

Planning and Development Reports

Committee Consideration – 13 April 2021

Council Resolution – 27 April 2021

Table of Contents

Item No.		Page No.
PD11.21	No. 23 Lynton Street, Swanbourne - Residential – Single House	2
PD12.21	No. 78 Waratah Avenue, Dalkeith - Amendments to approved plans for 5 Grouped Dwellings	12
PD13.21	No. 17 Doonan Road, Nedlands – Residential - 5 Single Houses.....	20
PD14.21	Proposed Amendments to the Local Planning Policy – Exempt Development.....	38
PD15.21	Consideration of Legal Advice – Possibility of Challenge to JDAP Decision on 97-105 Stirling Highway, Nedlands	41

PD11.21	No. 23 Lynton Street, Swanbourne - Residential – Single House
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Committee	13 April 2021
Council	27 April 2021
Applicant	CF Town Planning & Development
Landowner	Vanessa Reside
Director	Tony Free – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.	<p>The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.</p> <p>There is no financial or personal relationship between City staff and the proponents or their consultants.</p> <p>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.</p>
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	DA20/56128
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. Applicant's Justification Report
Confidential Attachments	1. Plans 2. Submissions 3. Assessment 4. Site photos

1.0 Executive Summary

The purpose of this report is for Council to determine a Development Application received on 26 October 2020, for a Single House at No. 23 Lynton Street, Swanbourne (the subject site).

The application was advertised to adjoining landowners and occupiers in accordance with the City of Nedlands Local Planning Policy (LPP) – Consultation of Planning Proposals and one objection was received from an adjoining property. As an objection has been received, this application is presented to Council for determination.

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) Volume 1 and is unlikely to have a significant adverse impact on the local amenity and character.

Recommendation to Committee

In accordance with Clause 68(2)(a) of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, Council approves the development application received on 26 October 2020 in accordance with plans date stamped 12 February 2021 for a Single House at Lot 12 (No. 23) Lynton Street, Swanbourne, subject to the following conditions:

1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.
2. This development approval only pertains to a Residential – Single House as indicated on the determination plans.
3. All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property's Certificate of Title.
4. Prior to occupation of the development, all major openings and unenclosed outdoor active habitable spaces, which have a floor level of more than 0.5m above natural ground level and overlook any part of any other residential property behind its street setback line shall be setback, in direct line of sight within the cone of vision from the lot boundary, a minimum distance as prescribed in C1.1 of Clause 5.4.1 – Visual Privacy of the Residential Design Codes. Alternatively, the major openings and unenclosed outdoor active habitable spaces are screened in accordance with the Residential Design Codes by either;
 - a) fixed obscured glazing or translucent glass to a height of 1.60 metres above finished floor level, or
 - b) Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure.
 - c) a minimum sill height of 1.60 metres as determined from the internal floor level, or
 - d) 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.

5. Prior to occupation of the development the finish of the parapet wall is to be finished externally to the same standard as the rest of the development in:
 - Face brick,
 - Painted render,
 - Painted brickwork; or
 - Other clean material as specified on the approved plans, and maintained thereafter to the satisfaction of the City of Nedlands.
6. All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.

7. Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners and hot water systems shall be integrated into the design of the building and not be visible from the primary street to the satisfaction of the City of Nedlands.
8. Prior to occupation of the development, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the City of Nedlands.
9. Retaining walls, fences or other structures are to be truncated or reduced to no higher than 0.75m within 1.5m of where the wall, fences, other structures adjoining vehicle access points where a driveway meets a public street to the satisfaction of the City of Nedlands.

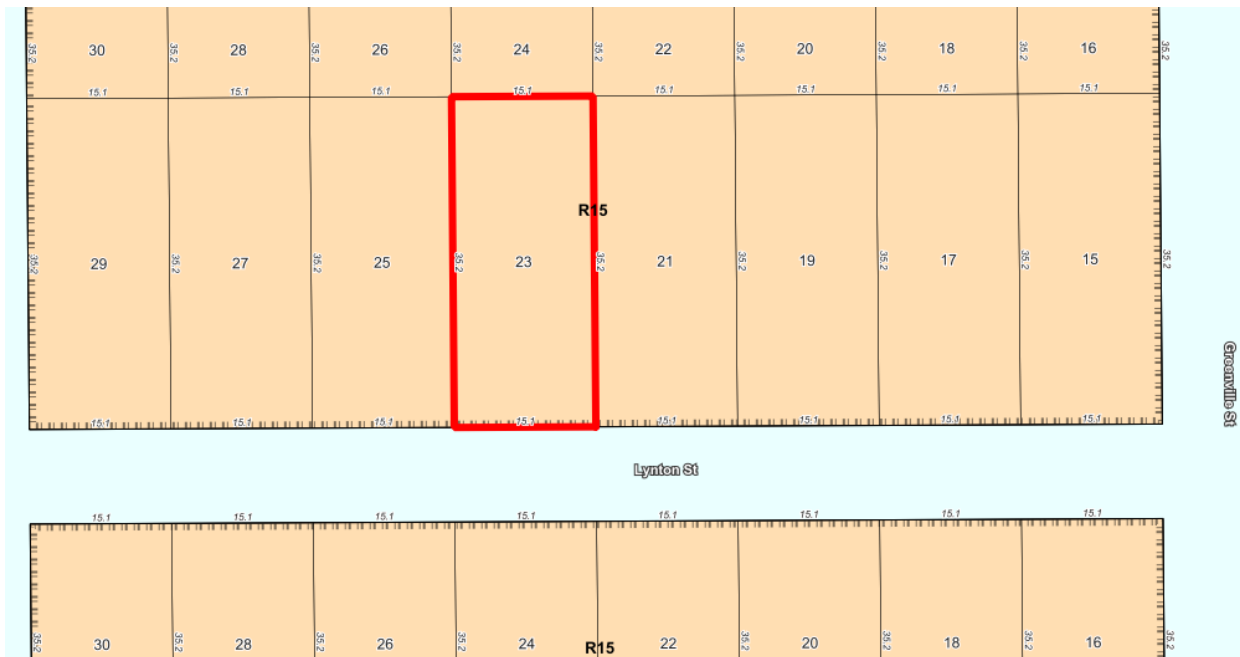
2.0 Background

2.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R15
Land area	531m ²
Additional Use	No
Special Use	No
Local Development Plan	No
Structure Plan	No
Land Use	Existing – Residential use for a Single House Proposed – Residential use for a Single House
Use Class	Permitted (P)

2.2 Locality Plan

The subject property is located in Swanbourne, within the City of Nedlands. As shown in the map below, the subject property has a density code of R15.



The property is a regular lot, with a north – south orientation. To the south is the primary street – Lynton Street. The property is bound by residential properties to the northern, eastern and western boundaries.

The subject site slopes down approximately 1 metre from east to west, with the eastern portion of the lot being situated higher than the western portion of the lot.

The subject site currently is developed with a single storey Single House.

The subject site is also an undersized lot for the R15 density code. The minimum lot area required under the R-Codes (Volume 1) for an R15 coded lot is 580m² and the subject property has a total area of 531m². This is the prevailing lot size in the immediate vicinity of the site, with lot creation having occurred prior to planning controls being in place.

3.0 Application Details

The applicant seeks development approval for a Single House, details of which are as follows:

Ground Floor:

- Double garage, Kitchen, Living, Dining, Scullery, Laundry, Master Ensuite, Study, Alfresco

Upper Floor:

- Bedroom 2, Bedroom 3, Bedroom 4, Bathroom, Playroom, Balcony

In support of the development application the applicant has provided a Justification Report, which is provided as Attachment 1.

4.0 Consultation

The application was advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to six adjoining owners and occupiers to seek comments on the aspects of the development where the applicant is seeking discretion to be applied under the Design Principles of the R-Codes for the following clauses:

- Clause 5.1.2 – Street Setbacks
- Clause 5.1.3 – Lot Boundary Setbacks
- Clause 5.2.1 – Setbacks of Garages and Carports
- Clause 5.3.8 – Retaining Walls

One (1) objection was received from an adjoining property. The following table is a summary of the concerns/comments raised and the City's response and action taken in relation to each issue:

Submission	Officer Response	Action Taken
The wall height of over 3m relative to the adjoining property, will have a detrimental impact on the light, ventilation and amenity of the property. Even though the wall height has been reduced from the original proposal, it is not acceptable and should not be supported.	The applicant has amended their plans. The original plans showed a boundary wall height of 4.1m from the top of the wall to the natural ground level (NGL) at the boundary. To address the neighbour concerns, the applicant amended their plans to provide a height of 3.44m at NGL. This amendment to the plans did not address the concerns of the adjoining landowner. Therefore, this application is presented to Council for determination. A detailed Design Principle assessment for Clause 5.1.3 – Lot Boundary Setbacks is provided at Section 5.2.1 of this Council Report.	Design Principle assessment provided under Section 5.2.1.
Council should uphold the scheme and assess the application with the design principles assessment.	As above.	As above
Advised applicant to re-work the plans so that the parapet wall of the garage is moved to the opposite lot boundary.	Applicant would like Council to consider the revised plans received by the City on 12/02/2021 and proceed with the application process.	No action required.

Note: A full copy of all relevant consultation feedback received by the City has been given to the Councillors prior to the Council meeting.

5.0 Assessment of Statutory Provisions

5.1 Planning and Development (Local Planning Schemes) Regulations 2015

Clause 67(2) of the Deemed Provisions stipulates 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 report.

In accordance with provisions (m) and (n) of the Regulations clause 67(2), due regard is to be given to the likely effect of the proposed development's height, scale, bulk and appearance, and the potential impact it will have on the amenity of the locality.

5.2 Policy/ Local Development Plan Consideration

5.2.1 Residential Design Codes – Volume 1 (State Planning Policy 7.3)

State Planning Policy 7.3 (Volume 1) of the Residential Design Codes (R-Codes) apply to single and grouped dwellings. The application is seeking an assessment under the Design Principles for the R-Codes for street setbacks, lot boundary setbacks, garage setback and retaining walls as addressed in the below tables.

Clause 5.1.2 – Street Setbacks

Design Principles
The application seeks assessment under the design principles which are as follows:
<p><i>"P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:</i></p> <ul style="list-style-type: none"> <i>• contribute to, and are consistent with, an established streetscape;</i> <i>• provide adequate privacy and open space for dwellings;</i> <i>• accommodate site planning requirements such as parking, landscape and utilities; and</i> <i>• allow safety clearances for easements for essential service corridors.</i>
<p><i>P2.2 Buildings mass and form that:</i></p> <ul style="list-style-type: none"> <i>• uses design features to affect the size and scale of the building;</i> <i>• uses appropriate minor projections that do not detract from the character of the streetscape;</i> <i>• minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and</i> <i>• positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework."</i>
Deemed-to-Comply Requirement
The deemed to comply setback to the Primary Street – Lynton Street is 9m.
Proposed
The ground floor and upper floor propose a 6m setback to the Primary Street – Lynton Street.
Administration Assessment
<p>The application meets the Design Principles for the reasons outlined below.</p> <ul style="list-style-type: none"> Clause 4.11 of the City's Residential Development Local Planning Policy provides for the consideration of a reduced primary street setback in low density areas. This allows for a reduced setback where at least 50% of the dwellings on one side of a street block have a setback of less than 9m. Where this is the case, the average setback of the street block can be used to determine the minimum primary street setback. This calculation excludes carports and minor projections. On Lynton Street, between the intersecting streets of Jameson St to the West and Greenville St to the East, the average setback on one side of the street (along the northern side where 23 Lynton is located) is 6.2m. Along the northern side of Lynton Street, the setbacks vary from 7.5m, 6.5m, 6m, 6.5m, 11m, 4.0m, 2.3m and 6.5m from west to east. Please refer to the Site Photos of the streetscape contained as Confidential Attachment 4 of this report.

- Between the intersecting streets of Jameson St and Greenville St, 75% of all the dwellings on Lynton Street are located forward of the 9m setback, representing a large proportion of the existing streetscape of Lynton Street.
- This application proposes a minimum setback of 6.0m which is in keeping with the average street setback of Lynton Street. The development is considered to be consistent with the established streetscape and contributes to the existing streetscape of the locality.
- Even with the reduced street setback and an undersized lot for the R15 density code, the development still provides for adequate privacy and compliant open space.
- The design of the development still provides sufficient space to accommodate site planning requirements such as parking and landscaping, whilst allowing for sufficient safety clearances.
- The two storey design of the dwelling provides visual interest and minimises the scale of the building through articulations and the use of various textures and materials.
- There are minor projections and a façade which does not detract from the character of the streetscape.
- The façade design of the dwelling ensures that there is a minimal proportion of the primary street elevation taken up by building services, vehicle entries, blank walls and meters.
- In light of the above, the development positively contributes to the prevailing development context and streetscape as outlined in the local planning framework. The application is considered to successfully meet the Design Principles for Clause 5.1.2 – Street Setbacks.

Clause 5.1.3 – Lot Boundary Setbacks

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p><i>“P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</i></p> <ul style="list-style-type: none"> • <i>reduce impacts of building bulk on adjoining properties;</i> • <i>provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> • <i>minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i> <p><i>P3.2 Buildings built up to boundaries (other than the street boundary) where this:</i></p> <ul style="list-style-type: none"> • <i>makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas;</i> • <i>does not compromise the design principle contained in clause 5.1.3 P3.1;</i> • <i>does not have any adverse impact on the amenity of the adjoining property;</i> • <i>ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and</i> • <i>positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.”</i>

Deemed-to-Comply Requirement
<p>The deemed to comply setback for the ground floor to the western side boundary is 1.6m.</p> <p>The deemed to comply setback for the upper floor to the eastern side boundary is 4.0m</p> <p>Building on boundary is not deemed to comply within the front setback area or where the building on boundary does not abut an existing building on boundary of a similar or greater dimension.</p>
Proposed
<p>The ground floor proposes a 1.5m setback to the western lot boundary.</p> <p>The upper floor proposes a 1.5m setback to the eastern lot boundary.</p> <p>Building on boundary is proposed within the front setback area by the Garage. The proposed building on boundary does not abut an existing building on boundary of a similar or greater dimension.</p>
Administration Assessment
<p>The application meets the Design Principles for the reasons outlined below.</p> <ul style="list-style-type: none"> • The proposal is seeking discretion for 0.1m on the ground floor of the deemed to comply setback to the western side boundary. The western elevation of the ground wall has multiple articulations which will assist in reducing the impact of building bulk on the adjoining lot. The portion of the wall seeking discretion has a total length of 16.7m along the total boundary length of 35.2m. This variation of 0.1m on the ground floor along this length with articulations is considered to be relatively minor. It is not considered to adversely impact the adjoining property through building bulk. • On the east elevation of the upper floor, a wall length and height of 13.5m and 6.2m is proposed. This requires a setback of 4.0m, whereas a 1.5m setback is proposed. The max height along the eastern boundary is 6.2m which is less than the deemed to comply height permissibility of 8.5m. The setback provided to the eastern lot boundary is considered to be appropriate and is not likely to adversely impact the adjoining property through building bulk. • Due to the north – south orientation of the lot, the development does not result in excessive overshadowing of adjoining properties. There is direct sun and ventilation to the building itself and the open space areas. • The open space proposed is compliant, with a north facing outdoor living area and living spaces. There are a number of openings which provide ventilation to the building and the setbacks proposed ensure there is sufficient ventilation to the adjoining building and open space to the adjoining site. • The development does not result in any overlooking impacts and resultant loss of privacy on the adjoining properties behind the front setback area. All the prescribed visual privacy setback provisions for a site coded R15 have been achieved. All windows from major openings of habitable rooms facing the adjoining eastern and western properties behind the front setback area are hi-lite windows. • In relation to the boundary wall, the City notes that on Lynton Street, there is a precedence of boundary walls in the front setback area. Over 70% of the dwellings on the northern side of Lynton Street have boundary walls within the front setback area. These boundary walls consist of a mix of carports, garages and the dwelling. • The design of the parapet wall for the garage ensures that there is effective use of space to maximise north-facing outdoor living areas.

- The boundary wall is not considered to adversely impact on the amenity of the adjoining western property. The boundary wall has a total height of 3.4m from the NGL at the boundary. In the R15 density code, there are no prescriptions for the height of a boundary wall. In comparison to an R20 density code, a 3.5m wall height from natural ground level is deemed to comply. The height proposed in this application for the boundary wall is less than the deemed to comply height of 3.5m for a boundary wall in a density code of R20 or greater.
- Where the boundary wall of this development proposal will abut the western property, on the adjoining western property, there are no openings to a 'habitable room. There is a wall with no windows and there is an opening to a bathroom. However, bathrooms are not considered to be 'habitable rooms.' Therefore, the location of the boundary wall is considered to be appropriate as it would not negatively impact on light or ventilation to habitable rooms or outdoor living areas of the adjoining property.
- In light of the above, the application is considered to successfully meet the Design Principles for Clause 5.1.3 – Lot Boundary Setbacks.

Clause 5.2.1 – Setbacks of Garages and Carports

Design Principles
The application seeks assessment under the design principles which are as follows: <i>“P1 The setting back of carports and garages to maintain clear sight lines along the street and not to detract from the streetscape or appearance of dwellings; or obstruct views of dwellings from the street and vice versa.”</i>
Deemed-to-Comply Requirement
The deemed to comply setback to the Primary Street – Lynton Street is 9m.
Proposed
The garage proposes a 6.0m setback to the Primary Street – Lynton Street.
Administration Assessment
<p>The application meets the Design Principles for the reasons outlined below.</p> <ul style="list-style-type: none"> • As mentioned above, the application proposes a minimum setback of 6.0m. The garage setback at 6.0m is in keeping with the average street setback of Lynton Street of 6.2m. • The setback of the garage at 6m still allows for the maintenance of clear sight lines along the street. • The design of the garage and the primary street façade is considered to be cohesive. The proposed location of the garage does not detract from the streetscape or appearance of the dwelling. • The dwelling has major openings to habitable rooms on the ground and upper floor to maintain passive surveillance. The location of the garage at the 6m setback does not obstruct views from the dwelling to the street and vice versa.

Clause 5.3.8 – Retaining Walls

Design Principles
<p>The application seeks assessment under the design principles which are as follows:</p> <p><i>“P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.”</i></p>

Deemed-to-Comply Requirement
Retaining walls on the lot boundary are deemed to comply at a height of 0.5m.
Proposed
A 0.6m high retaining wall is located on the western lot boundary
Administration Assessment
<p>The application meets the Design Principles for the reasons outlined below.</p> <ul style="list-style-type: none"> • The application is seeking discretion for 0.6m for the height of the retaining wall on the western lot boundary. • The height of the retaining wall is not considered to be excessive and is necessary to effectively use the land which slopes from east to west. • The retaining wall will allow the land to be used more effectively with appropriate levels, without detrimentally impacting upon the adjoining property.

6.0 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 Single House at No. 23 Lynton Street, Swanbourne has been submitted for Council consideration as an objection has been received. The objection raises concerns with the height of the parapet wall. The proposal meets 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 Single House is considered to be consistent with the Residential R15 density code and has been designed to complement the existing streetscape. 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 and Advice Notes.

