night-time use of the site was consistent with the adopted ODP. The ODP was initially prepared to guide development of the entire site and playing fields. The land has developed in accordance with the ODP. The associated development approval did not include any constraints to the operating hours of the facility.

LPS3 no longer requires an ODP to guide development in the area and instead a “Private Community Purposes” zone was put in place. The proposal has been assessed against the objectives of the “Private Community Purposes” zone as detailed in this report.

1. **Assessment of Statutory Provisions**

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

Schedule 2, Clause 67(2) of the Regulations identifies matters which the Local Government must give consideration in assessing an application for development approval. The proposal is not considered to meet a number of matters for consideration as detailed below.

*d) any environmental protection policy approved under the Environmental Protection Act 1983 section 31(d).*

The proposal is subject to compliance with the *Environmental Protection (Noise) Regulations 1997* (Noise Regulations).The applicant has not provided sufficient information to demonstrate that the noise generated from the ten diesel generated lighting towers will achieve compliance withthe Noise Regulations. Administration considered that the proposed location and use of the ten lighting towers cumulatively would unlikely achieve compliance with the Noise Regulations without amendments. In this regard the proposal is considered inconsistent with this clause as it has not demonstrated that it is capable of compliance with the Noise Regulations.

Should Council be of a mind to approve the application, it is recommended that a condition of approval be imposed to require the applicant provide an acoustic report demonstrating that the proposal will comply with the Noise Regulations.

*(m) the compatibility of the development with its setting, including —*

1. *the compatibility of the development with the desired future character of its setting; and*
2. *the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.*

The proposal is not considered to be compatible with its setting, nor present an appropriate relationship to the abutting adjoining residential properties. The impact from the resultant noise and light spill from the lighting installed in the 2021 season has demonstrated significant detrimental impact on the amenity of the adjoining residential properties. The applicant has not provided any information to demonstrate that the proposed lighting for the 2022 season will be installed in a different manner to minimise the impacts to adjoining development.

*(n) the amenity of the locality including the following —*

1. *environmental impacts of the development;*
2. *the character of the locality;*
3. *social impacts of the development.*

The proposal is considered to result in undue adverse impact to the amenity of the locality in relation to noise and light spill. The applicant has provided generic details on light spill for the subject lighting towers. No specific information has been provided for the proposed positioning on St Johns Wood playing fields and the proximity to residential land uses. As demonstrated by public submissions and site visit observations, the light spill from the 2021 season has significantly impacted on the amenity of the adjoining residential properties.

Should Council be of a mind to approve the application, it is recommended that a condition of approval be imposed to require the applicant to seek independent expert advice from a suitably qualified consultant detailing the specifications of the type of lighting proposed and certifying that the proposed lighting will not cause adverse amenity impacts on the surrounding locality and comply with Australian Standard AS.4282 *Control of the Obtrusive Effects of Outdoor Lighting.*

**5.2 State Planning Policies**

There are no relevant State Planning Policies and the primary control is LPS3.

**5.3 Local Planning Policies**

There are no relevant Local Planning Policies and the primary control is LPS3.

**5.4 Local Planning Scheme No. 3**

The site is zoned “Private Community Purposes” by LPS3. Clause 16 of LPS3 identifies the objectives of the objectives for this zone as follows:

* *“To provide sites for privately owned and operated recreation, institutions and places of worship.*
* *To provide for a range of privately-owned community facilities and uses that are incidental and ancillary to the provision of those facilities, which are compatible with surrounding development.*
* *To ensure that the standard of development is in keeping with surrounding development and protects the amenity of the area.”*

The proposal is inconsistent with the objectives of the “Private Community Purposes”, as the lighting is considered to result in a detrimental impact on the amenity of the surrounding residential development in relation to noise and light spill. The proposal cannot be considered to protect the amenity of the area and is thereby incompatible with surrounding development.

The applicant has been given the opportunity to provide further information to demonstrate how the lighting will be designed to minimise the impact on the surrounding development, and no further information has been forthcoming. Whilst it may be possible to condition the requirement for an acoustic report and light spill certification, it is considered that without significant amendments to the design of the lighting, it would be highly unlikely to achieve compliance with the Noise Regulations and Australian Standard AS.4282.

1. **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 ten temporary lighting towers on the St Johns Wood playing fields at 68 Stephenson Avenue, Mount Claremont, has been presented for Council consideration due to objections being received and refusal recommended.

