

Planning and Development Reports

Committee Consideration – 14 July 2020

Council Resolution – 28 July 2020

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| **PD31.20** | **No. 20 Robinson St, Nedlands - Additions to a Single House** |
|  | |
| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | Rowan Engles |
| **Landowner** | Paul and Verity Epstein |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **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** | DA19/42702 |
| **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. Applicant Justification Letter |
| **Confidential Attachments** | 1. Plans 2. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application received on 3 December 2019, for proposed additions to a single house (including a laundry, bedrooms and a bathroom) at No. 20 Robinson St, Nedlands.

The application seeks discretion to be exercised in relation to lot boundary setbacks addressing the northern, eastern, and southern lot boundaries.

The application was advertised to adjoining neighbours in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. Two objections were received during the advertising period.

It is recommended that the application be approved by Council as the development proposal is considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is unlikely to have a significant adverse impact on the local amenity, being consistent with the local character of the region.

1. **Recommendation to Committee**

**Council approves the development application dated 3 December 2019 with amended plans received 29 April 2020 for additions to a single house at Lot 299, 20 Robinson St, Nedlands, subject to the following conditions and advice notes:**

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 pertains only to additions to a single house as indicated on the plans attached.**
3. **All footings and structures shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
4. **This approval is limited to additions to a single house only and does not relate to any site works, decking or retaining walls 500mm or greater above the approved ground levels.**
5. **The existing outbuilding shall not be utilised for habitable or commercial purposes without further planning approval being obtained.**
6. **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 highly visible from the primary street, to the satisfaction of the City of Nedlands.**
7. **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.**
8. **Fences within the primary street setback area shall not exceed 1.8m in height from natural ground level and are to be visually permeable in accordance with the Residential Design Codes (v1, 2019) above 1.2m in height from natural ground level.**
9. **Prior to the occupation of the development, all structures within the 1.5m visual truncation area abutting vehicle access points shall be truncated or reduced to 0.75m height to the satisfaction of the City of Nedlands.**
10. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite (refer advice note ‘t’)**

**Advice Notes:**

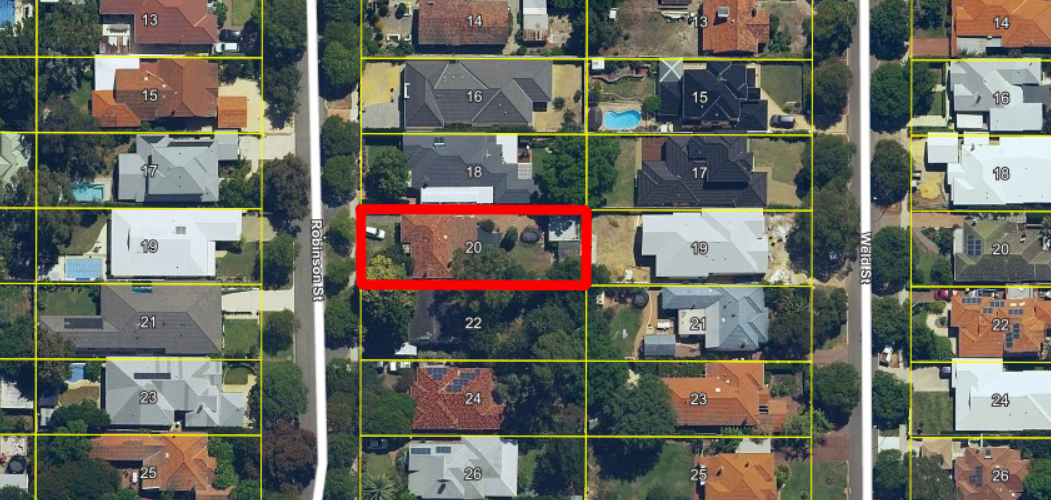
1. **This is a Planning Approval only and does not remove the responsibility of the applicant/owner to comply with all relevant building, health and engineering requirements of the City, or the requirements of any other external agency.**
2. **This planning decision is confined to the authority of the *Planning and Development Act 2005*, the City of Nedlands’ Local Planning Scheme No. 3 and all subsidiary legislation. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are first obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements, or encumbrances are adhered to.**
3. **This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.**
4. **This planning approval has been issued on the basis of the plans hereby approved. It is the responsibility of the applicant to ensure that the approved plans are accurate and are a true representation of all existing and proposed development on the site, and to ensure that development proceeds in accordance with these plans.**
5. **There may be matters which impact on proceeding with the approved development which are not shown on the approved plans (e.g. verge infrastructure, retaining walls). Such matters may need to be separately addressed before the approved development can proceed. It is the responsibility of the applicant to ensure that these matters are addressed prior to the commencement of the development hereby approved.**
6. **The applicant is advised that all development must comply with this planning approval and approved plans at all times. Any development, whether it be a structure or building, that is not in accordance with the planning approval, including any condition of approval, may be subject to further planning approval by the City.**
7. **The applicant is advised that variations to the hereby approved development including variations to wall dimensions, setbacks, height, window dimensions and location, floor levels, floor area and alfresco area, may delay the granting of a Building Permit.  Applicants are therefore encouraged to ensure that the Building Permit application is in compliance with this planning approval, including all conditions and approved plans. Where Building Permit applications are not in accordance with the planning approval, a schedule of changes is to be submitted and early liaison with the City’s Planning Department is encouraged prior to lodgement.**
8. **A separate development application is required to be submitted to and approved by the City prior to erecting any fencing within the street setback area(s) which is not compliant with the deemed-to-comply provisions of the Residential Design Codes, and/or erecting any fencing behind the primary street setback area which is more than 1.8m in height above approved ground levels.**
9. **A demolition permit is required to be obtained for the proposed demolition work. The demolition permit must be issued prior to the removal of any structures on site.**
10. **Prior to the commencement of any demolition works, any Asbestos Containing Material (ACM) in the structure to be demolished, shall be identified, safely removed and conveyed to an appropriate landfill which accepts ACM.**
11. **Removal and disposal of ACM shall be in accordance with *Health (Asbestos) Regulations 1992*, Regulations 5.43 - 5.53 of the *Occupational Safety and Health Regulations 1996*, *Code of Practice for the Safe Removal of Asbestos 2nd Edition*, *Code of Practice for the Management and Control of Asbestos in a* Workplace, and any Department of Commerce Worksafe requirements.**
12. **Where there is over 10m2 of ACM or any amount of friable ACM to be removed, it shall be removed by a Worksafe licensed and trained individual or business.**
13. **All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, lobby or staircase, shall be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.**
14. **All street tree assets in the nature-strip (verge) shall not be removed. Any approved street tree removals shall be undertaken by the City of Nedlands and paid for by the owner of the property where the development is proposed, unless otherwise approved by the City of Nedlands.**
15. **The contractor/developer shall protect the City’s street trees from any damage that may be caused by the scope of works covered by this contract for the duration of the contract. All work carried out under this contract is to comply with the City’s policies, guidelines and Australian Standards relating to the protection of trees on or adjacent to development sites (AS 4870-2009).**
16. **A new crossover or modification to an existing crossover will require a separate approval from the City of Nedlands prior to construction commencing.**
17. **Where building works are proposed a building permit shall be applied for prior to works commencing.**
18. **All car parking dimensions, manoeuvring areas, crossovers and driveways shall comply with Australian Standard AS2890.1 (as amended) to the satisfaction of the City of Nedlands.**
19. **In relation to condition 10, the applicant is advised that all downpipes from guttering shall be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 20-year recurrent storm event. Soak-wells shall be a minimum capacity of 1.0m3 for every 80m2 of calculated surface area of the development.**
20. **Background**