22 October 2020

Chief Executive Officer
City of Nedlands
PO Box 9
NEDLANDS WA 6909

Dear Sir/Madam

**APPLICATION FOR DEVELOPMENT APPROVAL
PROPOSED SINGLE DWELLING (TWO STOREY)
LOT 12 (No.23) LYNTON STREET, SWANBOURNE
CITY OF NEDLANDS**

We act on behalf of the landowners as their consultant town planners and hereby lodge an Application for Development Approval with the City of Nedlands seeking the City's approval for the construction of a new two (2) storey single dwelling on Lot 12 (No.23) Lynton Street, Swanbourne.

Please find enclosed the following information to assist the City's consideration and processing of the application:

- A completed and signed 'Application for Development Approval' form;
- A complete and signed 'Metropolitan Region Scheme Form 1';
- A copy of the Certificate of Title for the subject land;
- A copy of the Bushfire Attack Level report prepared in support of the application; and
- A copy of the plans prepared in support of the application.

We request that the invoice for any development application fees payable be addressed to Mr Andrew Stevens and forwarded via email (andrew@andrewstevensconstruction.com.au or 0417933223) at the City's earliest convenience.

In assessing this application, it is requested that the City give due consideration to the following information prepared in support of the proposed new dwelling on the subject land:

PROPERTY DETAILS & STATUTORY REQUIREMENTS

The subject land is located centrally within the Cottesloe locality approximately 165 metres west of West Coast Highway and approximately 990 metres east of the coastal reserve.

The subject land is rectangular in shape, comprises an area of 531.2m² and contains a fall in natural ground levels across the site from approximately 20.45 metres along the land's eastern side boundary to approximately 19.19 metres along the land's western side boundary, which equates to a fall of 1.26 metres across the width of the lot (see site feature survey). It is noted that the verge area abutting the subject land does not comprise a street tree (see Figure 1- Aerial Site Plan).

The subject land is currently developed and used for 'single dwelling' purposes and contains a number of physical improvements including a single detached dwelling, patio structures, outbuildings and boundary fencing. It should be noted that all existing structures on the land will be removed as part of this application (see Figure 1 – Aerial Site Plan).



Figure 1 - Aerial Site Plan



Figure 2 – The existing development on the subject land (left photo) and a new dwelling on the adjoining western property, with a 6 metre front setback.

The existing dwelling and associated structures on the land are not listed on the City of Nedlands Municipal Heritage Inventory (MHI) and may therefore be removed subject to the City issuing a demolition permit.

The subject land is classified 'Residential' zone under the City of Nedlands current operative Local Planning Scheme No.3 (LPS No.3) with a density coding of R15. Under the terms of the City's LPS No.3 the development and use of any land classified 'Residential' zone for 'single dwelling' purposes is listed as a permitted ("P") use.

The subject land has been identified by the Department of Fire and Emergency Services (DFES) as being located within a bushfire prone area. A BAL report (see copy attached) has been prepared in support of the application and has identified that the bushfire level applicable in this instance is low and will not adversely impact the subject land.

DEVELOPMENT STANDARDS

The design of the proposed new dwelling on Lot 12 has been formulated with due regard for the relevant 'deemed to comply requirements' of the Residential Design Codes Volume 1 (R-Codes) and the City of Nedlands current operative Local Planning Scheme No.3 (LPS No.3) including any relevant Local Planning Policies with the exception of the following:

- a) City of Nedlands Residential Development Local Planning Policy: Clause 4.1 – 'Street setback';
- b) R-Code Element 5.1.3 C3.1 – 'Lot boundary setback';
- c) R-Code Element 5.1.3 C3.2 – 'Lot boundary setbacks' (buildings on boundary); and
- d) R-Code Element 5.4.1 C1.1 – 'Visual privacy'.

The following table provides justification for those aspects of the proposed new dwelling on Lot 12 seeking a variation to the 'deemed to comply requirements' of the relevant planning framework.

Table 1 - Justification

R-CODE DESIGN ELEMENT & 'DESIGN PRINCIPLES'	PROPOSED VARIATION TO 'DEEMED TO COMPLY REQUIREMENTS'	JUSTIFICATION
<p>City of Nedlands Residential Development Local Planning Policy: Clause 4.1 – Street setback';</p> <p><i>Where a lot has a significant site constraint (including but not limited to an irregular configuration, topography changes or being considerably undersized for the assigned density code), which prevents the setback of a dwelling being consistent with an established streetscape, a reduced setback may be considered appropriate where the mass and form of the building is designed with an appropriate bulk and scale which minimises impact to the streetscape.</i></p>	<p>The application proposes that: the primary front setback for the new dwellings is 6 metres in lieu of 9 metres as required by the 'deemed to comply requirements' of Clause 4.1 of the City's Residential Local Planning Policy.</p>	<ol style="list-style-type: none"> 1. The proposed variation to the front setback will not result in the new dwelling having a detrimental impact on the local streetscape in terms of bulk and scale. 2. It is significant to note that the proposed front setback complies with the R-Codes for lots coded R15. 3. The reduced setback to the dwelling is considered to be a positive aspect to the local streetscape as the front balcony of the dwelling will contribute to providing an active street frontage for the development and will improve passive surveillance of the street. 4. The proposed new dwelling has been designed to include a balcony along the front façade and the use of varying materials (i.e. render, feature panels etc.), all of which will provide visual interest to the building when viewed from the public realm. 5. The reduced front setback for the proposed new dwelling will not have an adverse impact on the visual outlook from any adjoining properties on the street. 6. The proposed new dwelling makes effective use of all available space and provides for the creation of adequate internal and external living areas which will benefit all future occupants, given the relatively small lot area of the subject land (the lot is undersized for the R15 coding). In addition, the small nature of the lot, including the depth, is a constraint and difficult to achieve a 9 metre front setback along with a 6 metre rear setback. In this instance, the dwelling has provided the required rear setback which will allow for a large traditional back yard that will comprise exposure to the northern winter sun. 7. This part of the Lynton Street streetscape includes a new dwellings and garage/carports that comprise a reduced front setback that would have also obtained a variation to the City's Local Planning Policy. Given this, the Lynton Street streetscape is not consistent and that the new dwelling on Lot 12 will not be out of character with its

		<p>surroundings. Figure 2 illustrates the existing dwelling on adjoining No.25 Lynton Street which comprises a 6 metre front setback, which is consistent with the setback proposed for the new dwelling on Lot 12.</p> <ol style="list-style-type: none"> The proposed new dwelling on Lot 12 meets the 'deemed to comply requirements' of Element 5.4.2 C2.1 ('Solar access for adjoining sites') of the R-Codes. The front setback area of the new dwelling will be adequately landscaped to ensure that it will make a positive contribution to the local streetscape. <p>Having regard for all of the above it is contended that the proposed variation to the front setback for the new dwelling on Lot 12 will not have an adverse impact on the streetscape, will not adversely impact the existing dwellings along Lynton Street, will enhance the local streetscape, it satisfies the 'local housing objectives' of the City's Policy, will not compromise the objectives of the City's policy and may therefore be supported and approved by the City.</p>
<p>R-Code Element 5.1.3 C3.1 – 'Lot boundary setback'</p> <p><i>P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</i></p> <ul style="list-style-type: none"> • reduce impacts of building bulk on adjoining properties; • provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and • minimise the extent of overlooking and resultant loss of privacy on adjoining properties. 	<p>The application proposes the upper floor balcony wall will comprise a setback from the eastern side boundary of 1.509 metre in lieu of 3.8 metres required by the 'deemed to comply requirements' of Element 5.1.3 C3.1 of the R-Codes.</p>	<ol style="list-style-type: none"> The setback variation for the proposed new dwelling is well clear of the front boundary and is due to the balcony being unscreened. In the instance that the balcony were to be screened, the setback would comply. Given this, it is contended that the proposal to have an unscreened balcony will result in less bulk to the building and will allow for good passive surveillance of the street. In light of the above, the reduced setback to the eastern side boundary will not have an adverse impact on the streetscape in terms of bulk and scale. That portion of the proposed new dwelling on Lot 12 comprising a reduced setback to the eastern side boundary will abut a side setback area of the existing single detached dwelling on adjoining Lot 13 (No.21) Lynton Street which comprises vegetation along the boundary that will assist with screening the new dwelling when viewed from the adjoining property (see Figure 1 – Aerial Site Plan). Given this, the proposed setback variation to the eastern side boundary will not have an adverse impact on any key outdoor living areas associated with the existing dwelling on the adjoining property. The proposed new dwelling on Lot 12 meets the 'deemed to comply requirements' of Element 5.4.2 C2.1 (i.e. 'Solar access for adjoining sites') of the R-Codes. In addition, it is contended that the reduced setback to the eastern side boundary will not result in any impacts on access to natural light or ventilation for the existing dwelling on the adjoining property. <p>Having regard for the above it is contended that the portion of the new dwelling on Lot 12 comprising a reduced setback from the eastern side boundary satisfies the 'design principles criteria' of Element 5.1.3 of the R-Codes, will not have a negative impact on the adjoining property or the streetscape and may therefore be approved by the City.</p>
<p>5.1.3 C3.2 & C3.3 - Lot boundary setback (building on boundary)</p>	<p>The application proposes that the new dwelling on Lot 12 will seek the following</p>	<ol style="list-style-type: none"> The proposed new dwelling on Lot 12 meets the 'deemed to comply requirements' of Element 5.4.2 of the R-Codes (i.e. 'Solar access for adjoining sites') and will

<p>P3.2 Buildings built up to boundaries (other than the street boundary) where this:</p> <ul style="list-style-type: none"> • makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas; • does not compromise the design principle contained in clause 5.1.3 P3.1; • does not have any adverse impact on the amenity of the adjoining property; • ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and • positively contributes to the prevailing development context and streetscape. 	<p>variations to the 'deemed to comply requirements' of Element 5.1.3 C3.2 of the R-Codes:</p> <ol style="list-style-type: none"> i) The R-Codes does not allow a parapet wall as of right within areas coded R15; and ii) The height of the parapet wall will be 3.9 metres in lieu of a maximum height of 3.5 metres and an average height of 3 metres prescribed within the R-Codes (for land coded R20 and above – this is the only standard that could be applied in this instance regarding wall height). 	<p>not detrimentally impact access to light and ventilation for the existing dwellings on any adjoining properties.</p> <ol style="list-style-type: none"> 2. The additional height to the parapet wall can be attributed to the fall in levels across the site and the need to provide sufficient internal clearance for the garage. The height of the parapet wall is also a result of the constructed method for the upper floor. In reviewing the height, it is contended that the proposal will not have a detrimental impact on the streetscape. 3. The proposed parapet wall will assist with the effective use of space for the new dwelling, provide for improved use of the outdoor living area and improved visual privacy with the adjoining properties. 4. Other than the front balcony (which will be addressed further in this report). the proposed new dwelling on Lot 12 meets the 'deemed to comply requirements' of Element 5.4.1. C1.1 ('Visual privacy') of the R-Codes. 5. It is significant to note that the length of the parapet wall is minor, being only 6.3 metres and reflects a similar parapet wall for the existing dwelling on adjoining No.25 Lynton Street, which also comprises a parapet wall along its western side boundary of a similar nature to that proposed for Lot 12. 6. The proposed new dwelling has been designed to orientate the outdoor living area and major openings to the internal living areas to obtain the northern winter sun. This will also allow for the northern sun to penetrate into the dwelling. 7. That portion of the new dwelling to be built up to the western side boundary will abut the extensive front yard area and side setback area of the existing single detached dwelling on Lot 11 (No.25) Lynton Street (see Figure 1 – Aerial Site Plans). In addition, the parapet wall along the western side boundary will not cast a shadow over adjoining Lot 11 at 12 noon on 21 June (i.e. winter solstice). Given these facts, it is contended that the proposed new dwelling on Lot 12 will not have an adverse impact on any outdoor living areas or any major opening to habitable rooms associated with the existing dwelling on adjoining Lot 11. <p>Having regard for the above it is contended those portions of the new dwelling on the subject land proposed to be built up to the western side boundary satisfies the 'design principles criteria' of Element 5.1.3 of the R-Codes, will not have an adverse impact on the adjoining properties or the local streetscape and may therefore be approved by the City.</p>
<p>R-Code Element 5.4.1 C1.1 – 'Visual privacy'</p> <p><i>"Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</i></p> <ul style="list-style-type: none"> • <i>building layout and location;</i> 	<p>The application proposes that a portion of the 7.5 metre 'cone of vision' from the front balcony of the new dwelling on Lot 12 will extend over the adjoining eastern property contrary to the 'deemed to comply requirements' of Element 5.4.1 C1.1 of the R-Codes.</p>	<ol style="list-style-type: none"> 1. The proposed new dwelling on Lot 12 has been designed to provide a large balcony along the land's Lynton Street frontage to provide for improved levels of passive surveillance over the street and assist with improving security and safety of the public realm 2. In addition to the above, the new dwelling comprises a number of openings facing the street to provide for improved passive surveillance.

<ul style="list-style-type: none"> • design of major openings; • landscape screening of outdoor active habitable spaces; and/or <p>location of screening devices."</p>		<p>3. The proposed new dwelling has been designed to effectively locate all major openings to habitable rooms and the balcony in a manner which avoids direct overlooking of the rear yard areas of any existing dwellings on the adjoining properties. This includes the use of highlight windows, providing sufficient setbacks to boundaries and ensuring the dividing fence provides screening to restrict any direct over-looking.</p> <p>4. That portion of the 'cone of vision' from the front balcony of the new dwelling on Lot 12 will extend over the front setback area of the existing single detached dwelling on adjoining Lot 13 (No.21) Lynton Street (see Figure 1 – Aerial Site Plan). It should be noted that the area being overlooked by the balcony on Lot 12 is currently exposed and visible from the street. Given this, the proposed overlooking from the balcony will not have an adverse impact on any key habitable spaces for the existing dwelling on adjoining Lot 13 and that the balcony actually provides passive surveillance of the front setback area of the existing dwelling on adjoining Lot 13.</p> <p>Having regard for the above it is submitted that the portion of the 'cone of vision' extending from the front balcony of the proposed new dwelling on Lot 12 over the adjoining eastern property is considered to be minor in nature, will not adversely impact the amenity of the adjoining property and may therefore be approved by the City.</p>
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CONCLUSION

The proposed new dwelling has been designed to meet the needs of the landowners and reflects the changing nature of the street. In reviewing the proposal, it is noted the variations being sought as part of this application are minor and will not have an adverse impact on the local streetscape or the adjoining properties in the immediate locality in terms of bulk and scale. In fact, the front setback and dwelling appearance is consistent with the existing built form along Lynton Street and will not be out of character with its surroundings.

In light of the above information and justification, we respectfully request the City's favorable consideration and approval of the Application for Development Approval for the construction of a new dwelling on Lot 12 (No.23) Lynton Street, Swanbourne in accordance with the plans prepared in support of the application.

Should you have any queries or require any additional information regarding any of the matters raised above please do not hesitate to contact me on 0407384140 or carlof@people.net.au.

Yours faithfully,



Carlo Famiano
Town Planner
CF Town Planning & Development

cc Landowners

PD12.21	No. 78 Waratah Avenue, Dalkeith - Amendments to approved plans for 5 Grouped Dwellings
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Committee	13 April 2021
Council	27 April 2021
Applicant	Urbanista Town Planning
Landowner	Emerald Development Alliance Pty Ltd
Director	Tony Free – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.	<p>The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.</p> <p>There is no financial or personal relationship between City staff and the proponents or their consultants.</p> <p>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</p>
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	DA21-60926
Previous Item	DA19-42171 and SAT20-1285
Delegation	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to the application proposing five dwellings.
Attachments	<ol style="list-style-type: none"> 1. Applicant's Cover Letter 2. Landscape Plan
Confidential Attachments	<ol style="list-style-type: none"> 1. Plans 2. Assessment

1.0 Executive Summary

The purpose of this report is for Council to determine an amendment an existing development approval received on 23 February 2021. The application is for an amendment to the finished floor levels, site works and retaining for 5 two-storey grouped dwellings at No. 78 Waratah Avenue, Dalkeith.

The original application for the grouped dwellings (DA19-42171) was refused by Council on 25 August 2020 at the Ordinary Council Meeting (OCM). The Applicant subsequently lodged an application for review (DR185/2020) with the State Administrative Tribunal (SAT) dated 14 August 2020. Following a Directions Hearing and Mediation, amended plans were received by the City and the application was approved by Council, subject to conditions on 27 October 2020.

The proposed amendments were advertised to adjoining landowners and occupiers in accordance with the City of Nedlands Local Planning Policy – Consultation of

Planning Proposals. At the close of the advertising period, no submissions were received in relation to the amendments proposed with this application.

This application is presented to Council for determination in accordance with the City's Instrument of Delegation, as the application proposes to five dwellings. It is recommended that the application be approved by Council as the amendments are considered to satisfy the design principles of the Residential Design Codes (R-Codes) Volume 1. The amendments are unlikely to have a significant adverse impact on the local amenity and character.

Recommendation to Committee

In accordance with Clause 77 of the Deemed Provisions of the *Planning and Development (Local Planning Schemes) Regulations 2015*, Council grants approval to the amendment of the development approval dated 27 October 2020 (DA19/42471) for 5 grouped dwellings at 78 Waratah Avenue, Dalkeith in accordance with the amended plans dated 23 February 2021 and subject to the following conditions:

- 1. This application is limited to amendments to the finished floor levels, site works and retaining as indicated on the plan date stamped 23 February 2021.**
- 2. This 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.**
- 3. The previous development approval DA19/42171 dated 27 October 2020 and conditions (with the exception of Condition 4) there-in, remain in effect. This excludes the plans approved as part of the previous development application.**
- 4. The plans dated 22 May 2020 and 29 September 2020 which form part of the approval for DA19/42171 are cancelled and replaced with plans dated stamped 23 February 2021.**
- 5. Condition 4 of the previous development approval DA19/42171 dated 27 October 2020 is replaced with the following condition:**
 - The Landscape Plan (Attachment 2) forms part of this approval. Landscaping shall be installed and maintained in accordance with the approved landscaping plan prepared by Kelsie Davies Landscape Architecture dated 2 March 2021, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City.**

2.0 Background

2.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential

R-Code	R60
Land area	1012m ²
Additional Use	No
Special Use	No
Local Development Plan	No
Structure Plan	No
Land Use	Existing – vacant Proposed – ‘Residential’ use for Grouped Dwellings
Use Class	Permitted (P)

2.2 Subject Site Details

The subject property is coded R60 and currently comprises of one lot at No. 78 Waratah Avenue and one lot at No. 78b Waratah Avenue. Both lots have recently been cleared of all structures. There is a driveway adjacent to the eastern boundary for access to No. 78b Waratah Avenue, Dalkeith. (Figure 2 below)

The land is currently vacant and is seeking determination of this application for amendments to ensure efficient sewerage flow at the site prior to development proceeding.