The proposal is considered to result in an undue impact on the amenity of the adjoining residential development in relation to noise and light spill and is not considered to achieve the objectives of the “Private Community Purposes” zone.

Accordingly, it is recommended that the application be refused by Council.

|  |  |
| --- | --- |
| **PD37.21** | **Consideration of Development application – 5 Grouped Dwellings at 18 Tyrell St, Nedlands** |
|  | |
| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | Big Sky Homes Pty Ltd |
| **Landowner** | Joydem Pty Ltd |
| **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** | DA21/65367 |
| **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. Plans 3. Design Review Panel Assessment Minutes 4. Architectural Perspective Drawings |
| **Confidential Attachments** | * + - 1. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application for 5 grouped dwellings at 18 Tyrell Street, Nedlands.

The application was advertised to adjoining neighbours in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider design principles for street setbacks, lot boundary setbacks, building height, site works, visual privacy and visitor parking. At the close of the advertising period, 14 submissions were received, one (1) in support but with additional comments, two (2) requesting an extension to the advertising period and/or radius but with no further comments, and the remaining 11 objecting to the development proposal. Amended plans have been submitted that reduce or eliminate several of the advertised variations. As objections have 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 23 June 2021 in accordance with amended plans date stamped 5 October 2021 for five grouped dwellings at 18 Tyrell Road, Nedlands, subject to the following conditions:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**
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 occupation of the development the kitchen windows of Lot 1 located on the south elevation, and the Bedroomroom 3 window of Unit 5 on the south elevation, shall be screened in accordance with the Residential Design Codes by either;**
2. **fixed obscured or translucent glass to a height of 1.60 metres above finished floor level; or**
3. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
4. **a minimum sill height of 1.60 metres as determined from the internal floor level; or**
5. **an alternative method of screening approved by the City of Nedlands.**

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

1. **Prior to occupation of the development, the approved landscaping plan is to be installed and maintained in accordance with that plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City of Nedlands.**
2. **Prior to the lodgement of Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.**
3. **The development shall comply with the approved Waste Management Plan to the satisfaction of the City of Nedlands. Any modification to the approved waste management plan will require further approval by the City.**
4. **Prior to the lodgement of a Building Permit, a Landscape Management Plan, shall be submitted and approved by the City of Nedlands. It shall in addition to include a comprehensive maintenance plan for all proposed**

**landscaping on the site and contingencies for replacement of dead and**

**diseased plants.**

1. **Prior to occupation the development is to incorporate at least one energy efficiency initiative that exceeds the minimum practice, or all dwellings are to exceed the minimum NATHERS requirement by 0.5 stars.**

**Voting Requirement**

Simple Majority

1. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 809m2 |
| **Land Use** | Existing – Single House  Proposed – Grouped Dwellings |
| **Use Class** | ‘P’ Permitted Use |

**2.2 Locality Plan**

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

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

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

1. **Application Details**

The application seeks development approval for the construction of five grouped dwellings, with the front and rear units being two storeys and the three middle units being three storeys. The development proposes a single common property access leg off of Tyrell Street.

1. **Consultation**

**Public Consultation**

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

* Lot boundary setbacks;
* Visitor parking; and
* Site works.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. The development application was advertised twice, the first time to five adjoining landowners for a period of 14 days from 28 August 2021 to 10 September 2021. The application was advertised for a further 14 days from 9 September 2021 to 23 September 2021 to 26 adjoining landowners/occupiers.

At the close of the advertising period, a total of 14 submissions were received; 11 objections, one (1) submission of support (with comments), and two (2) requests to extend the advertising radius. The main concerns raised within the submissions were:

1. *The development does not respond to the established character of Nedlands, is too bulky, too tall, and sets an unpleasant precedent.*

The block has been coded R60 and the area is currently undergoing a transition to higher density development and away from the single houses that currently predominate. The R-Codes permit future development to occur in a scale and form similar to the subject proposal, and the development is considered to reflect the future character of the area.

1. *Air conditioning units should be positioned on the roof or ground floor.*

Air conditioning units are not shown on the plans but are required by the R-Codes to affixed so as to not be visible from the street.

1. *Retaining walls should be designed by an engineer, and the City should inspect the development once built to ensure compliance.*

A building permit will be required for the development, with any necessary retaining walls being appropriately designed and engineered in accordance with the Building Codes of Australia.

1. *The buildings should be made compliant.*

There are two pathways for development approval: deemed-to-comply or design principle assessment. Should a proposal not meet the deemed-to-comply criteria it is to be assessed against the design principles.

1. *The proposal is an overdevelopment of the lot.*

The development meets the minimum and average lot sizes required and meets the design principles for the discretion sought, as outlined in this report.

1. *The proposal presents visual privacy issues to adjoining lots.*

A condition is imposed requiring screening or modification to the kitchen windows for privacy, with the remaining major openings shown on the amended plans as being screened. All major openings meet the deemed-to-comply criteria for visual privacy.

1. *Insufficient landscaping has been provided.*

The development meets the landscaping criteria, incorporating a 2m x 2m tree planting area in each lot, and is supported by the City’s Design Review Panel.

1. *The lack of onsite parking will cause traffic and street parking problems.*

Administration has provided an assessment against the design principles for visitor car parking below.

1. *The proposal will overshadow its neighbours.*

The development is considered to satisfy the deemed-to-comply provisions of the R-Codes in relation to overshadowing and solar access. (See administration’s assessment below 5.3.3 Car Parking)

In response to submissions received, the applicant amended the plans and included the following changes:

* Visitor parking bay introduced between the building and Tyrell Street (and consequent reduction of landscaping);
* Approximate 0.15m decrease in maximum wall and roof height;
* Screening provided to southern elevation to the kitchen of Unit 5; and
* Reduction in window size of Unit 5 kitchen to the eastern elevation.

The amendments result in:

* a reduction in the number of variations to lot boundary setbacks;
* visual privacy variations now deemed-to-comply (subject to the Unit 1 south kitchen windows being screened as a condition of approval because, in aggregate, they exceed 1 m2); and
* the building height being deemed-to-comply.

**Design Review Panel**

This application was referred to the City’s Design Review Panel on 21 June 2021. Amended plans were received on 5 October 2021 in order to address the advice and recommendations by the Design Review Panel. The amended plans were referred to the Chair of the Design Review Panel for a second review on 26 August 2021. A copy of the Design Review Panel comments are contained in Attachment 3.

1. **Assessment of Statutory Provisions**

**5.1 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 regards to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**5.2 State Planning Policy**

**5.2.1 State Planning Policy 7.0**

The application was reviewed by the full DRP on 21 June 2021, with amendments further reviewed by the DRP Chair on 26 August 2021.

The following is a summary of the advice provided by the DRP.

|  |  |  |  |
| --- | --- | --- | --- |
| 1 | *Supported* | | |
| 2 | *Supported with conditions* | | |
| 3 | *Not supported* | | |
| 0 | *Additional information required* | | |
|  | | Original Plans – 12 June 2021 | Amended Plans – 5 October 2021 |
| Principle 1 – Context & Character | |  |  |
| Principle 2 – Landscape Quality | |  |  |
| Principle 3 – Built Form & Scale | |  |  |
| Principle 4 – Functionality & Built Quality | |  |  |
| Principle 5 - Sustainability | |  |  |
| Principle 6 – Amenity | |  |  |
| Principle 7 - Legibility | |  |  |
| Principle 8 – Safety | |  |  |
| Principle 9 – Community | |  |  |
| Principle 10 – Aesthetics | |  |  |

The final comments on the proposal are as follows:

*“The proponent has responded very positively, thoroughly and effectively to the comments and Recommendations of the DRP. In particular they have:*

* *Improved the amenity of the houses, especially the central houses, in terms of room sizes and relationships.*
* *Addressed the visual privacy for the northern neighbours*
* *Improved the legibility of the entries to the houses.*
* *Improved the landscaping both on ground and on structure.*
* *Provided well researched, comprehensive and satisfactory justifications in response to DRP suggestions.*

*Having considered the revised proposal against the DRP Comments and Recommendations the DRP Chair believes the proposal is now supportable”*

**5.2.2 State Planning Policy 7.3**

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 for the R-Codes for lot boundary setback, visitor parking, and site works. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setback**

The following lot boundary setbacks are required to be assessed under the design principles of the R-Codes:

* Unit 1 – Ground floor Master Bedroomroom (south): 1.2m setback
* Unit 5 – First floor Balcony (east): 1.3m setback
* Unit 5 – First floor Bedroom 3 (east): 1.3m setback
* Unit 5 – First floor Kitchen (east): 1.8m setback

The lot boundary setbacks are considered to meet the design principles as:

Southern lot boundary setback (Ground Floor Master Bedroomroom)

* The southern wall is articulated to provide outdoor living areas and open space, with the walls of the middle three units being set back 3.1m from the boundary. This ensures the majority of the development will be set back so as to reduce the impact of bulk and scale to adjoining properties.
* Trees and landscaping are provided to the southern boundary to obscure views to the building and soften the overall appearance as viewed from adjoining properties.
* The overall development meets the deemed-to-comply criteria for overshadowing.