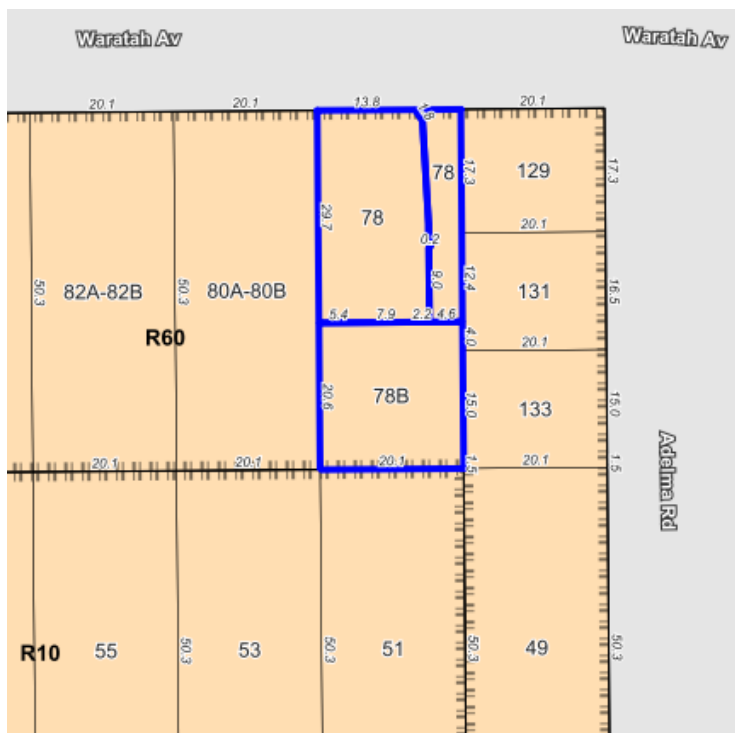


Figure 1 – Development context



Figure 2 - Aerial

The site slopes slightly towards the north, from a ground level of 18.29m AHD in the south eastern corner to 15.46m AHD in the north eastern corner. A sewer line runs parallel to the rear lot boundary.

The subject property is surrounded by a mix of single houses and grouped dwellings to the east, south and west. To the north of the subject property, there are a variety of retail and commercial tenancies at Dalkeith Village. Approximately 70m to the south of the subject property is the Dalkeith Primary School.

3.0 Application Details

The amendments of the dwellings relate to changes to the finished floor levels (FFLs), site works and retaining works. These changes necessary for the functionality of the sewerage connection on the site.

The sewerage connection is currently at the rear of the site, where the topography of the site is at its highest. Due to issues in the flow of the sewerage from the rear to the lot to the front of the lot, the FFLs of Units 1, 2 and 3 towards the front of the site are required to be elevated for efficient flow and connection. As shown in the table below, the FFLs for Units 1, 2 and 3 are increased and the FFLs for Units 4 and 5 are decreased.

Summary of proposed amendments to the FFL			
Lot	Approved FFL	Required earthworks	Amended FFL (subject to this DA)
1	15.712m AHD	+738mm	16.450m AHD
2	16.226m AHD	+224mm	16.450m AHD
3	16.741m AHD	+1mm	16.740m AHD
4	17.255m AHD	-5mm	17.250m AHD
5	17.255m AHD	-5mm	17.250m AHD

In considering the amendments, the nature and intensity of the grouped dwellings or the use of the site are not being exacerbated by this amendment.

4.0 Consultation

The application is seeking assessment under the Design Principles of the R-Codes for the following as a result of the increase in the FFLs for the sewerage:

- Clause 5.1.3 – Lot Boundary Setbacks
- Clause 5.3.7 – Site Works
- Clause 5.3.8 – Retaining Walls
- Clause 5.4.1 – Visual Privacy

The amendments were advertised to adjoining landowners and occupiers between 2 March 2021 and 16 March 2021. At the close of the advertising period, no submissions were received in relation to the amendments proposed in this application.

5.0 Assessment of Statutory Provisions

5.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, Part 9, clause 67(2) (Consideration of application by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. The City considers that the development meets these objectives, particularly in relation to height, scale and landscaping and overall amenity.

5.2 Policy/Local Development Plan Consideration

5.2.1 State Planning Policy 7.3 – Residential Design Codes (Volume 1)

State Planning Policy 7.3 (Volume 1) of the Residential Design Codes (R-Codes) apply to single and grouped dwellings. The application is seeking an assessment under the Design Principles for the R-Codes for lot boundary setbacks, site works, retaining walls and visual privacy as addressed in the below tables.

Clause 5.1.3 – Lot Boundary Setbacks

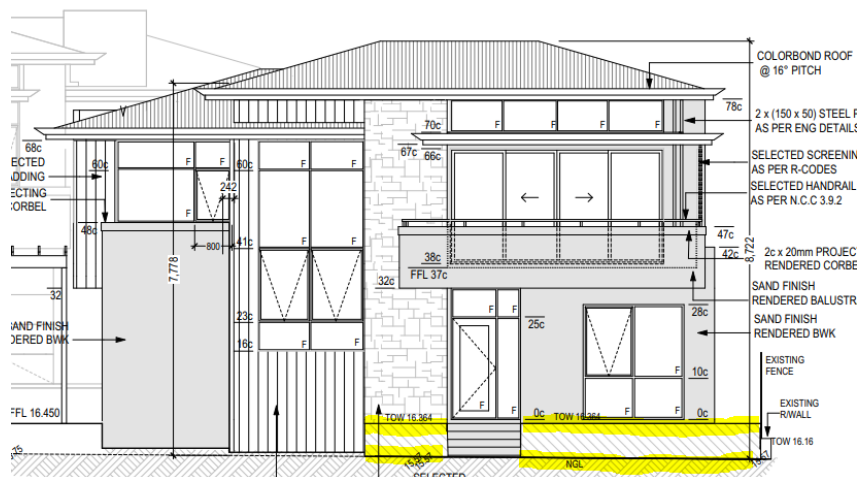
Design Principles
<p><i>P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</i></p> <ul style="list-style-type: none"> <i>• reduce impacts of building bulk on adjoining properties;</i> <i>• provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and</i> <i>• minimise the extent of overlooking and resultant loss of privacy on adjoining properties.</i>
Deemed-to-Comply Requirement and Proposal
<p>The deemed to comply setback for the study and robe wall is 1.1m to the western lot boundary. 1.0m is proposed for the ground floor of Unit 1.</p> <p>The deemed to comply setback for the balcony and living room wall is 1.3m to the western lot boundary. 1.2m is proposed for the upper floor of Unit 1.</p>
Administration Assessment
<p>The proposal meets the Design Principles for the following reasons:</p> <ul style="list-style-type: none"> The application is seeking minor discretions to the deemed to comply lot boundary setbacks. The study and robe wall is seeking a 0.1m discretion and the balcony and living room wall is also seeking a 0.1m discretion to the western lot boundary. These minor variations of 0.1m are not considered to unduly impact on the adjoining property through excessive building bulk. The subject site has a north – south lot configuration. This means that any overshadowing from the proposed development would fall wholly within the lot. Given this configuration, the development proposal still permits adequate direct sun and ventilation to the building and open spaces on the adjoining sites. The 0.1m discretion does not jeopardise the sunlight and ventilation exposure on the adjoining western site. On the ground floor, the study will be screened from the adjoining western site so as to minimise the extent of overlooking and resultant loss of privacy to the adjoining western site. The robe is not considered to be a major opening to a 'habitable room' and therefore is not considered to contribute to any overlooking. On the upper floor, the balcony is proposed to be screened in accordance with the requirements of the R-Codes to ensure there is no overlooking to the western adjoining lot. The living room has a window size of <1m², which is not considered to be a 'major opening' as per the R-Codes. Therefore, the living room is considered to minimise the extent of overlooking and resultant loss of privacy on the adjoining western lot.

Clause 5.3.7 – Site Works

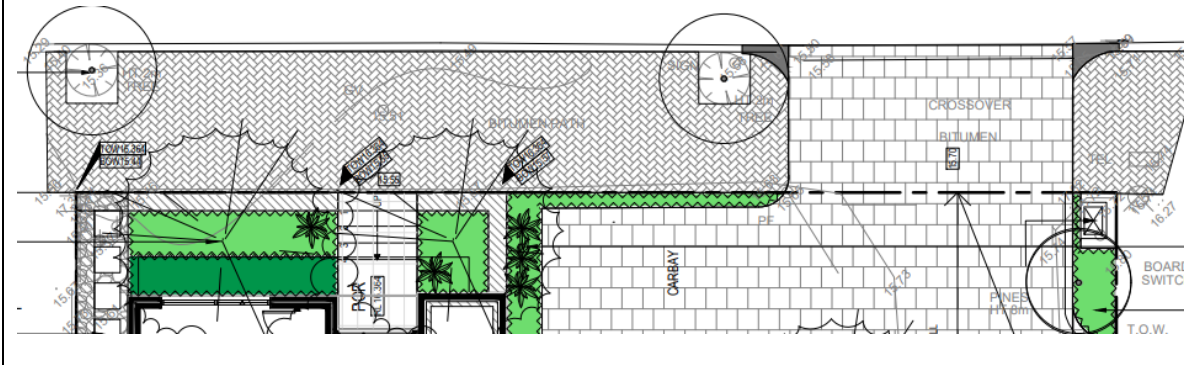
Design Principles
<i>P7.1 Development that considers and responds to the natural features of the site and requires minimal excavation/fill.</i>
<i>P7.2 Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.</i>
Deemed-to-Comply Requirement and Proposal
Site works along the boundary are deemed to comply to 0.5m. 0.56m of fill is proposed along the western lot boundary of Unit 1.
Administration Assessment
The proposal meets the Design Principles for the following reasons: <ul style="list-style-type: none"> • The site works are considered to be necessary as they respond to the natural features of the lot, which slopes from the highest point to the rear to the lowest point to the front. • The site works are considered to respect the natural ground level at the boundary of the site and as viewed from the street. • These site works are also considered to be necessary to allow for the efficient flow of sewerage within the site.

Clause 5.3.8 – Retaining Walls

Design Principles
<i>P8 Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.</i>
Deemed-to-Comply Requirement and Proposal
Retaining walls on the boundary are deemed to comply to a height of 0.5m. A 0.92m high retaining wall is proposed along the Waratah Avenue elevation facing the primary street.
Administration Assessment
The proposal meets the Design Principles for the following reasons: <ul style="list-style-type: none"> • The retaining wall is required to support the site works and fill proposed for the site. As shown in the image below, the retaining wall will be a feature in the front setback area, with steps to the entry.



- The retaining wall is considered to be necessary for the land to be used effectively – namely to support the fill and site works to permit the efficient flow of sewerage on site.
- The retaining walls do not detrimentally affect adjoining properties, as the retaining wall is located at the front of the lot and not along a side lot boundary.
- As shown in the landscaping plan and in the image below, the front setback area will be landscaped with a variety of plants and vegetation.



Clause 5.4.1 – Visual Privacy

Design Principles
<p><i>P1.1 Minimal direct overlooking of active habitable spaces and outdoor living areas of adjacent dwellings achieved through:</i></p> <ul style="list-style-type: none"> • building layout and location; • design of major openings; • landscape screening of outdoor active habitable spaces; and/or • location of screening devices. <p><i>P1.2 Maximum visual privacy to side and rear boundaries through measures such as:</i></p> <ul style="list-style-type: none"> • offsetting the location of ground and first floor windows so that viewing is oblique rather than direct; • building to the boundary where appropriate; • setting back the first floor from the side boundary; • providing higher or opaque and fixed windows; and/or • screen devices (including landscaping, fencing, obscure glazing, timber screens, external blinds, window hoods and shutters).
Deemed-to-Comply Requirement and Proposal
<p>The deemed to comply setback in the cone of vision for Bed 2 on the ground floor of Unit 1 to the western lot boundary is 3.0m. A 1.6m setback is proposed by Bed 2.</p> <p>The deemed to comply setback in the cone of vision for Bed 3 on the ground floor of Unit 1 to the western lot boundary is 3.0m. A 1.6m setback is proposed by Bed 3.</p>
Administration Assessment
<p>The proposal meets the Design Principles for the following reasons:</p> <ul style="list-style-type: none"> • Bed 2 and Bed 3 are located on the ground floor of Unit 1. The FFL of these bedrooms are raised more than 0.5m above the natural ground level, therefore requiring an assessment for visual privacy. • These openings have been setback 1.6m from the boundary, providing an acceptable setback to the western adjoining site for a lot boundary setback assessment.

- These bedrooms are provided with standard windows to ensure that there is sufficient light and ventilation to these rooms. The use of smaller or hi-lite windows is considered to be sub-optimal. The provision of adequate lighting and ventilation is considered to be important for the amenity of the residents of this unit.
- Dividing fencing of 1.8m in height (standard height) will provide a screening measure from these windows which are located on the ground floor. The dividing fencing will minimise the extent of overlooking to the western adjoining property.
- Given that the windows are on the ground floor, it is considered that the dividing fencing will allow the proposal to ensure there is minimal direct overlooking of the adjoining western property.

7.0 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 is seeking amendments to the finished floor levels, site works and retaining for the already approved 5 two-storey grouped dwellings at the subject site. The departures from the R-Codes have been assessed against the relevant design principles for lot boundary setbacks, site works, retaining and visual privacy. The proposal demonstrates compliance with these design principles. The amendments meet the key amenity related elements of R-Codes Volume 1 and as such are unlikely to have a significant adverse impact on the local amenity of the area.

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

17 February 2021

City of Nedlands
Attn: Planning Services
71 Stirling Hwy
NEDLANDS WA 6009

Dear Sir/Madam,

NO.78 (LOT 398) WARATAH AVENUE, DALKEITH **PROPOSED AMENDMENT TO DA19-42171**

Urbanista Town Planning have been engaged by the landowners of the subject property to prepare and submit a development application for minor amendments to the approved development at 78 Waratah Avenue, Dalkeith. Attached in this submission are the following documents:

- Completed and signed Application for Development Approval Form and MRS Form 1
- Development plans

The subject development was initially lodged with the City of Nedlands ('City') on 22 May 2020 and was refused, against the Administrations' recommendation, by the City's Council at its Ordinary Council Meeting on 25 August 2020. The application was submitted for review to the State Administrative Tribunal, to achieve an amenable outcome primarily relating to the topics of Street Setbacks, Boundary Walls, and Open Space and landscaping. Following mediation on the 22 September, the application was again considered at the City's council on the 13 October 2020, where the amended plans were approved subject to conditions.

The proposed amendments will raise the FFL of lots 1, 2 and 3 via retaining works and are necessary for the functionality of sewerage connection on-site. Sewerage connection is at the rear of the site, where the topography is highest (NGL of 18.24m AHD) resulting in issues, detected during the preparation of working drawings, for proper flow of sewerage from the front three lots to this elevated connection point. The approved FFL of the lots of 78 Waratah, as well as the proposed amendment, is summarised in the table below.

SUMMARY OF PROPOSED AMENDMENTS			
Lot #	Approved FFL	Required Earthworks	Amended FFL
1	15.712m AHD	+738mm	16.450m AHD
2	16.226m AHD	+224mm	16.450m AHD
3	16.741m AHD	+1mm	16.740m AHD
4	17.255m AHD	-5mm	17.250m AHD
5	17.255m AHD	-5mm	17.250m AHD

The amendments do not alter the nature, intensity, or fundamental aspects of the grouped dwellings as approved. No aspect of the development is modified other than to raise the FFL of these lots with associated adjustments, as necessary. The proposed fill and retaining works, predominantly affect only lots 1 and 2, are minor and the resulting building heights are within the range of approved building heights of DA19-42171.

Overall, the development remains consistent in scale and form with other development in the locality and is unlikely to have any adverse impact on the amenity of adjacent properties or the streetscape generally. We look forward to working with the City to reach an amicable and timely solution in development approval.

Should you have any question in relation to the details provided in this submission, please contact Petar Mrdja on 6444 9171 or petar@urbanistaplanning.com.au.

Yours sincerely,

Petar Mrdja | Director

GENERAL NOTES:
1. THIS IS A CONCEPT PLAN ONLY.
2. ALL STRUCTURES SUBJECT TO
ENGINEERING AND COUNCIL APPROVAL.
3. ALL MEASUREMENTS TO BE CHECKED
PRIOR TO CONSTRUCTION.

City of Nedlands
Received
02 March 2021

REV	DATE	DWN	DESCRIPTION
A	29.09.2020	KD	LANDSCAPE CONCEPT PLAN
B	22.02.2021	KD	UPDATED CONCEPT PLAN

LEGEND

TREES

EXISTING TREES
TO BE RETAINED

DWARF CITRUS TREES
EG. TAHITI LIME

SMALL ORNAMENTAL TREES
EG. CREPE MYRTLE

SMALL SCREENING TREES
EG. MAGNOLIA TEDDY BEAR

SMALL ORNAMENTAL TREES
EG. FLOWERING ALMOND

FEATURE PLANTS

SELECTED FEATURE PLANTING

PLANTING

PLANTING TYPE 01
LOW / GROUNDCOVERS

PLANTING TYPE 02
SCREENING PLANTING

SELECTED ARTIFICIAL TURF

SURFACE FINISHES

SELECTED GRAVEL

500x500mm PAVER STEPPERS

LANDSCAPE AREA

CALCULATIONS

LANDSCAPE AREAS

Total Landscape areas = 121m² (12% of site)

CANOPY COVER

Existing Tree = approx. 80m²

Proposed Trees:

8 x Small Trees = 56m²

7 x Medium Trees = 196m²

Total Canopy Cover = 332m² (33% of site)

LANDSCAPE PLANTING PALETTE

Symbol	Species	Common Name	Spacing	Size
Trees:				
OTlat	Citrus latifolia	Dwarf Tahitian Lime	As Shown	100L
OTlim	Citrus limon	Dwarf Eureka Lemon	As Shown	100L
LAGind	Lagerstroemia indica	White Crepe Myrtle	As Shown	100L
MAGted	Magnolia 'Teddy Bear'	Teddy Bear Magnolia	As Shown	100L
PRUdol	Prunus dolcis	Flowering Almond	As Shown	100L
SAPseb	Sapium sebiferum	Chinese Tallow	As Shown	100L
Shrubs and Groundcovers:				
AJUprep	Ajuga reptans	Bungle Weed	3/m3	140mm
ALTit	Alternanthera 'Little Ruby'	Little Ruby	3/m3	140mm
DIAeme	Dianella tasmanica 'Emerald Cascade'	Emerald Cascade	3/m3	140mm
GARoso	Gardenia 'O So Fine'	O So Fine	3/m3	140mm
LAUnob	Lauris nobilis	Bay Tree	2.5/linm	200mm
LEUbro	Leucophya brownii	Silver Cushion Bush	3/m3	140mm
LIRjus	Liriope muscari 'Just Right'	Just Right	3/m3	140mm
LIRjus	Liriope muscari 'Just Right'	Just Right	3/m3	140mm
LOMit	Lomandra 'Tanika'	Tanika	3/m3	140mm
NANbli	Nandina domestica 'Blush'	Dwarf Sacred Bamboo	3/m3	200mm
NANbli	Nandina domestica 'Flirt'	Dwarf Sacred Bamboo	3/m3	200mm
MURpan	Muraya paniculata	Orange Jessamine	2.5/linm	200mm
PITmis	Pittosporum tobira 'Miss Muffet'	Miss Muffet	3/linm	200mm
RHAori	Rhapiolepis indica 'Oriental Pearl'	Dwarf Indian Hawthorn	3/linm	200mm
SANtri	Sansevieria trifasciata laurentii	Mother-in-law's Tongue	3/m3	200mm
SCAfan	Scaevola humilis 'Purple Fusion'	Fan Flower	3/m3	140mm
TRAjas	Trachelospermum jasminoides	Star Jasmine	3/m3	140mm
Feature Plants:				
ALCtop	Aloe hybrid	Topaz	As Shown	12L
AGAatt	Agave attenuata	Foxtail	As Shown	12L
STRreg	Strelitzia reginae	Bird of Paradise	As Shown	12L

NOTES

1. LANDSCAPE WORKS

1.1 ALL AREAS ARE TO BE FINE GRADED EVENLY TO CONFORM TO KERB LEVELS AND SURROUNDING FINISHES.

1.2 SURFACES SHALL BE FREE FROM DEPRESSIONS, IRREGULARITIES AND NOTICEABLE CHANGES IN GRADE. GENERALLY, GRADES SHALL DEViate IN LEVEL NO GREATER THAN 20mm IN ONE LINEAR METRE.