Eastern Lot Boundary Setback (Bedroomroom 3 to Balcony)

* Landcsaping has been provided on the first floor through the use of planter boxes. The proposed on-structure planting softens the impact of the building bulk to the east as does the increased setback to Bedroomroom 2.
* As the setback addresses the eastern lot boundary solar access is not impacted.
* As highlight windows and screening has been proposed, visual privacy meets the deemed-to-comply criteria.

Diagram

Description automatically generated

**Clause 5.3.3 – Car parking**

The development proposes one visitor bay. The visitor parking is considered to meet the design principles as:

* The site is located less than 250m from a high frequency bus route serving multiple destinations located near the intersection of Stirling Highway and Tyrell Street. This allows ample opportunities for use of public transport.
* Each unit has room for two vehicles in the garage, whereas the proximity of the bus stop means the onsite parking criteria of the R-Codes state only a single bay is necessary. The development has an excess of five parking bays in total, as each unit has one additional bay beyond the deemed-to-comply provisions.
* Parking is available to the west of Tyrell Street and is unrestricted outside of business hours and on weekends. This enables on-street parking for short and long-term visitors to the site.

**Clause 5.3.7 - Site works**

The development proposes 1.0m excavation. The site works are considered to meet the design principles as:

* The site works include only excavation, which reduces the building height and consequently reduces the impact of bulk and scale to adjoining lots.
* The excavation allows the development to remain consistent with the floor levels and streetscape appearance of adjoining houses.
* The retaining walls are below natural ground level and can therefore be located up to a boundary under the deemed-to-comply provisions, without any visual privacy impacts.

1. **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 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.

|  |  |
| --- | --- |
| **PD38.21** | **Consideration of Development Application – Single House at 37C Kinninmont Avenue, Nedlands** |
|  | |
| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | Oswald Homes |
| **Landowner** | A & A Beamish |
| **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** | DA21/66409 |
| **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. Zoning Plan and Aerial Image 2. Plans 3. Architectural Perspective Drawings |
| **Confidential Attachments** | 1. Submissions 2. Applicant’s Justification Report |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application for a Single House at 37C Kinninmont Avenue, Nedlands.

The application was advertised to adjoining neighbours in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals due to the need to consider design principles for lot boundary setbacks, garage width and visual privacy. At the close of the advertising period, three submissions were received. As objections have been received, this application is presented to Council for determination.

It is recommended that the application be approved by Council as it has been assessed as satisfying the design principles of the Residential Design Codes (R-Codes) Volume 1. Where a proposal does not meet the deemed-to-comply provisions of the R-Codes, Council is required to exercise judgement to determine the proposal against the design principles of the R-Codes. The R-Codes require assessment against the design principles with the corresponding deemed-to-comply provisions not applied. It is considered that the development is unlikely to have a significant adverse impact on the local amenity and character of the streetscape and neighbouring properties.

**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 15 July 2021 in accordance with amended plans date stamped 6 October 2021 for a Single House at 37c Kinninmont Avenue, Nedlands, subject to the following conditions:**

1. **All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior or to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development 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 occupation of the development, the balcony on the southern elevation facing south shall be screened to satisfy the deemed to comply criteria of clause 5.4.1 of the Residential Design Codes Volume 1. Screening referred to in c1.1(ii) of the Residential Design Codes Volume 1 is to be in the form of:**
2. **Fixed obscured or translucent glass to a height of 1.60 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 1.60 metres as determined from the internal floor level; or**
5. **An alternative method of screening approved by the City of Nedlands.**

**The required setbacks and/or screening shall be thereafter maintained to the satisfaction of the City of Nedlands**

1. **Landscaping shall be installed and maintained in accordance with the approved plans, including the planting of one (1) tree with a minimum planting area of 2m x 2m. All landscaping shall be maintained for the lifetime of the development thereafter, to the satisfaction of the City.**
2. **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.**

**Voting Requirement**

Simple Majority

1. **Background**

**2.1 Land Details**

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

**2.2 Locality Plan**

The subject lot is located at 37C Kinninmont Avenue, Nedlands and is approximately 170m north of Stirling Highway. The site is currently vacant and is relatively flat.