2. SOIL PREPARATION

2.1 PLANTED AREAS SHALL BE SPREAD WITH MIN. 50mm OF APPROVED STANDARD SOIL CONDITIONER THAT SHALL BE RIPPED INTO EXISTING SOIL TO A MIN. DEPTH OF 200mm.

2.2 ARTIFICIAL TURF AREAS SHALL BE INSTALLED OVER COMPACTED SUB GRADE TO SUPPLIERS SPECIFICATION.

3. PLANTING

3.1 PLANTED AREAS SHALL BE MULCHED WITH AN ORGANIC MULCH UNLESS OTHERWISE STATED TO A MINIMUM DEPTH OF 75mm.

3.2 ADVANCED TREES SHALL BE STAKED W/ 50x50mm DIA HARDWOOD POSTS. POSTS SHALL BE PAINTED BLACK AND INSTALLED TO A MIN DEPTH OF 500mm. TREES SHALL BE SECURED TO POLES W/ RUBBER TIES IN FIGURE 8.

3.4 TREE LOCATIONS ARE AS SHOWN - REFER TO LEGEND.

3.5 SHRUBS OVER 500mm ARE NOT TO BE PLANTED ON VERGE AREAS (SIGHT LINES).

3.6 SHRUBS & GROUNDCOVERS IN MIXED PLANTING AREAS ARE TO BE PLANTED AT RANDOM IN GROUPINGS OF 3 OR 4.

3.7 ALL SHRUBS & GROUNDCOVERS TO BE SELECTED FROM PROPOSED PLANTING PALETTE. DETAILED PLANTING PLAN SHALL BE SUPPLIED BEFORE INSTALLATION.

4. IRRIGATION

4.1 ALL PLANTING AND TURF AREAS TO BE IRRIGATED VIA A FULLY AUTOMATIC SYSTEM FROM MAINS.

4.2 ALL GARDEN BEDS TO BE IRRIGATED VIA POLY RISER JETS. ALL TREES TO BE IRRIGATED VIA BUBBLERS.

4.3 WATER PRESSURE TO HAVE A MINIMUM FLOW RATE OF 30L/pm AT 300kPa FROM THE WATER CONNECTION POINT.

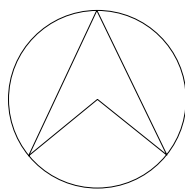
4.4 INDIVIDUAL CONTROLLERS TO BE LOCATED IN EACH GARAGE, COMMON CONTROLLER TO BE LOCATED IN BIN STORE UNLESS OTHERWISE DIRECTED.

4.5 SLEEVES BENEATH PAVED SURFACES TO BE PROVIDED BY OTHERS.

5. GENERAL

5.1 PLEASE NOTE THAT KDLA'S QUOTATION & SCHEDULE OF QUANTITIES IS TO TAKE PRECEDENCE OVER DRAWING NOTES.

5.2 ALL PLANTING TO BE APPROVED ON SITE BY SUPERINTENDENT BEFORE INSTALLATION.



PD13.21	No. 17 Doonan Road, Nedlands – Residential - 5 Single Houses
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Committee	13 April 2021
Council	27 April 2021
Applicant	Summit Developments
Landowner	Elberton Property 9 Pty Ltd
Director	Tony Free – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.	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.
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	DA/20-58509
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. Site photographs 2. Applicant report
Confidential Attachments	1. Development Plans 2. Landscape Plan 3. Planning Assessment 4. Overview of key lot boundary variations

1.0 Executive Summary

The purpose of this report is for Council to determine a Development Application received from the applicant on the 15 November 2020, for five two-storey single houses at No. 17 Doonan Road, Nedlands contained in **Confidential Attachment 1**.

The land was approved for a five lot, green title subdivision by the Western Australian Planning Commission (WAPC) on 16 July 2020. Although titles have not yet been issued, the City has assessed the application as five single houses as opposed to grouped dwellings.

Each single house within the subject site comprises 3 bedrooms and two bathrooms with two car parking bays within a garage at grade.

The application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. Six objections were received during the advertising period, five of which were based on valid planning matters.

Following amendments made by the applicant, the only remaining minor issues of assessment relate to street setback, lot boundary setback, open space, the setback of the garage, overshadowing of Lot 207 and landscaping. It is recommended that the application be refused by Council as further modifications are needed to address these inter-related design issues and therefore meet the design principles.

Recommendation to Committee

Council, in accordance with clause 68(2)(c) of the Deemed Provisions refuses to grant development approval for five (5) two-storey single houses at No. 17 (Lot 77) Doonan Road, Nedlands, for the following reasons:

- 1. Non-compliance with the deemed-to-comply requirements and inconsistency with the Design Principles of R-Codes Vol. 1 in relation to the following design elements:**
 - a) Clause 5.1 Context objectives**
 - b) Clause 5.1.2 Street setback deemed-to-comply requirements C2.1 and C2.4 buildings setback from the primary street and Design Principles P2.1 and P2.2 in respect of Lot 206, 207, 208, 209 and 210.**
 - c) Clause 5.1.3 Lot boundary setback deemed-to-comply requirements C3.1(i) for buildings setback from lot boundaries and Design Principle P3.1 with respect to Lots**
 - d) Clause 5.1.4 Open space deemed-to-comply requirement C4 and Design Principle P4 with respect to all lots.**
 - e) Clause 5.4.2 Solar access for adjoining sites deemed-to-comply requirement C2.1 and Design Principle P2.1 and P2.2 with respect to development on Lot 206 and its on development on Lot 207**
- 2. Inconsistency with aims (a), (c) and (l) of the Scheme and SPP7.0 Design of the Built Environment with respect to Design Principle 2 – Landscaping and Design Principle 3 – Built form and Scale and Design Principle 6 – Amenity.**
- 3. Does not satisfy clause 67(2)(m) with respect to the compatibility of the development with the desired future character outlined in the draft Melvista West Transition Zone LPP, and the consequent bulk impact on the large upper floors on the streetscape and adjoining land.**

2.0 Background

2.1 Land Details

Metropolitan Region Scheme Zone	Urban
Local Planning Scheme Zone	Residential
R-Code	R60
Land area	921m ²
Additional Use	N/A
Special Use	N/A
Local Development Plan	N/A
Structure Plan	N/A
Land Use	Residential (Single house)
Use Class	Proposed – Permitted (P) Residential (Grouped dwellings)

2.2 Locality Plan

The subject site is 921m² in area and is located within the street block bounded by Stirling Highway to the north, Doonan Road to the east, Jenkins Avenue to the south, and Marita Road to the west. The subject site has primary frontage to Doonan Road and secondary frontage to Jenkins Avenue.

Within the street block, the land abutting the highway is zoned Mixed Use R-AC1 with the remaining land in the street block forming a transitional growth and built form area. The subject site is coded Residential R60, which is a medium density coding that contemplates low to mid-rise apartments and grouped dwellings.

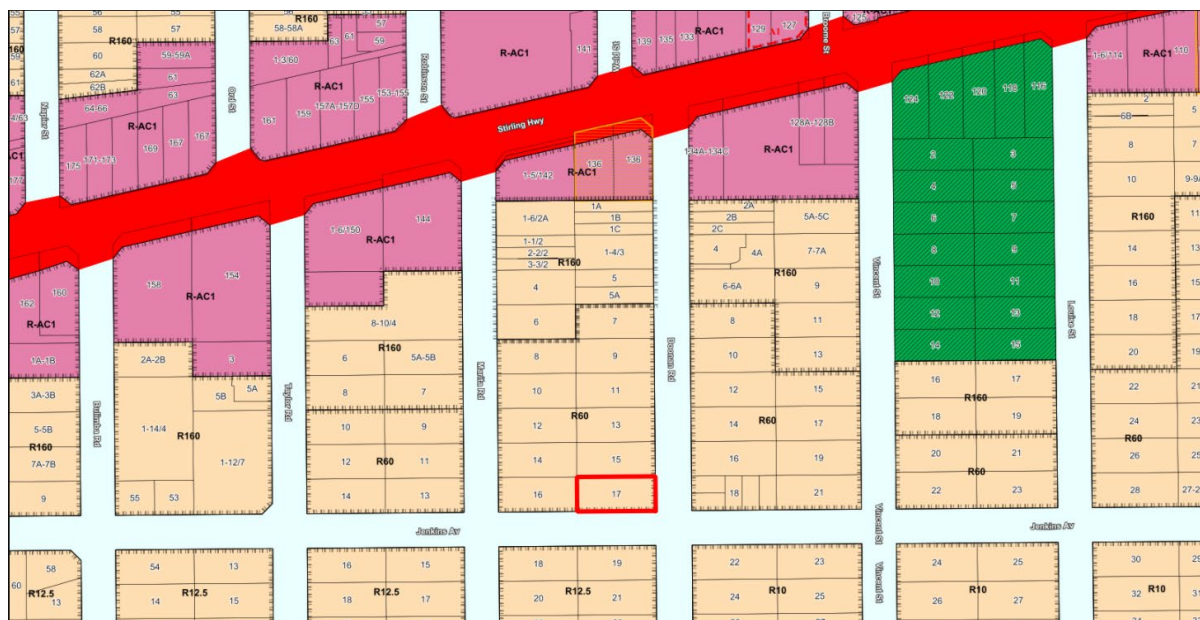


Figure 1 - Planning context

Although the surrounding area is predominated by single houses, it is not an intact streetscape, as there are a number of redeveloped homes and recently subdivided lots in close proximity to the site. Site visit photos are contained as **Attachment 1**. Directly opposite the site, a similar proposal for five single houses was approved by Council in September 2020. The area is considered to be undergoing change.

Reflecting the diverse range of housing stock, the primary street setbacks of the buildings within the immediate locality range from 3m to 9m. Side setbacks are inconsistent, however, based on the aerial, most dwellings feature 1m-2m setbacks. In terms of building height, most buildings are one to two storeys in height.

The predominant landscape character of this locality is characterised by vegetated front and rear gardens and mature canopy tree within the verge area. Vehicle access is also a common feature as there is no rear laneway access.

The site is located in the identified Melvista West Transition Zone. In September 2020 Council adopted for advertising a draft Local Planning Policy which seeks to define the desired future character and calibrate appropriate design and built form settings with respect of this area.

3.0 Application Details

The applicant seeks development approval to construct 5 single houses, the details of which are as follows:

- 3 bedrooms;
- two bathrooms; and
- two bay garage.

By way of justification in support of the development application the applicant has provided an assessment of the proposal in accordance with the planning framework, contained in **Attachment 2**.

4.0 Consultation

The applicant is seeking assessment under the Design Principles of the R-Codes for the following:

- Street setbacks
- Lot boundary setbacks
- Open space
- Setback of garages and carports / garage width
- Site works / Retaining
- Visual Privacy

The development application was advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to 34 residents and landowners. Five objections and five non-objections which were submitted. The City notes that the 5 submissions in support of the proposal were submitted by the landowner of 5 subdivided lots (formerly No. 18 Doonan Road). A breakdown of the issues raised in submissions is provided graphically in **Figure 2** below:

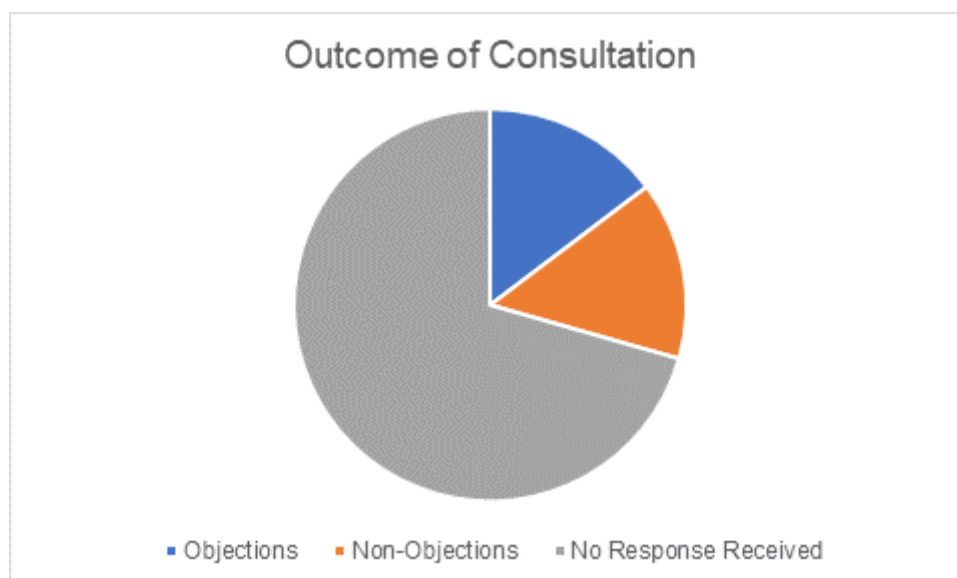


Figure 2 – Outcomes of public consultation

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

Issue	No. of times issue was raised	Officer Response	Action Taken
Dividing Fence	1	Dividing fences are generally a civil matter and not a valid planning matter.	Nil.
Street setback	2	Objection supported The development unreasonably encroaches into the street setback area. Refer to the assessment of Street setback later in the report.	Reason for refusal
Lot boundary setbacks	4	Objection supported The dwellings currently sit outside of the acceptable building envelope, which is reinforced by the shortfall in open space. Refer to the assessment of Street setback later in the report.	Reason for refusal
Open space	3	Objection supported The proposal involves open space shortfalls of between 8-13%. Several considerations of the Design Principle have not been met. Refer to the Planning Assessment later in the report.	Reason for refusal
Setback of garage	4	Objection Not Supported The development could be made compliant with no discernible benefit for the streetscape. The City has taken a pragmatic approach to the setback of the garage and carports and supports the variation.	No further action
Visual privacy	4	Objection not supported Several respondents objected to the full height windows on the northern elevations particularly Lot 206. However, the proposal is largely compliant with the requirements of element 5.4.1 – Visual privacy.	Condition

		The only variation noted in the assessment is considered to meet the design principles and can be appropriately conditioned. Refer to the Planning Assessment later in the report.	
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5.0 Assessment of Statutory Provisions

5.1 Planning and Development (Local Planning Schemes) Regulations 2015

Schedule 2, clause 67(2) (Consideration of application by local government) stipulates 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.

In accordance with provisions (m) and (n) of the Regulations clause 67(2), due regard is to be given to the likely effect of the proposed development's height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

5.2 Local Planning Scheme No. 3

An assessment of the Scheme as they relate to this application is provided below.

Item	Requirement	Proposal	Satisfies
9 – Aims of Scheme	a) Protect and enhance local character and amenity	The primary street setbacks, lack of landscaping and open space and the large bulky upper floors of each dwelling are not considered to enhance the local character or amenity of the locality.	Modifications required
	b) Respect the community vision for the development of the district;	The development is not considered to adversely affect the community vision for the development of the district in that it reflects the endorsed Local Planning Strategy.	Yes
	c) Achieve quality residential built form outcomes for the growing population;	The built form of the development has been assessed and is requires some modifications to be consistent with this Aim.	Modifications required
	d) To develop and support a hierarchy of activity centres;	The medium-rise development is consistent with the intent of the R60 density code identified by Local Planning Scheme No. 3. The development will contribute to the dwelling target set out in the Local Planning Strategy for this transition zone.	Yes
	e) To integrate land use and transport systems;	The development is located in walking distance of high-frequency public transport on Stirling Highway.	Yes
	f) Facilitate improved multi-modal access into and around the district;	The site is located on the Safe Active Streets Network – a pedestrian and cycle friendly boulevard.	Yes

	g) Maintain and enhance the network of open space;	The development does not impact the City's network of open space.	Yes
	h) Facilitate good public health outcomes;	The development is not considered to adversely affect the desired public health outcomes.	Yes
	i) Facilitate a high-quality provision of community services and facilities;	The development is not considered to adversely affect the community services or facilities and will contribute to ensuring their viability.	Yes
	j) Encourage local economic development and employment opportunities;	The development is considered to positively contribute to the support of local businesses, during and post-construction.	Yes
	k) To maintain and enhance natural resources;	The development will retain three street trees and plant two further trees.	Yes
	l) Respond to the physical and climatic conditions;	Minor modifications to meet his objective	Partially
	m) Facilitate efficient supply and use of essential infrastructure;	The development does not negatively impact this objective.	Yes
16.2 - Residential Zone Objectives	To provide for a range of housing and a choice of residential densities to meet the needs of the community;	The proposal is considered to provide a type of housing that will contribute to the City's housing diversity.	Yes
	To facilitate and encourage high quality design, built form and streetscapes throughout residential areas;	The development has achieved a quality design, with an appropriate built form and streetscape presentation. It is noted that a multiple dwelling outcome may have achieved a smaller footprint and allowed a greater proportion of landscaping.	Yes
	To provide for a range of non-residential uses, which are compatible with and complementary to residential development;	This objective is not applicable to the subject application.	N/A
	To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks;	Minor modifications are needed to make the development compatible with its setting.	No

32.1(2-6) - Parking	Cash-in-lieu parking	of	None	N/A – the City does not have a Car Parking Strategy to guide cash-in-lieu. Therefore, these scheme provisions cannot be applied.
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6.3 Design of the Built Environment (State Planning Policy 7.0)