The parent lot of 37 Kinninmont Avenue has been granted conditional subdivision approval by the Western Australian Planning Commission (WAPC) for three side-by-side lots. All lots have direct frontage to Kinninmont Avenue, with the subject site located on the southernmost lot. The site is bound by the primary street – Kinninmont Avenue to the east and by residential properties to the north, west and south. All directly adjoining sites are also coded R60.

The immediate streetscape is surrounded by existing single houses, ranging between one and two storeys in height.

1. **Application Details**

The application seeks development approval for the construction of a two-storey single house with direct frontage to Kinninmont Avenue.

1. **Consultation**

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

* Lot Boundary Setbacks
* Garage Width
* Visual Privacy

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 41 adjoining landowners and occupiers, for a period of 14 days from 15 September 2021 to 29 September 2021. At the close of the advertising period three objections were received.

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

1. Garage width

Administration has completed an assessment of the proposal against the design principles where discretion has been sought by the development proposal in relation to garage width (Clause 5.3.3). Please see section 5.2.1 of this report.

1. Size of dwelling on the site

The development is considered to satisfy all deemed-to-comply provisions of the R-Codes in relation to site area and open space.

1. Lot boundary setbacks

Administration has completed an assessment of the proposal against the design principles where discretion has been sought by the development proposal in relation to lot boundary setbacks (Clause 5.1.2). Please see section 5.2.1 of this report.

1. Visual privacy

Administration has completed an assessment of the proposal against the design principles where discretion has been sought by the development proposal in relation to visual privacy (Clause 5.4.1). Please see section 5.2.1 of this report.

1. Landscaping

The development is considered to satisfy all deemed-to-comply provisions of the R-Codes in relation to landscaping.

1. Overshadowing

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

1. **Assessment of Statutory Provisions**

**5.1 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.

**5.2 State Planning Policy**

**5.2.1 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, garage width and visual privacy. As required by the R-Codes, Council in assessing the proposal against the design principles, should not apply the corresponding deemed-to-comply provisions. All other areas meet the deemed-to-comply provisions.

**Clause 5.1.3 – Lot Boundary Setbacks**

The dwelling is seeking an assessment against the design principles for setbacks proposed to the northern and southern lot boundaries from the upper floor.

*Northern elevation:*

The wall from the office to the ensuite of the upper floor is setback 1.8m to the northern lot boundary. The setback has been considered against the design principles and is assessed as appropriate as follows:

* The upper floor of the dwelling facing north incorporates four wall articulations between the balcony at the front and Bedroomroom 3 at the rear. The provided setbacks varying from 1.2m to 1.8m will allow the perception of building bulk to be broken up through the articulated walls.
* The northern elevation of the upper floor proposes highlight windows to Bedroomroom 2, Bedroomroom 3 and the office to protect the visual privacy of the future dwelling at No. 37B Kinninmont Avenue. The remainder of the windows facing north are minor openings and, therefore, the visual privacy provisions of the R-Codes are not applicable to these windows.
* The northern lot is currently vacant. In the design stage, the future landowners of the northern lot can consider the layout, design and proposed setbacks of this application in their proposal.
* In the context of ventilation, the proposed development meets the provisions of Clause 5.1.4 – Open Space. This allows airflow around the dwelling and neighbouring properties.
* In relation to the balcony, an assessment is provided against the design principles for visual privacy under Clause 5.4.1 below.

*Southern elevation:*

The wall from the staircase to the balcony of the upper floor is set back 1.3m to the southern lot boundary and the hallway is setback 2.4m from the southern lot boundary. The setbacks have been considered against the design principles and is assessed as appropriate as follows:

* The upper floor of the dwelling facing south incorporates five wall articulations between the balcony at the front and Bedroomroom 3 at the rear. The provided setbacks varying from 1.3m to 2.4m will allow the perception of building bulk to be broken up through the articulated walls.
* The development proposes a primary living area of the kitchen, dining and family room that opens onto an outdoor living area which has access to northern light. This allows for the effective passive solar design given the major openings facing north in conjunction with an outdoor living area.
* On the upper floor facing south, the master Bedroomroom proposes highlight windows to protect visual privacy to the south. The windows to the stairs, hallway and void facing south are minor openings. Therefore, the visual privacy provisions of the R-Codes are not applicable to these windows.
* The proposed development meets the deemed-to-comply provisions of Clause 5.4.2 – Solar Access for Adjoining Sites. Although the overshadowing from the development will fall over the open space of the southern lot, the application cannot be assessed against the design principles as the deemed-to-comply provisions have been met.
* The setbacks provided will allow access to natural sunlight and ventilation to the subject site and adjoining properties.
* In relation to the balcony, an assessment is provided against the design principles for visual privacy under Clause 5.4.1 below.

**Clause 5.2.2 Garage Width**

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

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

* An arbour along the southern elevation to lead pedestrians to the entry of the dwelling;
* Soft landscaping on both sides of the driveway;
* Reduced driveway width;
* A tree in the south-western corner in the front setback area; and
* The upper floor balcony above the garage which cantilevers over the garage door line to provide articulation and reduce the visual dominance of the garage door.

**Clause 5.4.1 Visual Privacy**

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

* The indirect overlooking from the eastern elevation (front) of the balcony facing south falls in the front garden area of the southern adjoining lot. The indirect overlooking does not fall over an active habitable space or outdoor living area. The indirect overlooking is over the front garden.
* The southern elevation of the balcony (facing south) and the northern elevation (facing north) are screened appropriately to meet the deemed-to-comply provisions of the R-Codes. Condition 4 is also recommended for the composite screening on the southern elevation. The screening ensures there is no direct overlooking and that visual privacy is maintained behind the front setback area. The screening facing south is shown in the image below:

Diagram

Description automatically generated with low confidence

Southern elevation of Balcony

* The indirect overlooking from the balcony facing north is likely to fall over the front garden of the future development at 37B Kinninmont Avenue.
* The design of the building, the internal layouts and the major openings ensure that all other raised major openings protect the visual privacy of the adjoining sites in accordance with the deemed-to-comply provisions of the R-Codes.
* The eastern elevation of the balcony faces Kinninmont Ave. This allows for passive surveillance of the street. The eastern elevation is shown in the image below:

Diagram

Description automatically generated

1. **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 two-storey single house has been presented for Council consideration due to objections 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 of Administration’s recommendation (above).

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| PD39.21 Scheme Amendment No. 16 – Fast Food Outlets Use Permissibility |

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| **Committee** | 9 November 2021 |
| **Council** | 23 November 2021 |
| **Applicant** | City of Nedlands |
| **Director** | Tony Free – Director Planning & Development |
| **Employee Disclosure under section 5.70 of the Local Government Act 1995** | Nil.  “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”. |
| **Attachments** | 1. Scheme Amendment No. 16 – Justification Report 2. Summary of Submissions |
| **Confidential Attachments** | 1. Full copy of Submissions |

1. **Executive Summary**

The purpose of this report is for Council to consider (post-advertising) proposed Amendment No.16 to the City of Nedlands Local Planning Scheme No. 3. It is Administration’s recommendation that Amendment No. 16 is not supported.

**Recommendation to Committee**

**Council:**

1. **Pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with Regulation 41(3)(c) of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to NOT support Amendment No. 16 to the City of Nedlands Local Planning Scheme No. 3 for the following reasons:**
2. **The Amendment is inconsistent with the City’s Local Planning Strategy that was endorsed by the Western Australian Planning Commission in 2017, and therefore does not align with the City’s strategic planning framework or direction.**
3. **The Amendment could unfairly prejudice the development of takeaway food businesses that fall within the land use definition of Fast Food Outlet, and prevent services being located in suitable locations (such as the Mixed Used zone or Specialised Activity Centres).**
4. **The Urban Development zone is not considered to be the most appropriate zone for the development of Fast Food Outlets, given it comprises only a small portion of the Scheme area.**
5. **Resolves to provide a summary of the reasons why the City does not support Amendment No.16 to the City of Nedlands Local Planning Scheme No.3, and a schedule of submissions made on the Amendment, to the Western Australian Planning Commission within twenty-one (21) days of the Resolution, in accordance with Regulation 44 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.**
6. **Discussion/Overview**

**2.1 Key Relevant Previous Council Decisions**

***Initiation of Amendment No.16***

Council was presented with Amendment No. 16 to the City of Nedlands Local Planning Scheme No.3 (the Scheme) at the 23 February 2021 Ordinary Council Meeting (OCM).