Design Principle	Officer Comment
1. Context and Character Good design responds to and enhances the distinctive characteristics of a local area, contributing to a sense of place.	A discussion of the context of this area was provided earlier in the report. The development proposes five single houses that all address the street, have individual driveways and entries. Other elements of the proposal, however, are not considered consistent with the local area. The minimal setbacks provided to all boundaries particularly to the street results in a different character to that of recent approvals. Minor improvements are needed to meet this principle is considered to have been met.
2. Landscape quality Good design recognises that together landscape and buildings operate as an integrated and sustainable system, within a broader ecological context.	The landscape plan, contained in Attachment 3 , proposes features small areas of crowded tree planting on-site and the retention and planting of street trees. Further open space and pulling back the building envelope would assist in improving the landscape provision. Further modifications are needed to meet this principle.
3. Built form and scale Good design ensures that the massing and height of development is appropriate to its setting and successfully negotiates between existing built form and the intended future character of the local area.	The upper and/or ground floors require modification to improve the proportion of open space provided to each dwelling, reduce the overall building bulk and improve the massing of each dwelling. Further modifications are needed to meet this principle.
4. Functionality and build quality Good design meets the needs of users efficiently and effectively, balancing functional requirements to perform well and deliver optimum benefit over the full life cycle.	All rooms are of an appropriately size and the layout is simple and functional. This principle is considered to have been met.
5. Sustainability Good design optimises the sustainability of the built environment,	There are no sustainability provisions that relate to single houses as deemed-to-comply requirements of the R-Codes Vol. 1. Although there are no sustainability measures identified, the proposed

delivering positive environmental, social and economic outcomes.	<p>dwellings are consistent with the surrounding development.</p> <p>This principle is considered to have been met.</p>
<p>6. Amenity</p> <p>Good design provides successful places that offer a variety of uses and activities while optimising internal and external amenity for occupants, visitors and neighbours, providing environments that are comfortable, productive, and healthy.</p>	<p>Lot 207 will have poorer amenity due to the building bulk and overshadowing caused by the proposed dwelling on Lot 206.</p> <p>All other proposed dwellings are considered to achieve this design principle, as gardens are co-located with living areas, providing positive outlook, and softening the impact of the development as viewed from adjoining properties.</p> <p>Minor modifications are needed to the proposed dwelling on Lot 206 to achieve this principle.</p>
<p>7. Legibility</p> <p>Good design results in buildings and places that are legible, with clear connections and easily identifiable elements to help people find their way around.</p>	<p>The entry to Unit 1 is clear and easily accessed from the street, via a defined pedestrian path. All remaining dwellings are accessed via the communal driveway.</p> <p>This principle is considered to have been met.</p>
<p>8. Safety</p> <p>Good design optimises safety and security, minimising the risk of personal harm and supporting safe behaviour and use.</p>	<p>Each dwelling has a major opening or balcony facing the driveway or street, providing adequate passive surveillance. Further, there are no areas capable of being used for concealment.</p> <p>This principle is considered to have been met.</p>
<p>9. Community</p> <p>Good design responds to local community needs as well as the wider social context, providing environments that support a diverse range of people and facilitate social interaction.</p>	<p>The development provides a degree of dwelling diversity within the City.</p> <p>This principle is considered to have been met.</p>
<p>10. Aesthetics</p> <p>Good design is the product of a skilled, judicious design process that results in attractive and inviting buildings and places that engage the senses.</p>	<p>The proposed materials are considered higher quality, than what a standard grouped dwelling development typically features. The materials reference the area and are consistent with the contemporary homes and buildings within the surrounding area.</p> <p>This principle is considered to have been met.</p>

6.3 Policy/Local Development Plan Consideration

6.3.1 Residential Design Codes – Volume 1 (State Planning Policy 7.3)

The key issues of assessment that the applicant is seeking assessment under the Design Principles of the R-Codes are Street setback, Lot boundary setback, Open space, Setback of garages and carport, and Solar access. These have been assessed and found to require further modification to meet the design principles. All remaining variations meet the design principles (refer to Confidential Attachment – Planning Assessment appended to this report).

Element 5.1.2 - Street setback

Design Principles
<p>P2.1 Buildings set back from the street boundaries an appropriate distance to ensure they:</p> <ul style="list-style-type: none"> • Contribute to and are consistent with, an established streetscape; • Provide adequate privacy and open space for dwellings; • Accommodate site planning requirements such as parking, landscape, and utilities; and • Allow safety clearances for easements for essential service corridors. <p>P2.2 Buildings mass and form that:</p> <ul style="list-style-type: none"> • uses design features to affect the size and scale of the building; • uses appropriate minor projections that do not detract from the character of the streetscape; • minimises the proportion of the façade at ground level taken up by building services, vehicle entries and parking supply, blank walls, servicing infrastructure access and meters and the like; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.
Deemed-to-Comply Requirement
<p>C2.1 Buildings set back from the primary street boundary:</p> <ol style="list-style-type: none"> i. in accordance with Table 1 (2m); ii. corresponding to the average of the setback of existing dwellings on each adjacent property fronting the same street; iii. reduced by up to 50 per cent provided that the area of any building, including a carport or garage, intruding into the setback area is compensated for by at least an equal area of open space between the setback line and line drawn parallel to it at twice the setback distance (refer Figure 2a, 2b and 2c); iv. in the case of areas coded R15 or higher, where: <ul style="list-style-type: none"> • a grouped dwelling has its main frontage to a secondary street; • a single house results from subdivision of an original corner lot and has its frontage to the original secondary street; or • a single house or grouped dwelling (where that grouped dwelling is not adjacent to the primary street), has its main frontage to a communal street, right-of-way or shared pedestrian or vehicle access way; and • the street setback may be reduced to 2.5m, or 1.5m to a porch, verandah, balcony or the equivalent (refer Figure 2b and 2d). v. to provide for registered easements for essential services. <p>C2.2 Buildings set back from the secondary street boundary in accordance with Table 1 (1m);</p> <p>C2.3 Buildings set back from the corner truncation boundary in accordance with the secondary street setback in Table 1 (1m);</p> <p>From LPP – Residential Development</p> <p>C2.4i. A minor incursion such as a porch, balcony, verandah, architectural feature or the equivalent may project not more than 1m into the street setback area provided that the total of such projects does not exceed 50% of the building façade as viewed from the street (Not applicable as upper floors are greater than 50%).</p> <p>C2.4ii. For lots with a density code greater than R15, projections greater than 1m and exceeding 50% of the building façade may project into the street setback area provided an equivalent open space area is under Clause 5.1.2 C2.1iii. (Not applicable as the open space and side setbacks do not comply).</p>

Proposed
<p>The following minimum setbacks are provided:</p> <ul style="list-style-type: none"> • The dwelling proposed on Lot 206 is setback 0.97m from the primary street • The dwelling proposed on Lot 207 is setback 1.01m from the primary street • The dwelling proposed on Lot 208 is setback 1.01m from the primary street • The dwelling proposed on Lot 209 is setback 1m from the primary street • The dwelling proposed on Lot 210 is setback 1m from the primary street
Administration Assessment
<p>The ground floor portion of each dwelling is setback in accordance with the deemed to comply criteria for primary and secondary streets.</p> <p>The setback of the upper floor balconies require an additional 0.5m-0.53m to comply with the minimum 1.5m prescribed setback. The shortfall does not meet Design Principle P2.1 and P2.2 for the following reasons:</p> <p>P2.1</p> <ul style="list-style-type: none"> • The development encroaches into the street setback area preventing consistency with the emerging character in this locality, guided by previous approvals such as 18 Doonan Road. • Minor improvements are needed in respect of the setback of the garages to ensure that vehicle entries do not dominate the street setback area. • The development overall requires minor modification with respect to the setback, landscaping and bulk of the upper floor, to positively contribute to the future development context and streetscape. • The proportion of open space is not consistent with the density code and the cantilevered upper floor contributes to site cover. <p>All other elements of P2.1 and P2.2 are considered to have been met:</p> <ul style="list-style-type: none"> • The dwellings are provided with adequate parking, landscaping and utilities; • The subject site is not burdened with any easements. • The dwellings are generally articulated and feature a varied material and colour palette. • Although the garages exceed the maximum proportion in element 5. The ground level is consistent with infill development of this nature.

Element 5.1.3 – Lot boundary setback

Design Principles
<p>P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:</p> <ul style="list-style-type: none"> • reduce impacts of building bulk on adjoining properties; • provide adequate direct sun and ventilation to the building and open spaces on the site and adjoining properties; and • minimise the extent of overlooking and resultant loss of privacy on adjoining properties. <p>P 3.2 Buildings built up to boundaries (other than the street boundary) where this:</p> <ul style="list-style-type: none"> • makes more effective use of space for enhanced privacy for the occupant/s or outdoor living areas; • does not compromise the design principle contained in clause 5.1.3 P3.1; • does not have any adverse impact on the amenity of the adjoining property; ensures direct sun to major openings to habitable rooms and outdoor living areas for adjoining properties is not restricted; and • positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework.

Deemed-to-Comply Requirement
<p>C3.1 Buildings which are set back in accordance with the following provisions, subject to any additional measures in other elements of the R-Codes:</p> <ul style="list-style-type: none"> i. buildings set back from lot boundaries in accordance with Table 1, Tables 2a and 2b (refer to Figure Series 3 and 4); <p>Walls may be built up to a lot boundary behind the street setback (specified in Table 1 and in accordance with clauses 5.1.2, 5.2.1 and 5.2.2), within the following limits and subject to the overshadowing provisions of clause 5.4.2 and Figure Series 11:</p> <ul style="list-style-type: none"> i. where the wall abuts an existing or simultaneously constructed wall of similar or greater dimension; ii. in areas coded R20 and R25, walls not higher than 3.5m with an average of 3m or less, up to a maximum length of the greater of 9m or one-third the length of the balance of the lot boundary behind the front setback, to one side boundary only; iii. in areas coded R30 and higher, walls not higher than 3.5m with an average of 3m or less, for two-thirds the length of the balance of the lot boundary behind the front setback, to one side boundary only; or iv. where both the subject site and the affected adjoining site are created in a plan of subdivision submitted concurrently with the development application.
Proposed
<p>An overview of the key lot boundary setback variations that currently do not meet the design principles is provided in Confidential Attachment and are listed below:</p> <p><u>Lot 206</u></p> <ul style="list-style-type: none"> • Ground – North – All (identified as A in Confidential Attachment) is setback 1.6m in lieu of 3.1m • Upper – North – All (identified as B in Confidential Attachment) is setback 1.6 in lieu of 2.2m • Upper – South – All (identified as C in Confidential Attachment) is setback 1.5m in lieu of 2.2m <p><u>Lot 207</u></p> <ul style="list-style-type: none"> • Upper – North – All (identified as D in Confidential Attachment) is setback 1.7m in lieu of 2m <p><u>Lot 209</u></p> <ul style="list-style-type: none"> • Upper – East – All (identified as E in Confidential Attachment) is setback 1.5m in lieu of 2.2m <p><u>Lot 210</u></p> <ul style="list-style-type: none"> • Upper – West – All (identified as F in Confidential Attachment) is setback 1.5m in lieu of 2.4m <p>The following walls built on the building are non-compliant and require modification as they do not meet the design principles:</p> <p><u>Lot 208</u></p> <ul style="list-style-type: none"> • The two storey wall (stairs) built on the boundary (identified as G in Confidential Attachment) <p><u>Lot 209</u></p> <ul style="list-style-type: none"> • The two storey wall (stairs) built on the boundary (identified as H in Confidential Attachment)

Administration Assessment
<p><u>C3.1 - Side and rear setbacks</u></p> <p>The side and rear setbacks noted above do not meet the design principles for the following reasons:</p> <ul style="list-style-type: none"> The development has not minimised bulk on adjoining properties. Each dwelling has pushed both the ground and upper floor outside of the acceptable building envelope and does not provide adequate open space. Modifications to either the ground and/or upper floor are needed to address this design principle. <p>All other considerations of Design Principles 3.1 are considered to have been met:</p> <ul style="list-style-type: none"> Lots 206, 208, 209, 210 have open space that are designed to maximise the northern aspect. Adequate light is provided to Lot 207. Although minimal setback is proposed, adequate ventilation is provided. Overall, the dwellings have been designed to minimise the extent of overlooking by proposing high-light windows and other forms of screening. <p>All remaining setback shortfalls are considered minor and meet the design principles. Refer to the Planning Assessment appended to this report.</p> <p><u>C3.2 - Building on boundary</u></p> <p>The building on boundary proposed on Lots 208 and 209 do not meet Design Principle P3.2 for the following reason:</p> <ul style="list-style-type: none"> The two storey boundary walls do not abut a similar wall and result in building bulk with consequent impacts on the amenity of the (internal) residents. <p>The above-mentioned boundary walls and all remaining boundary walls are considered to meet the following considerations of P3.2:</p> <ul style="list-style-type: none"> are relatively short in length, and most are single storey in height, consistent with the expectations of the R60 density code; The walls do not have an adverse impact on visual privacy to either habitable rooms or outdoor living areas; The walls do not unreasonably restrict ventilation or sunlight; and Had the boundary walls abutted one another, the City would have supported the proposal.

Element 5.1.4 – Open space

Design Principles
<p>P4 Development incorporates suitable open space for its context to:</p> <ul style="list-style-type: none"> reflect the existing and/or desired streetscape character or as outlined under the local planning framework; provide access to natural sunlight for the dwelling; reduce building bulk on the site, consistent with the expectations of the applicable density code and/or as outlined in the local planning framework; provide an attractive setting for the buildings, landscape, vegetation and streetscape; provide opportunities for residents to use space external to the dwelling for outdoor pursuits and access within/around the site; and provide space for external fixtures and essential facilities.
Deemed-to-Comply Requirement
<p>The minimum proportion of open space for dwellings within Residential R60 is 40%.</p>

Proposed
<p>Every dwelling proposed includes a shortfall in open space which are as follows:</p> <p>Lot 206: 29.5%</p> <p>Lot 207: 30%</p> <p>Lot 208: 28%</p> <p>Lot 209: 28%</p> <p>Lot 210: 28%</p> <p>The above open space calculation is based on buildings, including enclosed and roofed balconies, that cantilever over the ground floor contribute to site cover. This interpretation is supported by the new definition of the draft Medium Density Code which aligns with the City.</p>
Administration Assessment
<p>The provision of open space for each dwelling does not meet the following considerations of Design Principle P4:</p> <ul style="list-style-type: none"> • The proposal does not reflect the emerging streetscape character of this locality which has greater street setbacks than is proposed. The cantilevered upper floors of each dwelling result in greater bulk and reduced landscape opportunity; • The proposal does not reduce building bulk onsite, as there is little separation provided internally and externally. The cantilevered encroaches into the acceptable setback areas, contributes to site cover and building bulk; and • Adequate access to natural sunlight is provided to the dwellings proposed on Lot 206, 208, 209 and 210. The dwelling and open space at Lot 207 has restricted light access due to the lot orientation and the design of the upper floor of the dwelling at Lot 206. <p>All other design principles are considered to have been met:</p> <ul style="list-style-type: none"> • Adequate space is provided for landscaping and vegetation behind the street setback; • Sufficient space is provided for residents' outdoor pursuits; and • Adequate space is provided for external fixtures and facilities. <p>The City would likely be supportive of the proposal had the development achieved open space consistent with the approval at 18 Doonan Road, Nedlands.</p>

Element 5.4.2 – Solar access to adjoining properties

Design Principles
<p>P2.1 Effective solar access for the proposed development and protection of the solar access.</p> <p>P2.2 Development designed to protect solar access for neighbouring properties taking account the potential to overshadow existing:</p> <ul style="list-style-type: none"> • outdoor living areas; • north facing major openings to habitable rooms, within 15 degrees of north in each direction; or roof mounted solar collectors
Deemed-to-Comply Requirement
<p>The minimum proportion of open space for dwellings within Residential R60 is 50%.</p>
Proposed
<p>Lot 206: Approximately 72% or 133m² of 185m²</p> <p>Lot 207: Nil</p> <p>Lot 208: Nil</p> <p>Lot 209: Nil</p> <p>Lot 210: Nil</p>

Administration Assessment

The proposed dwelling on Lot 206 does not meet the design principles for this element for the following reasons:

- The major openings, open space and outdoor living area proposed on Lot 207 are unreasonably overshadowed by the large upper floor of the proposed dwelling on Lot 206 which has minimal setback to all boundaries. The upper floor should be redesigned to minimise the extent of overshadowing of these areas before approval is granted.

The City acknowledges that overshadowing of lot 207 is unavoidable due to the lot size, dimension and orientation. However, given that the developer is proposing all five dwellings as part of this application, there is an opportunity to minimise the impact of overshadowing on that property and particularly with respect to the outdoor living area. Had the upper floor of Lot 206 been massed to maximise solar access and light, the City would have supported this element of the proposal.

The remaining variations are considered to have met the design principles and do not form part of the reasons for refusal. Council may wish to refer to the Planning Assessment appended to this report.

Local Planning Policy – Peace Memorial Rose Garden Precinct

Local Planning Policy – Peace Memorial Rose Garden Precinct (PMRG Policy, was prepared by residents, and submitted to Council to adopt for advertising. It was submitted with the stated purpose to “ensure that the character of the well-established precinct is sustained and evolved as new development occurs”. The subject site is within this precinct. The precinct boundary is illustrated below in **Figure 3**.



Figure 3 – PMRG Policy area boundary.

The PMRG Policy augments acceptable outcomes for the below elements of the R-Codes Vol. 2:

- Building height;
- Street setbacks;
- Side and rear setbacks; and
- Façade design.

The development of the PMRG Policy can be summarised as follows:

- Original draft PMRG Policy was submitted by the community, and Council adopted this policy for advertising at its April 2020;
- As part of the April 2020 Council Resolution, there was also instruction to establish a Community Working Group (CWG) to assist with the refinement of the policy;
- Draft PMRG Policy advertised May-June 2020;
- Amended draft PMRG Policy was prepared by CWG in August 2020;
- Amended draft PMRG Policy presented to September 2020 Special Council Meeting. Administration recommended that Council not adopt the policy on the basis that:
 - Significant changes were made to the policy post-advertising, requiring further advertising;
 - The policy did not follow orderly and proper planning in its formation, as was not informed by built form modelling and testing; and
 - The policy area does not align with the boundaries of identified precincts for which strategic planning has already commenced.
- Council adopted the PMRGP Policy at the 3rd September 2020 Special Council Meeting. WAPC approval is not required for any aspect of the policy.
- Legal advice was obtained by the City on 14th September 2020, which contended that the PMRG Policy ‘does not validly form part of the City’s current planning framework’. The primary reason for this advice is that the policy was prepared by landowners, rather than by the City, which is not supported by the *Planning and Development Act*. For this reason, the assessment of the amended plans does not include reference to this policy.

The Draft Local Planning Policy – Melvista West Transition Zone (Draft Melvista West Policy) seeks to establish a localised planning response for the Melvista West Transition Zone. The subject site is within this precinct.

As illustrated above, the draft Melvista West Policy precinct boundary and policy area is broader than that of the PMRG Policy but excludes the areas of Mixed Use R-AC1 zoned-properties adjacent Stirling Highway.

The draft Melvista West Policy was adopted for advertising by Council at its 3rd September 2020 Special Council Meeting. Advertising of this policy has now closed. In its report for this item, Administration noted that the draft policy will form a “starting point” for development guidance in the precinct and will be subject to further revisions through built form modelling, legal and architectural review, external referrals, horticultural and heritage advice, as well as community engagement.

The Melvista West Policy seeks to augment provisions of both R-Codes Vol. 1 and Vol. 2, as outlined below.

R-Codes Vol. 1 – proposed changes to deemed-to-comply provisions for:	R-Codes Vol. 2 – proposed changes to acceptable outcomes for:
<ul style="list-style-type: none"> • Street setback • Lot boundary setback • Building height • Setback of garages and carports • Landscaping • Design of car parking spaces • Vehicle access 	<ul style="list-style-type: none"> • Building height • Street setback • Side and rear boundary • Tree canopy and deep soil areas • Vehicle access • Car and bicycle parking • Façade design

	<ul style="list-style-type: none"> • Roof design • Landscape design • Development incentives for community benefit
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Pursuant to clause 67(b) of the deemed provisions, in considering an application for development approval, due regard is to be given by the decision-maker to the requirements of any planning instrument that the local government is seriously considering adopting or approving.

‘Due regard’ requires the decision maker to give proper, genuine and realistic consideration to the draft policy, however, the weight which is given to that consideration is a matter for the decision-maker.

The legal principles that are applied when assessing the weight afforded to a draft instrument, such as a local planning policy, are explained in the SAT’s decision in ***Nicholls and Western Australian Planning Commission [2005] WASAT 40***.

Those principles require four factors to be given consideration to, which are:

- i. *the degree to which the draft assesses the specific application;*
- ii. *the degree to which the draft is based on sound town planning principles;*
- iii. *the degree to which the ultimate approval of the draft could be regarded as ‘certain’; and*
- iv. *the degree to which the ultimate approval of the draft could be regarded as ‘imminent’.*

With respect to the above factors, the City will only comment on the third and fourth matters. As noted above, the provisions of the draft Melvista West Policy are still subject to change as a result of rigorous testing, peer review and community engagement. Given that this policy is a “starting point” for development guidance in the precinct the degree of certainty and imminence of the policy is questionable. Therefore, the City’s position is that the weight given to the draft Melvista West Policy should not prevail over the weight afforded to the relevant deemed-to-comply criteria in the R-Codes Vol. 1 in determining whether the application is acceptable as the draft policy is neither certain in its final form nor is it imminent in terms of adoption.

Setting aside the specific development criteria, draft Melvista West LPP contains a desired future character statement, which is less likely to change as it is based on the rigorous character and context analysis undertaken by the City. Additionally, following changes to the deemed provisions, specifically in respect to the additional consideration of the desired future character of an area, the City has considered the draft statement is tabled below:

Desired Future Character Element	Officer Response
Built form will respond to the streetscape and changes in development density within an appropriate building envelope, using innovative design treatments and providing appropriate massing	Minor modifications are needed to ensure the building envelope does not squeeze too much onto the five lot site.
Appropriately dimensioned setbacks will support the retention and consolidation of canopy trees and vegetation.	The site has been cleared. There are no trees retained on-site. Further open space is to be provided to ensure the viability of the trees noted on the landscape plan.
Development will reference the traditional built form character of the area through the	Three of the dwellings include pitched roofs while two feature skillion roofs. The

integration of design elements and a high-quality palette of materials and finishes.	proposal is consistent with the application approved at 18 Doonan Road.
Open, legible and attractive streetscapes.	Further improvement to the upper floors will ensure that the development meets this desired element.
Vegetated interface to the lot boundary and street.	Further open space within the front setback area would ensure the development met this desired element.
Aesthetic of the current architectural style and form being reinterpreted in a contemporary manner.	The development is broadly consistent with this desired element.

The development requires further improvement to be consistent with the above valued elements, specifically in relation to the open and legible attractive streetscape, which has little in the way of landscaping, is dominated by vehicle access and has unreasonable bulk as a consequence of the minimal setback and cantilevered upper floor.

8.0 Conclusion

The interrelated variations noted in this report are easily addressed with minor modifications. However, in its current form, the design of the development sits outside what should be accepted in the R60 density code.

Given the lot size and setbacks proposed small improvements will reduce building bulk presented to the street and adjoining properties, light to the dwelling at Lot 207, increased landscape opportunity and overall amenity of internal and external residents.

On that basis, the City recommends that the application be refused, however, if amended plans were to be received, which address the concerns with respect with the R Codes, and the consideration of desired future character, the City would reassess the application or a new application on its merits.

Subject site



Example of contemporary construction



Typical Californian Bungalow



Infill Development





23 November 2020

Planning Department

City of Nedlands
71 Stirling Hwy,
Nedlands, WA 6009

Dear Sir/ Madam,

RE: **APPLICATION FOR DEVELOPMENT APPROVAL – PROPOSED 5 x SINGLE HOUSE (DOUBLE STOREY) ON LOT 77 (17) DOONAN ROAD, NEDLANDS**

PAR Property Development Consultants (PAR) acts on behalf of the proponents of 17 Doonan Road, Nedlands (herein referred to as the 'subject site') in support of an application for Approval to Commence Development for 5 x Single House (Double Storey).

A Design Statement report has been prepared with reference to the Development Application drawings, outlining how the proposed development complies with the relevant Policies and provisions under the City of Nedlands Local Planning Scheme No. 3.

1.0 SITE DETAILS

1.1 Legal description

PROPOSED 5 x SINGLE HOUSE (DOUBLE STOREY) ON LOT 77 (17) DOONAN ROAD, NEDLANDS

Zoning	Residential
Density coding	R60
Existing Lot area	994 sq. metres

On 09 April 2020, Western Australian Planning Commission (**WAPC**) has granted planning approval for subdivision of the subject corner lot into (5) green title lots under **WAPC Ref No: 159152**. The approved green title lots are outlined in **Table 1** below.

Table 1

Subdivision Summary	Area
Proposed Lot 206	183m ²
Proposed Lot 207	185m ²
Proposed Lot 208	183m ²
Proposed Lot 209	183m ²
Proposed Lot 210	183m ²

The approved freehold lots have individual frontage facing either primary street – Doonan Road or secondary street - Jenkins Avenue.

1.2 Site Context

The subject site currently features land use of 'Residential' R60 under City of Nedlands' Local Planning Scheme No. 3 (LPS3). The proposal involves construction of 5 x Double Storey Single House developments on the subject site, demolishing the existing single storey dwelling.

The area immediately surrounding the site is residential in nature, comprising predominantly Single Houses and Grouped Dwellings. **Figure 1** below indicates the location of the subject property. The subject site is located at the corner of Doonan Road and Jenkins Avenue.

The subject site, which is within Nedlands suburb, is well serviced by existing road network with Stirling Highway (*Primary Regional Road*) to the north and Railway Road (*Other Regional Road*) to the northwest (Refer to **Figure 4: LPS3– Zoning map**). It is located 170m walking distance to the Stirling Highway commercial precinct. There are ample public transport facilities such as high frequency bus routes along Stirling Highway with Claremont Train Station being located just 250m from Stirling Highway bus routes. These provide excellent transport networks access to the Perth Central Business District (CBD).

The subject site has also excellent access to extensive local amenities. It is located in close proximity to extensive reserves namely; Peace Memorial Rose Gardens (northeast) and College Park Reserve (southwest). It is located close proximity to other public amenities such as The University of Western Australia, Loreto Nedlands Primary School, Aegis Alfred Carson Agedcare and Nedlands Golf Club WA.

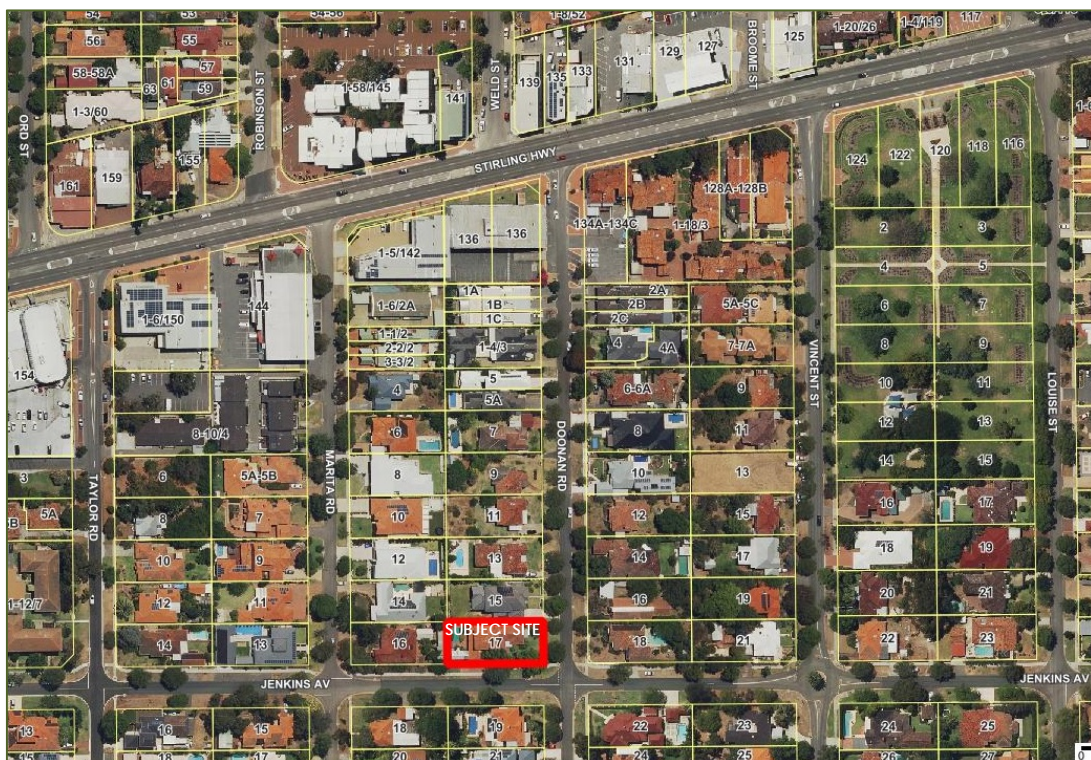


Figure 1 above provides an illustration of the locality (Source: City of Nedlands Intramap)

2.0 REGIONAL PLANNING FRAMEWORK

2.1 Metropolitan Region Scheme (MRS)

The subject site is zoned 'Urban' under the Metropolitan Region Scheme (MRS). Accordingly, 'Residential' land use proposed within this application is consistent with the 'Urban' zone under the MRS.

2.2 Perth and Peel @ 3.5 Million

This is the guiding document for the Western Australian Planning Commission (WAPC) high level strategic planning for the Perth and Peel Regions. It builds on *Direction 2031 and Beyond* as well as the *State Planning Strategy 2050*, responding to challenges with long-term growth strategy for land use and infrastructure.

Nedlands is located within the Central Sub-Region area under *Perth and Peel @ 3.5 million* and is earmarked to accommodate an additional 215,000 dwellings of which 4,400 infill-dwellings are proposed within the municipality of Nedlands.

A key aim of *Perth and Peel 3.5 million* is to increase infill housing options and density along urban corridor to strengthen employment to meet future needs of industry, commerce and the community.

The proposed development will serve an important role in continuing to service the catchment surrounding Stirling Highway urban corridor and will hope to encourage further growth and density in the near future as envisioned by *Perth and Peel 3.5 Million*. The concentration of residential density along accessible high frequency transit routes that is in close proximity to employment and amenity is supporting the continued growth of the Stirling Highway commercial precinct and diversifying housing stocks and opportunities.

2.3 State Planning Policy 7.0 – Design of the Built Environment

State Planning Policy 7.0 – Design of the Built Environment (SPP7) became operational on 24 May 2019. SPP7 sets out 10 Design principles to promote the importance of design quality and sets out the principles, processes and considerations which apply to the design of the built environment in Western Australia, across all levels of planning and development.

An assessment of the proposed development application against the Design Principles is provided in **Table 2** below.

Table 2: SPP7 Design Principles Statement

SPP7 DESIGN PRINCIPLES	DESIGN RESPONSE
<p>1. Context and character <i>Objective: Good design responds to and enhances the distinctive characteristics of a local area, contributing to a sense of place.</i></p>	<p>In accordance with City's Local Planning Strategy, the proposed development will provide built form transition from the high-density mixed-use development that is anticipated along <i>Stirling Highway Urban Growth Area</i> and the low density development to the south. Development on the subject site which otherwise is an underutilised site sits within the <i>Second Transition Zone</i> for potential urban infill. Refer to Figure 2 below- <i>Local Planning Strategy Map</i>.</p> <p>The proposed two storey development provides a similar two-storey form of development that support the strategic increase in density and infill of existing urban land while maintaining low rise residential built form within the <i>Second Transition Zone</i>.</p> <p>Varying pitched roof, skillion and flat roofs with contrasting material/ render will create a contemporary architectural addition to the streetscape, whilst maintaining a similar height and bulk to the streets.</p>
<p>2. Landscaping quality <i>Objective: Good design recognises that together landscape and buildings operate as an integrated and sustainable system, with a broader ecological context.</i></p>	<p>The existing three (3) nos. mature street trees along the both streets are retained to maintain the existing leafy residential streetscape.</p> <p>Additional two (2) nos. of new street trees are proposed along Jenkins Avenue to positively contribute to the amenity of the proposed development and surrounding area.</p>
<p>3. Built Form and Scale <i>Objective: Good design ensures the massing and height of development is appropriate to its setting and successfully negotiates between existing built form and the intended future character of the local area.</i></p>	<p>The proposed double storey building bulk and scale are considered to be appropriate when viewed from the surrounding streets and adjoining properties. The development will act as a transitional development between higher-density development along Stirling Highway and the low density development to the south.</p> <p>Varying roof built forms and heights with contrasting material/ render are designed to ameliorate the size and scale of the built form while providing visual interest as viewed from the public streets. The proposed buildings are setback in accordance with the deemed-to-comply provisions of the R-Codes, with the exception of minor variations to the site works and retaining, which pose minimal impact to the existing streetscape.</p> <p>Each dwelling provides at least 40% open space which is consistent with the Deemed-to-comply provision.</p>

SPP7 DESIGN PRINCIPLES	DESIGN RESPONSE
<p>4. Functionality and Build Quality</p> <p><i>Objective: Good design meets the needs of users efficiently and effectively, balancing functional requirements to perform well and deliver optimum benefit over the full-life cycle.</i></p>	<p>The proposed dwelling has been designed to be adaptable to a multitude of users with changing demographics and aging population in the local area.</p> <p>Due small lot size constraint with compact building footprint, all bedrooms are located at the upper level. North facing private alfresco is provided to each dwelling in a location that improves sun access and the outlook of the habitable rooms - living and kitchen.</p>
<p>5. Sustainability</p> <p><i>Objective: Good design optimises the sustainability of the built environment, delivering positive environmental, social and economic outcomes.</i></p>	<p>The residential aspect of the redevelopment has been designed with sound sustainability measures such as natural cross-ventilation, maximising northern sun and installation of solar photovoltaic panels to the roof of each dwellings.</p> <p>The landscaping plan details species that are suited to Perth's climate that is water-wise with proposed trees to reduce the urban heat island effect.</p>
<p>6. Amenity</p> <p><i>Objective: Good design provides successful places that offer a variety of uses and activities while optimising internal and external amenity for occupants, visitors and neighbours, providing environments that are comfortable, productive and healthy.</i></p>	<p>The development provides space and structural provisions for future lift addition within each dwelling to maintain accessibility between levels especially for the elderly.</p> <p>The upper floor dwelling balconies are orientated and setback appropriately to allow outlook to the public realm, while maintaining the visual privacy of the adjoining properties.</p>
<p>7. Legibility</p> <p><i>Objective: Good design results in buildings and places that are legible, with clear connections and easily identifiable elements to help people find their way around.</i></p>	<p>Pedestrian access is clearly defined with distinctive entry porch that either fronts primary or secondary street. Landscaping strips along driveway and in between the crossovers create greater legibility for the users.</p> <p>Existing mature street trees that are being retained along the main streets will provide shaded pedestrian connection within the residential neighbourhood.</p>
<p>8. Safety</p> <p><i>Objective: Good design optimises safety and security, minimising the risk of personal harm and supporting safe behaviour and use.</i></p>	<p>Dwelling which has individual street frontage has been designed to attribute to passive surveillance to public realm. The proposed dwelling has been intentionally designed with major openings and/or balcony at upper levels for the purpose of passive surveillance and activity to provide pedestrian safety.</p>
<p>9. Community</p> <p><i>Objective: Good design responds to local community needs as well as the wider social context, providing environments that support a diverse range of people and facilitate social interaction.</i></p>	<p>The proposal provides diverse housing opportunities and responds to the nearby education establishments and employment hubs that will benefit the local economy.</p> <p>The development is designed to cater for a variety of ages due to its strategic location with excellent access to wide public amenities. The proposal is highly consistent with the objectives advocated by City's Local Planning Strategy in providing greater housing choice and diversity.</p>
<p>10. Aesthetics</p> <p><i>Objective: Good design is the product of a skilled, judicious design process that results in attractive and inviting buildings and places that engage the senses.</i></p>	<p>A large amount of high architectural detailing is provided throughout with complimentary materials, textures and colours are provided, creating a vibrant residential environment.</p> <p>The proposal has been carefully considered to respond to the surrounding residential environment, address the street corner and enhance the pedestrian environment.</p>

Those design principles which are relevant to the development proposal have been suitably addressed.



Figure 2 below- Local Planning Strategy Map

3.0 LOCAL PLANNING FRAMEWORK

3.1 City of Nedlands Local Planning Strategy

The City in conjunction with the preparation of LPS3 prepared a Local Planning Strategy to inform the direction of their current scheme. The strategy contained a specific section pertaining to **Nedlands South**. Notably Clause 5.9.11 of the strategy states the following:

- *Retain and enhance the character and streetscape of the existing residential areas outside Urban Growth Areas and Transition Zones.*
- *Within the Transition Zones adjoining Stirling Highway, ensure the height, scale and bulk of redevelopment smoothly integrates back to the established residential character of the area.*
 - *Facilitate medium rise, medium intensity predominately residential redevelopment within the First Transition Zone.*
 - *Facilitate low rise, diverse residential built form within the Second Transition Zone.*
- *Within the Transition Zone adjoining Broadway, ensure the height, scale and bulk of redevelopment appropriately integrates back to the established residential character of the area.*
 - *Ensure a quick transition of built form to integrate back to the established residential character of the area.*

In this regard, the redevelopment will accord with the recommendation contained within the strategy. The proposed development will provide built form transition from the high-density mixed-use development that is anticipated along Stirling Highway Urban Growth Area and the low density development to the south. The proposed two storey development provides a similar two-storey form of development that support the strategic increase in density and infill of existing urban land while maintaining low rise residential built form within the *Second Transition Zone*.

3.2 City of Nedlands – Town Planning Scheme No. 3

The subject site currently zoned 'Residential' under City of Nedlands Local Planning Scheme No. 3 with an allocated residential density of R60 as depicted in **Figure 4** below.

Pursuant to LPS3 the objectives for 'Residential' zone is as follows:

- To provide for a range of housing and a choice of residential densities to meet the needs of the community.
- To facilitate and encourage high quality design, built form and streetscapes throughout residential areas.
- To provide for a range of non-residential uses, which are compatible with and complementary to residential development.
- To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks.