Council resolved to initiate Amendment No.16, that seeks to prohibit the ‘Fast Food Outlet’ land use within the ‘Mixed Use’ and ‘Neighbourhood Centre’ zones, therefore making Fast Food Outlets prohibited in all zones, except for the Urban Development zone.

Amendment No. 16 has undergone public advertising in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations) and is now presented to Council for its consideration.

***Local Planning Scheme No. 3 definition***

It is important to note that the Scheme definition of Fast Food Outlet not only applies to fast food companies with drive through components, but also includes those takeaway food facilities without a drive through. The Scheme provides the following definition for a Fast Food Outlet:

*means premises, including premises with a facility for drive through service, used for the preparation, sale and serving of food to customers in a form ready to be eaten –*

*(a) without further preparation; and*

*(b) primarily off the premises.*

Council must consider that seeking to prohibit the Fast Food Outlet land use from everywhere but the Urban Development zone may have unintended consequences for smaller take away style businesses, including (but not limited to) common uses such as fish and chips, kebab, pizza or sushi establishments, and other take away style food outlets that would predominantly fall within this land use classification.

If the Fast Food Outlet land use becomes prohibited within the majority of the Scheme area, future local takeaway food businesses would be unable to apply to operate. Existing and lawfully approved takeaway food businesses would become classified as ‘non-conforming uses’, requiring development approval for any alteration or extension. This creates difficultly for businesses seeking to expand or make minor modifications to their existing operations. If the lawfully approved land use is discontinued and has been discontinued for a period of 6 months, the business and/or lot loses its non-conforming use rights and would no longer legally be permitted to operate.

This could impact upon the provision of amenity and services for residents and the potential for small businesses to flourish. Some of these businesses have operated for many years and form part of the existing character of local centres and services offered to residents. Furthermore, and of relevance, takeaway food options were one of the only land uses permitted to operate during full Covid-19 lockdowns, highlighting their critical role in providing convenient food options for residents.

Banning the Fast Food Outlet land use contradicts the aims and objectives of the City’s strategic planning framework by limiting the potential diversity of commercial uses within the Mixed Use area. Proceeding with Amendment No.16 is therefore not recommended by Administration.

***Urban Development zone***

If Council proceeds with Amendment No.16, a Fast Food Outlet would only be capable of approval within the Urban Development zone. The zoning table within the Scheme does not specify the permissibility of land uses within the Urban Development zone. Instead, the Scheme requires the preparation of a Structure Plan (as a statutory mechanism) to guide subdivision, land use permissibility and development within the Urban Development zone.

The Structure Planning process generally precedes the development application process, allowing Administration and Council to consider future land uses within the Urban Development zone, before being assessed and determined by the WAPC.

**3.0 Strategic Documents**

***Local Planning Strategy***

The City’s Local Planning Strategy outlines that the City seeks to increase its Mixed Use and Commercial centres, and the diversity of commercial uses on offer within these areas. Prohibiting a land use such as Fast Food Outlets does not align with the vision of the endorsed Local Planning Strategy, as it intends to decrease the potential diversity of commercial uses within the Mixed Use area and Neighbourhood Centres.

**4.0 Consultation**

In accordance with Regulation 38(3)(a) of theRegulations and the City’s Local Planning Policy – Consultation of Planning Proposals*,* Amendment No.16 (a ‘Complex’ Amendment) was publicly advertised on the City’s YourVoice web page and in the Post Newspaper for a minimum period of 60 days. Advertising commenced on 3 April 2021 and concluded on 9 June 2021.

A total of 22 submissions were received (19 in support, 3 objecting). Key themes raised in the submissions were:

* Fast Food Outlets are not aligned with the City’s values and result in anti-social behaviour, obesity, noise, odour, traffic congestion, excessive signage and litter.
* There are already enough Fast Food Outlets in neighbouring areas.
* There is a large proportion of students in the area, who would benefit from the availability of fast food.

Refer to Attachment 2 for a copy of the Summary of Submissions, identifying the key themes raised.

**5.0 Strategic Implications**

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

The intention of Amendment No. 16 is to prohibit Fast Food Outlets within the majority of the City of Nedlands, by making the Fast Food Outlet land use classification a prohibited (‘X’) use within the Mixed Use and Neighbourhood Centre zones.