The proposed development will enhance a variety of housing in order to meet the needs of different household types within proximity of Stirling Highway. The double storey development is highly consistent and compatible with and complementary to residential development in terms of a scale, bulk, height, street and lot boundary setbacks.

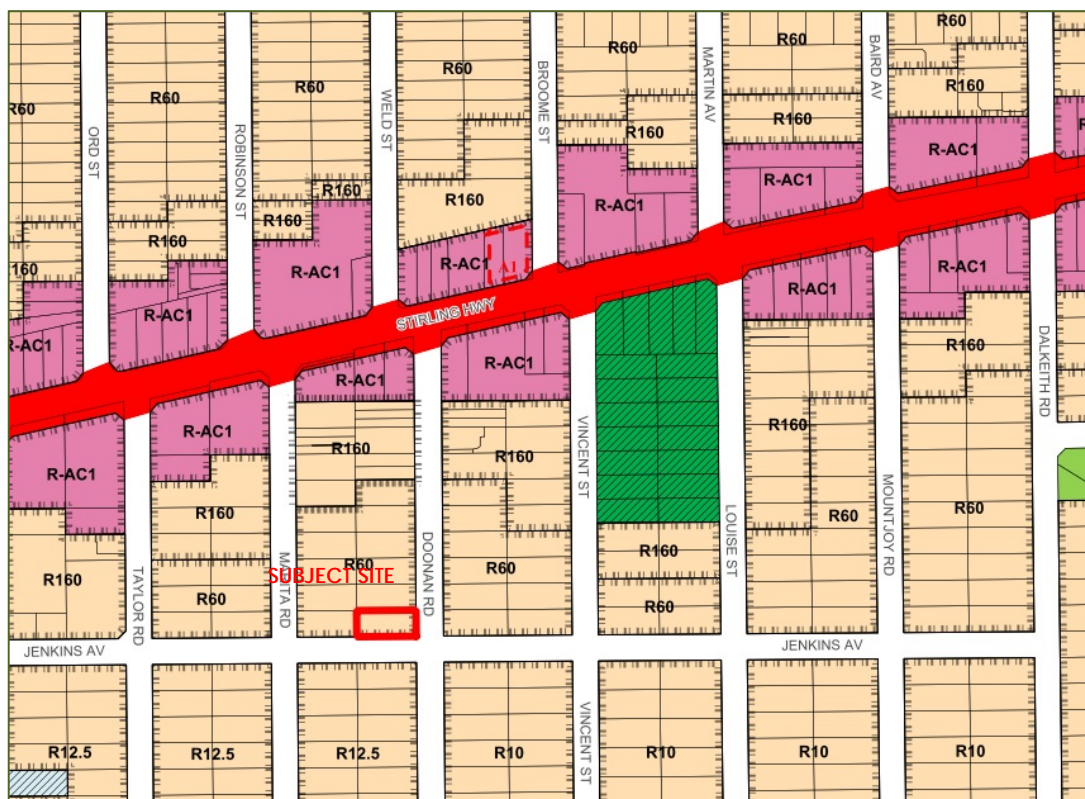


Figure 4: LPS3– Zoning map

(Source: City of Nedlands website)

4.0 BUILDING DESIGN AND STATEMENT

The purpose of this development application is to obtain planning approval for 5 x Double Storey Single House that incorporates the following design elements.

The proposed 3 lots are fronting Jenkins Avenue while the remaining 2 lots fronting onto Doonan Road. Each freehold lot is considered as separate residential property and, as such the proposed driveway width for each lot is compliant with *Clause 5.3.5 - Vehicular Access* requirements which is no wider than 4.5m at the street boundary. The locations of each crossover are also consistent with the approval subdivision layout with its preferred crossovers locations and also consistent with the provisions of the R-Codes.



Retaining works are proposed along side boundaries are necessary to ensure levelled and practical use of the outdoor living areas and ground floor habitable rooms between each dwelling. Further written justification for the proposed retaining works greater than 0.5m in height is provided in the body of this report.

The proposed dwellings are designed to address both streets with major openings and/or balcony to provide high level of passive surveillance over the public realm. The proposed dwellings which incorporate design elements such as contrasting painted render, face brick with varying roof forms are consistent with the existing streetscape. These varying roof forms and wall articulations will create a contemporary architectural addition to the streetscape, whilst maintaining a similar height and bulk to the streets. The facades facing the street are of high quality and are well articulated.

The proposed dwelling also meets with Sustainability Design Criteria such as north facing outdoor living area with maximum major opening to the northern sun, cross-ventilation and provision for solar photovoltaic panels. Visual privacy, Open space and Overshadowing requirements meet with the Deemed-to-comply provisions of the R-Codes.

The R-Codes provides the 'Deemed to comply' provisions as one way of achieving a satisfactory design outcome. The R-Codes further provides that development that complies with the 'Design Principles' under the corresponding section of the Codes can be supported. Clause 2.5.1 of the R-Codes states that in considering a development on the design principles, the corresponding Deemed to comply provisions should not be applied.

The proposed variations to the Deemed to comply provisions contained in this development application are therefore is considered to comply with the provisions of the R-Codes based on their merits.

As depicted in drawings, the site slopes significantly from the eastern boundary (Doonan Road) down to the western boundary (side). There is a level difference of 1.7m from the highest to the lowest point of the site.

The adopted finished floor levels of the proposed dwellings; Unit 206 – FFL11.14, Unit207 – FFL11.03, Unit 208 – FFL10.69, Unit 209 – FFL10.33 and Unit 210 – FFL9.74 have appropriately respond to the sloping nature of the site that is consistent with Clause 5.3.7 P7.1 of the R-Codes. It is necessary to retain a portion of the northern boundary as well as in between each dwelling in order to achieve equal cutting and filling for practical use of the outdoor living areas and habitable rooms of the each dwellings. There are minimal retaining fill of between 350mm to 700mm within the development site.

The Design Principles contained under *Clause 5.3.7 – Site Works, P7.1 and P7.2* of the R-Codes states:

P7.1 - "Development that considers and responds to the natural features of the site and requires minimal excavation/fill."

P7.2 – “Where excavation/fill is necessary, all finished levels respecting the natural ground level at the lot boundary of the site and as viewed from the street.”

As depicted on the drawings submitted, the proposed dwellings respect the natural ground level of the land as viewed from the street while maintaining the prevailing streetscape character. Given the highest portion of the filling is set at the rear of dwelling, it does not impact on the natural ground level as viewed from the street and is therefore consistent with *Clause 5.3.7 P7.2* of the R-Codes.

Accordingly, the proposed site works is considered to satisfy the Design Principles of *Clause 5.3.7 P7.1 & 7.2* of the R-Codes.

Clause 5.3.8 of the R-Codes – Retaining Wall

The Design principles contained in *Clause 5.3.8 – Retaining walls*, P8 of the Residential Design Codes 2019 (R-Codes) states:

“Retaining walls that result in land which can be effectively used for the benefit of residents and do not detrimentally affect adjoining properties and are designed, engineered and landscaped having due regard to clauses 5.3.7 and 5.4.1.”

The proposed northern boundary retaining wall is considered to satisfy the Design Principles of the R-Codes as:

1. The adopted finished floor levels of the each dwelling respect the natural ground level of the land as viewed from the street. They also maintain the prevailing development context and streetscape character along Doonan Road as well as Jenkins Avenue;
2. The proposed retaining structure itself will not negatively impact on the amenity of adjoining building (*House No. 15 Doonan Road*) in terms of northern sun access or visual impact. Majority of the proposed retaining structure along south boundary is adjoining to existing adjoining garage;
3. The adjoining main building is located at approximate 4.0m from the common lot boundary. The adjoining Outdoor Living Area (patio) which is located at their rear massive backyard will not have visual bulk impact nor restricting their northern sun aspect; and
4. Privacy of adjoining property is maintained through appropriate building design measures in accordance with the Visual Privacy provisions of the R-Codes.

Hence, the proposed retaining walls will not detrimentally impact the amenity of the adjoining neighbours in terms of visual bulk, visual privacy and overshadowing.

Given the above, the proposed 0.58m to 0.73m high retaining walls are considered to satisfy the Design Principles contained in *Clause 5.3.8 – Retaining walls* of the Residential Design Codes 2019 (R-Codes), as the proposed structures do not detrimentally impact on the amenity of neighbouring property.

5.0 CONCLUSION

Based on the above, the proposed double storey development will not have any adverse effect upon the occupiers or adjoining neighbours and meet with the provisions of the Scheme and objectives of the ‘Residential’ zone.

Orderly and proper planning requires that new development is a coherent and appropriate new development and consistent with the planning vision established for the area. The key points regarding the proposal are:

1. The proposed development is an attractive architecturally design building which, if approved, would provide an attractive setting for the existing streetscape;
2. The double storey development is of a scale highly consistent with the site’s location with excellent access to a wide public amenities such as public open spaces, schools, university and public transport options;

3. The proposed development is highly consistent with the various provisions and objectives advocated by the City's Scheme and Policy framework for a site with a R60 density within the *Second Transition Zone*; and
4. The proposal does not negatively impact on the amenity of adjoining properties.

The subject site forms an important role in transitioning the built form down from the anticipated mixed-use high-density development along Stirling Highway. The proposal successfully mitigates potential conflicts in land use and built form within this transition area and is considered to contribute positively to the public realm.

In light of the preceding information, it is respectfully requested that City of Nedlands give timely consideration and approve the proposed development. Should you require any further information, please email me at peter@parpdconsultants.com

Yours sincerely,



PETER NG
DIRECTOR

Master Urban & Regional Planning (Curtin)
Bachelor of Architecture (Hons) (Deakin)



PD14.21	Proposed Amendments to the Local Planning Policy – Exempt Development
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Committee	13 April 2021
Council	27 April 2021
Applicant	City of Nedlands
Director	Tony Free – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.	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.
Previous Item	Nil
Attachments	<ol style="list-style-type: none"> 1. Draft amended Local Planning Policy – Exempt Development 2. Planning Exemptions – Exempt Development LPP vs. 2015 Regulations 3. Local Planning Policy – Exempt Development with tracked changes

1.0 Executive Summary

Administration is proposing to amend the adopted Local Planning Policy – Exempt Development (Exempt Development LPP) to align with the recent changes to the *Planning and Development (Local Planning Schemes) Regulations 2015*.

The purpose of this report is for Council to adopt the draft amended Exempt Development LPP (Attachment 1).

Recommendation to Committee

Council proceeds to adopt the draft amended Local Planning Policy – Exempt Development, as set out in Attachment 1, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4(3)(b)(i).

2.0 Background

The Department of Planning, Lands and Heritage (DPLH) released its Action Plan for Planning Reform in August 2019. One of the actions identified in this plan was cutting unnecessary red tape. The first stage of resultant changes was made to the *Planning and Development (Local Planning Schemes) Regulations 2015* (2015 Regulations) through the *Planning Regulations Amendment Regulations 2020* (2020 Regulations), which became operational on 15 February 2021. The 2015 Regulations now include

a number of new planning approval exemptions, including exemptions for certain small residential projects.

The City's Exempt Development LPP, which was adopted by Council on 2nd May 2019, contains a number of exemptions from planning approval for small residential projects. Some of these exemptions are now covered by the 2015 Regulations. The Exempt Development LPP now needs to be amended to reflect these new exemptions, as discussed in more detail in the Discussion section below.

3.0 Discussion

The purpose of the Exempt Development LPP is to outline types of development exempt from requiring development approval, in addition to those specified by Schedule 2 – Deemed provision for local planning schemes of the 2015 Regulations.

As a result of the 2020 Regulations, the list of planning exemptions and the corresponding conditions of exemption, under Schedule 2 of the 2015 Regulations has been expanded. Of the new exemptions in Schedule 2, the following are already contained within the Exempt Development LPP:

- Flagpoles
- Cubbyhouses
- External fixtures – solar collectors
- Demolition of a non-residential building

Attachment 2 provides a comparison of the conditions of exemption between the Exempt Development LPP and Schedule 2 of the 2015 Regulations

In accordance with s.257B(3) of the *Planning and Development Act 2005*, if there is an inconsistency between Schedule 2 of the 2015 Regulations and a local planning policy prepared under a local planning scheme, the former will prevail over the latter, to the extent of the inconsistency. Therefore, the conditions of exemption for flagpoles, cubby houses, solar collectors and demolition of non-residential buildings within Schedule 2 will prevail over the conditions of exemption for these items in the Exempt Development LPP. As such, the Exempt Development LPP has been amended to remove these four items. Attachment 3 provides a comparison of the conditions of exemption between the Exempt Development LPP and the 2015 Regulations for these items.

4.0 Consultation

The WAPC have advised that any proposed amendments to local planning policies that are required solely to bring them into alignment with the 2020 Regulations are considered minor amendments and, therefore, do not require advertising under the 2015 Regulations.

The proposed amendments to the Exempt Development LPP seek to bring the policy into alignment with the 2020 Regulations. No other amendments are proposed. Advertising of the draft amended Exempt Development LPP is therefore not required.

5.0 Strategic Implications

How well does it fit with our strategic direction?

The proposed amendments to the Exempt Development LPP are minor in nature and are not considered to impact upon the City's strategic direction.

Who benefits?

Both the City and the community will benefit from the clarity provided by aligning the Exempt Development LPP with the 2015 Regulations.

Does it involve a tolerable risk?

There are no foreseeable risks associated with updating the Exempt Development LPP as proposed.

Do we have the information we need?

Yes.

6.0 Budget/Financial Implications

Can we afford it?

There is no cost associated with updating the Exempt Development LPP as proposed.

How does the option impact upon rates?

Nil.

7.0 Statutory Provisions

Planning and Development (Local Planning Schemes) Regulations 2015

Under Schedule 2, Part 2, Clause 3(1) of the 2015 Regulations, the City may prepare a local planning policy in respect to any matter related to the planning and development of the Scheme area. Schedule 2, Part 2, Clause 3(4) of the 2015 Regulations allows the City to amend a local planning policy.

In accordance with Schedule 2, Part 2, Clause 4(4), once Council resolves to amend a local planning policy it must publish a notice of the proposed policy on the City's website, and if considered appropriate, ensure the notice is published in a newspaper circulating in the local government area.

8.0 Conclusion

It is proposed to amend the adopted Exempt Development LPP to align with the recently updated 2015 Regulations. The WAPC have advised that such amendments to local planning policies are minor in nature and do not need to be advertised for public comment. It is therefore recommended that Council adopt the draft proposed Exempt Development LPP, as contained in Attachment 1.



LOCAL PLANNING POLICY – EXEMPT DEVELOPMENT

1.0 PURPOSE

- 1.1 This policy outlines types of development exempt from requiring development approval in addition to those specified by Schedule 2 – Deemed provision for local planning schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all development on land that is zoned within the Scheme area of the City of Nedlands.

3.0 OBJECTIVES

- 3.1 To allow minor development to proceed without requiring development approval where it will not have a detrimental impact on the amenity of adjoining and nearby properties, the streetscape or the neighbourhood.
- 3.2 To ensure development is compatible in its setting and consistent with prevailing forms of authorised development.

4.0 POLICY MEASURES

- 4.1 The following provides for development which does not require development approval as per clause 61(1), Item 20 of Schedule 2 – Deemed provision for local planning schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.

Animal enclosures

- 4.1.1 Animal Enclosures where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Animal Enclosure:
- (a) is setback 2m from lot boundaries;
 - (b) satisfies part 5.4.3 Outbuildings C3 i - vii of the deemed-to-comply requirements of the R-Codes; and
 - (c) is used for domestic (non-commercial) purposes.

Note: Animal enclosures must also comply with relevant environmental health requirements and local laws.

Garden ornaments

- 4.1.2 Garden Ornaments where located on residential zoned property are exempt from the requirement to obtain planning approval provided the Garden Ornament:
- (a) is a maximum of 4m² in area;
 - (b) is a maximum of 2.4m in height above natural ground level;



- (c) is located outside of the 1.5m visual truncation area, where a vehicle access point meets a public street;
- (d) provides for at least one major opening, from a habitable room of the dwelling, facing the primary street, remaining unobstructed.

Fixed outdoor cooking facility

4.1.3 A Fixed Outdoor Cooking Facility where located on a residential zoned property is exempt from the requirement to obtain planning approval provided the Fixed Outdoor Cooking Facility:

- (a) is located behind the street setback area; and
 - (i) is a maximum 1.8m in height (excluding a chimney or flue) above natural ground level;
- or
- (ii) setback in accordance with Table 2a of the R-Codes.

Pool pump sheds

4.1.4 Pool pump sheds where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the pool pump shed:

- (a) Is compliant with the provisions part 5.4.3 Outbuildings of the Residential Design Codes.

Sea containers

4.1.5 Sea Containers are exempt from the requirement to obtain planning approval provided the Sea Container:

- (a) is wholly located within the property boundaries of the lot;
- (b) does not exceed 6m in length;
- (c) is utilised for storage only; and
- (d) is removed within 14 days of being placed on the lot.

External fixtures – satellite dish

4.1.6 A Satellite Dish, where it is located on a non-residential zoned property and is ground mounted, is exempt from the requirement to obtain planning approval provided Satellite Dish:

- (a) is located behind the street setback area;
- (b) is a maximum of 1.8m in diameter;
- (c) is not visible from the street;
- (d) is setback from lot boundaries the same distance as the external fixture's height above natural ground level (i.e. 2m in height = 2m lot boundary setback); and
- (e) there is no more than one (1).



4.1.7 A Satellite Dish, where it is located on a non-residential zoned property and is not ground mounted, is exempt from the requirement to obtain planning approval provided the Satellite Dish:

- (a) is located behind the street setback area
- (b) is integrated with the building;
- (c) is a maximum of 1.8m in diameter;
- (d) is not visible from the street; and
- (e) there is no more than one (1) per property.

Note: Where located on Residential zoned land the R-codes apply.

Other Exemptions

1. Painting and Maintenance;
2. Change of site levels of less than half a metre; and
3. Boundary fencing in accordance with relevant legislation.

5.0 DEVELOPMENT APPLICATION REQUIREMENTS

5.1 Where a proposed development does not meet the Policy Measures, an application for Development Approval is required.

6.0 RELATED LEGISLATION

6.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

6.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- Planning and Development (Local Planning Schemes) Regulations 2015
- City of Nedlands Local Planning Scheme No. 3
- State Planning Policy 7.3 – Residential Design Codes
- Any other relevant State or Local Planning Policies

6.3 Where this Policy is inconsistent with the provisions of a specific Policy, Design Guideline or Local Development Plan that applies to a site or area, the provisions of that specific Policy, Design Guideline or Local Development Plan shall prevail.



7.0 DEFINITIONS

7.1 For this Policy the following definitions apply:

Definition	Meaning
Animal Enclosure	An enclosed structure for keeping small animals, and includes aviaries but, excludes stables.
External Fixture	Utilities, equipment, plant or other structures which are necessary for a dwelling to achieve efficient, comfortable and environmentally sustainable operating outcomes and includes; solar collectors, rainwater storage tanks, clothes drying structures, communications and power and water infrastructure, letterboxes, satellite dishes or other fixtures as necessary for the residential use of the buildings on-site.
Garden Ornament	An item used for garden or landscape enhancement and decoration and includes water fountains, bird baths and feeders, sundials and outdoor sculptures.
Fixed Outdoor Cooking Facility	A permanent cooking apparatus and includes barbeques (BBQ), pizza ovens, outdoor ovens and stoves.
Sea Container	A metal transportable structure designed for the storage and transport of goods from one location to another by road or sea.
Small Animal	As per City of Nedlands Health Local Law.