There are currently only three zones within the Scheme area where a Fast Food Outlet is legally capable of approval, being the Mixed Use, Neighbourhood Centre and Urban Development zones. The Mixed Use and Neighbourhood Centre zones encompass the majority of the Local and Neighbourhood Activity Centres within the Scheme area, where small-scale Fast Food Outlets could be considered as an appropriate land use or development.

Prohibiting Fast Food Outlets in all zones (except for the Urban Development zone) is not in keeping with the City’s Local Planning Strategy, which encourages diversity in commercial outlets on busy thoroughfares, such as Stirling Highway. Given Amendment No.16 is not aligned with the intent of the Local Planning Strategy, it does not fit within the City’s formal strategic direction and is not recommended for support. Furthermore, Amendment No.16 may undermine the function of the UWA-QEIIMC Specialised Activity Centre, which is identified within the State Government’s *Perth and Peel @3.5 million* strategic framework as a key location for future growth. Takeaway food businesses play a role in servicing such Activity Centres.

**Who benefits?**

Given it is not in line with the City’s Local Planning Strategy (which has been endorsed by the WAPC), and it proposes to prohibit a specific land use from the vast majority of the Scheme area, it is Administration’s view that the Amendment is unlikely to be supported by the WAPC.

The investment of new businesses in appropriate locations could provide employment opportunities for the City’s residents. The provision of diverse commercial businesses (including Fast Food Outlets) provides opportunities for the City to increase its employment self-sufficiency and self-containment, which is a key consideration of the Local Planning Strategy. Fast Food Outlets contribute to the provision of a variety of workplaces, which then provides opportunities for employment for residents.

**Does it involve a tolerable risk?**

Considering the inconsistencies with the City’s strategic direction, Amendment No.16 has a risk of being refused by the Minister for Planning (upon assessment and the recommendation of the WAPC).

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

The Amendment No.16 justification report and this Council report provide an appropriate amount of information.

**6.0 Budget/Financial Implications**

**Can we afford it?**

There are no immediate costs associated with Amendment No. 16, except for staff time to liaise with the WAPC. If the WAPC and the Minister approve the Scheme Amendment, there will be a small fee associated with the publishing of the Amendment.

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

There is no current impact upon rates.

**7.0 Officer / Administration comment**

This proposal is not considered to provide an optimal outcome for the City in terms of development control or in the interests of orderly and proper planning. The WAPC and Minister for Planning are unlikely to support an Amendment that seeks to ban a specific land use from what is the vast majority of the Scheme area.

Administration advises Council that Amendment No. 16 should not be supported, given its inconsistencies with the City’s endorsed Local Planning Strategy. The Amendment is also likely to unfairly impact upon future local takeaway food businesses within the City. It is considered that Amendment No 16 is unlikely to be supported by the WAPC or Minister for Planning.

For these reasons, this course of action is not supported by Administration.

**8.0 Conclusion**

In accordance with the Regulations, Council is required to pass a Resolution to either:

* 1. Support Amendment No.16 without modification; or
  2. Support Amendment No.16 with proposed modifications to address issues raised in the submissions (the City may re-advertise the modified Amendment No.16 for a period of 42 days); or
  3. Not support Amendment No.16 (Administration’s recommended Resolution).

Once a Resolution is made, Administration is required to provide all necessary documentation to the WAPC within 21 days of the Resolution. Within 90 days of receiving the documents, the WAPC must consider the documents and make a recommendation to the Minister for Planning.

Before a decision is made by the Minister, the City may be directed to advertise any requested modifications to Amendment No.16 (if deemed as significant modifications).

**8.1 Alternate Recommendation**

In the event Council wishes to support the proposed Amendment No.16, it should resolve the following alternate recommendation:

Council:

1. Pursuant to section 75 of the *Planning and Development Act 2005*and in accordance with Regulation 41(3)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, resolves tosupport Amendment No. 16 to the City of Nedlands Local Planning Scheme No. 3 as follows:

a) As detailed in Attachment 1 – Amendment No. 16 Justification Report.

1. Resolves to provide a summary of the reasons why the City supports Amendment No.16 to the City of Nedlands Local Planning Scheme No.3, and a schedule of submissions made on the Amendment, to the Western Australian Planning Commission within twenty-one (21) days of the Resolution, in accordance with Regulation 44 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.