Council Resolution Number	
Implementation Date	
Date Adopted	

Planning Exemptions – Exempt Development LPP vs 2015 Regulations

Planning approval exemption within Exempt Development LPP	New planning approval exemption in Schedule 2, Part 7, Clause 61 of the 2015 Regulations
<p>4.1.3 Flagpoles</p> <p>Flagpoles where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Flagpole:</p> <ul style="list-style-type: none"> a) is a maximum 6m in height above natural ground level; b) is setback a minimum 1.5m from any lot boundary; c) does not include or display commercial advertising material; and d) there is no more than one (1) per property. 	<p>Item 14 – The erection or installation of a flagpole, subject to following conditions:</p> <ul style="list-style-type: none"> a) The height of the flagpole is no more than 6 m above the natural ground level. b) The flagpole is no more than 200 mm in diameter. c) The flagpole is not used for advertising. d) There is no more than 1 flagpole on the lot. <p>The works are not located in a heritage-protected place.</p>
<p>4.1.6 Cubby houses</p> <p>Cubby Houses where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Cubby House:</p> <ul style="list-style-type: none"> a) is a maximum 6m² in area; b) is located behind the street setback area; c) is setback from lot boundaries in accordance with Table 2a of the R-Codes; d) has a finished floor level no more than 0.5m above natural ground level or any deemed-to-comply or approved fill and/or retaining; and e) is a maximum 2.4m in height above natural ground level or any deemed-to-comply or approved fill and/or retaining; and f) there are no more than one (1) per property. 	<p>Item 13 – The erection or installation of a cubbyhouse, subject to the following conditions:</p> <ul style="list-style-type: none"> a) The cubbyhouse is not erected or installed in the street setback area of a building. b) The floor of the cubbyhouse is no more than 1 m above the natural ground level. c) The wall height of the cubbyhouse is no more than 2.4 m above the natural ground level. d) The building height of the cubbyhouse is no more than 3 m above the natural ground level. e) The area of the floor of the cubbyhouse is no more than 10 m². f) The cubbyhouse is not erected or installed within 1 m of more than 1 boundary of the lot.

Planning Exemptions – Exempt Development LPP vs 2015 Regulations

<p>4.1.8 External fixtures – solar collector</p> <p>A Solar Collector/s, where it is located on a non-residential zoned property, are exempt from the requirement to obtain planning approval provided the Solar Collector/s:</p> <ul style="list-style-type: none"> a) is located behind the street setback area; b) is not visible from the street; c) is integrated with the building; and d) complies with building height requirements. <p>Note: Where located on Residential zoned land the R-codes apply.</p>	<p>Item 15 – The installation of solar panels on the roof of a building, subject to the following conditions:</p> <ul style="list-style-type: none"> a) The solar panels are parallel to the angle of the roof. b) The works are not located in a heritage-protected place.
<p>4.1.11 Demolition of a non-residential building</p> <p>The demolition of a non-residential building is exempt from the requirement to obtain planning approval unless it is:</p> <ul style="list-style-type: none"> a) located in a place that is entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990; or b) the subject of an order under the Heritage of Western Australia Act 1990 Part 6; or c) included on a heritage list prepared in accordance with this Scheme; or d) located within an area designated under this Scheme as a heritage area; or e) the subject of a heritage agreement entered into under the Heritage of Western Australia Act 1990 section 29. 	<p>Item 2 – The demolition of a building that is not a single house, ancillary dwellings, multiple dwelling or grouped dwellings, subject to the following conditions:</p> <ul style="list-style-type: none"> a) the building does not share a common wall with another building. b) The works are not located in a heritage-protected place.



LOCAL PLANNING POLICY – EXEMPT DEVELOPMENT

1.0 PURPOSE

- 1.1 This policy outlines types of development exempt from requiring development approval in addition to those specified by Schedule 2 – Deemed provision for local planning schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all development on land that is zoned within the Scheme area of the City of Nedlands.

3.0 OBJECTIVES

- 3.1 To allow minor development to proceed without requiring development approval where it will not have a detrimental impact on the amenity of adjoining and nearby properties, the streetscape or the neighbourhood.
- 3.2 To ensure development is compatible in its setting and consistent with prevailing forms of authorised development.

4.0 POLICY MEASURES

- 4.1 The following provides for development which does not require development approval as per clause 61(1), ~~Item 20(i) and 61(2)(e)~~ of Schedule 2 – Deemed provision for local planning schemes of the Planning and Development (Local Planning Schemes) Regulations 2015.

Animal enclosures

- 4.1.1 Animal Enclosures where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Animal Enclosure:
- (a) is setback 2m from lot boundaries;
 - (b) satisfies part 5.4.3 Outbuildings C3 i - vii of the deemed-to-comply requirements of the R-Codes; and
 - (c) is used for domestic (non-commercial) purposes.

Note: Animal enclosures must also comply with relevant environmental health requirements and local laws.

Garden ornaments

- 4.1.2 Garden Ornaments where located on residential zoned property are exempt from the requirement to obtain planning approval provided the Garden Ornament:
- (a) is a maximum of 4m² in area;
 - (b) is a maximum of 2.4m in height above natural ground level;



- (c) is located outside of the 1.5m visual truncation area, where a vehicle access point meets a public street;
- (d) provides for at least one major opening, from a habitable room of the dwelling, facing the primary street, remaining unobstructed.

Flagpoles

~~4.1.3 Flagpoles where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Flagpole:~~

- ~~(a) is a maximum 6m in height above natural ground level;~~
- ~~(b) is setback a minimum 1.5m from any lot boundary;~~
- ~~(c) does not include or display commercial advertising material; and~~
- ~~(d) there is no more than one (1) per property.~~

Fixed outdoor cooking facility

4.1.44.1.3 A Fixed Outdoor Cooking Facility where located on a residential zoned property is exempt from the requirement to obtain planning approval provided the Fixed Outdoor Cooking Facility:

- (a) is located behind the street setback area; and
 - (i) is a maximum 1.8m in height (excluding a chimney or flue) above natural ground level;
- or
- (ii) setback in accordance with Table 2a of the R-Codes.

Pool pump sheds

4.1.54.1.4 Pool pump sheds where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the pool pump shed:

- (a) Is compliant with the provisions part 5.4.3 Outbuildings of the Residential Design Codes.

Cubby houses

~~4.1.6 Cubby Houses where located on a residential zoned property are exempt from the requirement to obtain planning approval provided the Cubby House:~~

- ~~(a) is a maximum 6m² in area;~~
- ~~(b) is located behind the street setback area;~~
- ~~(c) is setback from lot boundaries in accordance with Table 2a of the R-Codes;~~
- ~~(d) has a finished floor level no more than 0.5m above natural ground level or any deemed to comply or approved fill and/or retaining; and~~
- ~~(e) is a maximum 2.4m in height above natural ground level or any deemed to comply or approved fill and/or retaining; and~~
- ~~(f) there are no more than one (1) per property.~~



Sea containers

~~4.1.74.1.5~~ Sea Containers are exempt from the requirement to obtain planning approval provided the Sea Container:

- (a) is wholly located within the property boundaries of the lot;
- (b) does not exceed 6m in length;
- (c) is utilised for storage only; and
- (d) is removed within 14 days of being placed on the lot.

External fixtures — solar collector

~~4.1.8~~ A Solar Collector/s, where it is located on a non-residential zoned property, are exempt from the requirement to obtain planning approval provided the Solar Collector/s:

- ~~(a) is located behind the street setback area;~~
- ~~(b) is not visible from the street;~~
- ~~(c) is integrated with the building; and~~
- ~~(d) complies with building height requirements.~~

~~Note: Where located on Residential zoned land the R-codes apply.~~

External fixtures – satellite dish

~~4.1.94.1.6~~ A Satellite Dish, where it is located on a non-residential zoned property and is ground mounted, is exempt from the requirement to obtain planning approval provided Satellite Dish:

- (a) is located behind the street setback area;
- (b) is a maximum of 1.8m in diameter;
- (c) is not visible from the street;
- (d) is setback from lot boundaries the same distance as the external fixture's height above natural ground level (i.e. 2m in height = 2m lot boundary setback); and
- (e) there is no more than one (1).

~~4.1.104.1.7~~ A Satellite Dish, where it is located on a non-residential zoned property and is not ground mounted, is exempt from the requirement to obtain planning approval provided the Satellite Dish:

- (a) is located behind the street setback area
- (b) is integrated with the building;
- (c) is a maximum of 1.8m in diameter;
- (d) is not visible from the street; and
- (e) there is no more than one (1) per property.

Note: Where located on Residential zoned land the R-codes apply.

Demolition of a non-residential building



~~4.1.11 The demolition of a non-residential building is exempt from the requirement to obtain planning approval unless it is:~~

- ~~(a) located in a place that is entered in the Register of Heritage Places under the Heritage of Western Australia Act 1990; or~~
- ~~(b) the subject of an order under the Heritage of Western Australia Act 1990 Part 6; or~~
- ~~(c) included on a heritage list prepared in accordance with this Scheme; or~~
- ~~(d) located within an area designated under this Scheme as a heritage area; or~~
- ~~(e) the subject of a heritage agreement entered into under the Heritage of Western Australia Act 1990 section 29.~~

Other Exemptions

1. Painting and Maintenance;
2. Change of site levels of less than half a metre; and
3. Boundary fencing in accordance with relevant legislation.

5.0 DEVELOPMENT APPLICATION REQUIREMENTS

5.1 Where a proposed development does not meet the Policy Measures, an application for Development Approval is required.

6.0 RELATED LEGISLATION

6.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

6.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- [Planning and Development \(Local Planning Schemes\) Regulations 2015](#)
- City of Nedlands Local Planning Scheme No. 3
- State Planning Policy 7.3 – Residential Design Codes
- Any other relevant State or Local Planning Policies

6.3 Where this Policy is inconsistent with the provisions of a specific Policy, Design Guideline or Local Development Plan that applies to a site or area, the provisions of that specific Policy, Design Guideline or Local Development Plan shall prevail.



7.0 DEFINITIONS

7.1 For this Policy the following definitions apply:

Definition	Meaning
Animal Enclosure	An enclosed structure for keeping small animals, and includes aviaries but, excludes stables.
Cubby House	An enclosed structure, such as a small-scale replica of a dwelling, used primarily by children for the purposes of play, but excludes unenclosed platforms.
External Fixture	Utilities, equipment, plant or other structures which are necessary for a dwelling to achieve efficient, comfortable and environmentally sustainable operating outcomes and includes; solar collectors, rainwater storage tanks, clothes drying structures, communications and power and water infrastructure, letterboxes, satellite dishes or other fixtures as necessary for the residential use of the buildings on-site.
Flagpole	A structure design to support a flag and containing nothing other than a flag.
Garden Ornament	An item used for garden or landscape enhancement and decoration and includes water fountains, bird baths and feeders, sundials and outdoor sculptures.
Fixed Outdoor Cooking Facility	A permanent cooking apparatus and includes barbeques (BBQ), pizza ovens, outdoor ovens and stoves.
Sea Container	A metal transportable structure designed for the storage and transport of goods from one location to another by road or sea.
Small Animal	As per City of Nedlands Health Local Law.

Council Resolution Number	
Implementation Date	
Date Adopted	

PD15.21	Consideration of Legal Advice – Possibility of Challenge to JDAP Decision on 97-105 Stirling Highway, Nedlands
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Committee	13 April 2021
Council	27 April 2021
Applicant	City of Nedlands
Director	Tony Free – Director Planning & Development
Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.	<p>The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.</p> <p>There is no financial or personal relationship between City staff and the proponents or their consultants.</p> <p>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.</p>
Reference	DA20/56259
Previous Item	Nil
Attachments	Nil
Confidential Attachments	1. Legal Opinion dated 17 March 2021

1.0 Executive Summary

At its Ordinary Meeting held on 23 February 2021, Council resolved as follows in relation to Item 14.7:

“Council directs the CEO to:

- 1. obtain legal advice from suitably experienced Senior Counsel (briefed by City solicitors) on the options of a Merit Review by State Administrative Tribunal or a Judicial Review of the Metro Inner North Joint Development Assessment Panels approval of 97-105 Stirling Highway made on Monday 8 February 2021; and*
- 2. undertake the appointment of such legal advice in a timely manner so as to comply with relevant time limits for review.”*

Consequent to the above decision, legal opinion from Mr. Pettit SC was sought by the City’s solicitors. This opinion is included as a confidential attachment.

The opinion concludes that there are no reasonable grounds of judicial review, other than with respect to an arguable failure by the JDAP to give adequate reasons for the decision. Any challenge by the City on the grounds that inadequate reasons have been given would only result in an order to provide proper reasons being provided rather than the decision being set aside.

In relation to Resolution 2, a three-month appeal period applies to judicial reviews to the Supreme Court. This time expires on 8 May 2021. However, as the legal opinion has not identified any grounds for a judicial review, this timeframe does not pose a constraint.

Legal advice has confirmed there is no avenue of review to the State Administrative Tribunal.

Recommendation to Committee

Council:

- 1. Notes the legal opinion provided by Mr Ken Pettit SC in relation to the decision of the Metro Inner-North Joint Development Assessment Panel for the mixed use development at 97-105 Stirling Highway, Nedlands; and**
- 2. Requests the Metro Inner-North Joint Development Assessment Panel provides proper reasons for its decision of 8 February 2021 to grant approval to the mixed use development at 97-105 Stirling Highway, Nedlands.**

2.0 Discussion/Overview

Subsequent to Council's resolution of 23 February 2021, Council's solicitor was instructed to obtain a legal opinion from a suitably experienced Senior Counsel. Council's solicitor briefed Mr. Pettit SC on 5 March 2021. Mr. Pettit provided his opinion on 16 March 2021. A copy of this opinion is attached.

Merit Review by State Administrative Tribunal

It has been established that there is no avenue for review by the State Administrative Tribunal (Tribunal) of the merits of the decision. Current planning legislation does not provide for a third party right of review (appeal). As the City was not the decision maker, it is legally a 'third party'. The only avenue where a 'third party' can be involved in a Tribunal matter is where it allows the party to join a proceeding already before it (section 38 of the *State Administrative Tribunal Act 2004*). This right does not extend to a 'third party' making a fresh application for review.

Judicial Review by Supreme Court of WA

Mr. Pettit SC has provided a detailed assessment of the City's legal position regarding a judicial review to the Supreme Court of WA. Mr. Pettit SC advises that the Supreme Court exercises jurisdiction over the executive functions of state and local government, including JDAP decisions. However, the Court cannot entertain challenges directed to the merits of a decision, only to how the decision maker complied with statute law and process. One exception to this focus is where a decision is made that is so unreasonable as to be outside the bounds of the decision-makers jurisdiction (*Wednesbury* unreasonableness). Mr. Pettit SC has not found evidence that the decision made by the JDAP was unreasonable in the context of *Wednesbury* unreasonableness.

The legal opinion considers several avenues of possible challenge, namely:

- Metropolitan Region Scheme (MRS) reservation

- Zoning and permissibility
- Character of the area
- Regard to the Nedlands Town Centre Precinct Plan Policy
- Residential density
- Building height
- Plot Ratio
- Traffic
- Disregard of State Design Review Panel

Mr. Pettit SC has concluded that there is no likely process error associated with the MRS reservation, zoning or permissibility of uses.

In relation to whether the JDAP had due regard to the character of the area, Mr. Pettit SC concluded that the RAR provided the Panel advice on the future nature of the precinct as a town centre. Based on the Nedlands Town Centre Precinct Plan, the “desired character” identified in the RAR was a high density, high rise, mixed use Town Centre. In relation to regard to the Precinct Plan, Mr. Pettit SC identifies reference in the JDAP agenda to the Plan a total of 53 times. This indicates that the JDAP did have due regard to the Precinct Plan.

The RAR advises the JDAP that the Department of Planning, Lands and Heritage has informed the City that the building height controls contained in the Precinct Plan contradict the Scheme and are to be removed. Mr. Pettit SC has advised that in his view, the advice of the Department of Planning Lands and Heritage is incorrect. It is possible for a local planning policy to deal with building height and not contradict the Scheme. Notwithstanding the erroneous advice provided by the Department, Mr. Pettit SC cannot see any error was made by JDAP.

The opinion concluded that there is little scope for a challenge in judicial review to the heights of three towers. Firstly, the City’s LPS3 did not contain a definite height limit and the draft Precinct Plan provided for up to 20 storeys. Secondly, even though the height of the development exceeded to 20 storeys provided by the Precinct Plan, this is not a process error by the JDAP. Mr. Pettit SC states: “...*the express and deliberate removal of height restrictions in LPS3 is not so definitely reversed by the draft Policy as to characterize the JDAP decision on height as beyond its power.*”

Mr. Pettit SC contended that there is no challenge relating to plot ratio or traffic. He also contended that the JDAP provided due regard to the State Design Review Panel comments. This is due to the level of coverage provided these matters in the Agenda documents and within the presentations provided at the meeting.

Insufficient Reasons for Decision

Mr. Pettit SC notes that from a 908-page Agenda, the JDAP’s reasons for the decision amounted to less than a single page. The opinion advises that there remains a reasonable prospect of success for a challenge to the adequacy of the reasons. However, the result of a successful challenge would be limited to the JDAP being ordered to provide reasons. It would not result in the setting aside of the decision. Whilst the new reasons may provide grounds for judicial review, it is likely that any amplified reasons would be framed to avoid such a challenge.

3.0 Consultation

No external consultation has been conducted.

4.0 Strategic Implications

How well does it fit with our strategic direction?

This is an administrative matter.

Who benefits?

The possible setting aside of the decision may reflect the prevailing view of the community as expressed in the level of submissions against the development.

Does it involve a tolerable risk?

There is a high degree of financial risk associated with legal action due to its open-ended nature.

Do we have the information we need?

The legal opinion provided indicates there is little chance of success in a challenge to set aside the decision.

5.0 Budget/Financial Implications

Any legal action will have a budgetary impact. However, it is not known at this time what the impact would be of lodging a claim in the Supreme Court.

Can we afford it?

Any costs associated with legal action will need to be accommodated within the current and future budgets.

How does the option impact upon rates?

Impact on rates is not known at this stage and will depend upon Council's chosen course of action.

6.0 Conclusion

The legal opinion provided by Mr. Pettit SC does not identify any grounds of appeal that would result in the setting aside of the decision made on 8 February 2021 in relation to the mixed use development at 97-105 Stirling Highway, Nedlands. Whilst there may be ground for challenging the adequacy of the reasons given by the JDAP for its decision, this would only result in an order for new reasons.

It is recommended that the City request additional reasons for the decision from the Metro Inner-North Joint Development Assessment Panel.