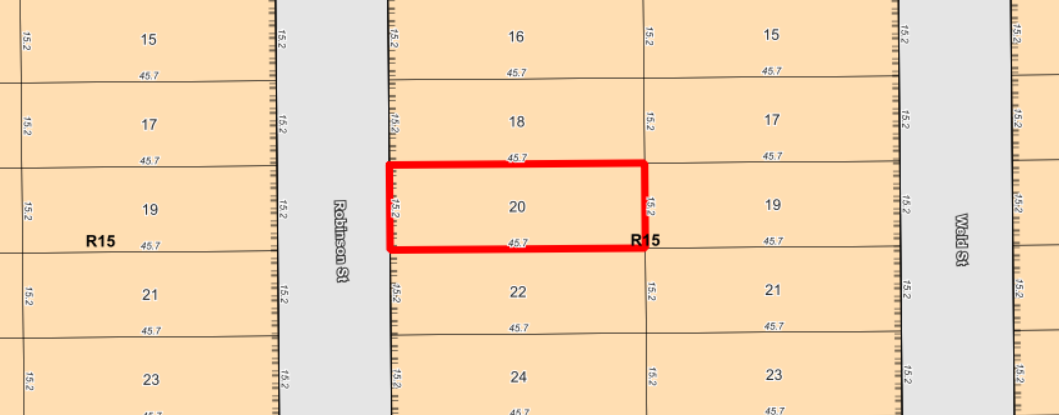
**3.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R15 |
| **Land area** | 696m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Single Residential House |
| **Use Class** | P |

**3.2 Locality Plan**

The subject property is located within a ‘Residential Zone’ with a residential density code of R15 in the Hollywood Ward. The locality is characterised by single houses with a lot size of approximately 700m2. Blocks are orientated East-West and comprise of a mixture of both single storey and two storey houses.





1. **Application Details**

The applicant seeks development approval for single storey additions to a single house. The proposed additions relate to ground floor additions only and include:

* an outdoor living area addressing the northern lot boundary;
* a lounge;
* a laundry;
* three (3) bedrooms and
* a bathroom.

The submitted plans seek assessment based on design principles assessment as the proposed does not satisfy the ‘*Deemed to Comply’* requirements of *State Planning Policy 7.3 Residential Design Codes Volume 1* (R-Codes) in relation to lot boundary setback requirements.

The following is a summary of the proposed lot boundary setbacks:

* Minimum Northern Lot Boundary Setback – 1.0m in lieu of 1.1m (deemed to comply)
* Minimum Eastern Lot Boundary Setback – 3.97m in lieu of 6.0m (deemed to comply)
* Minimum Southern Lot Boundary Setback – 0.8m in lieu of 1.5m (deemed to comply)

By way of justification in support of the development, the applicant has provided a letter addressing objections received during the consultation period and providing justification of the proposed variations. This letter has been provided as Attachment 1 to this report.

1. **Consultation**

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

* Lot boundary setbacks

The development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to eight (8) residents and landowners. Two (2) objections were received during the consultation period as per below pie graph:

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** | **No. of times issue raised** | **Officer Response** | **Action Taken** |
| The proposed wood burning stove should not be supported due to the possible health impacts on adjoining landowners. | 2 | The creation of smoke associated with heating or cooking from a wood burning fireplace/stove is not regulated under the *Planning and Development Act* and is governed by Environmental Health regulations and Building Regulations associated with chimney location and design.  The City’s Environmental Health and Building Departments have reviewed the development proposal and have indicated no concerns with the design as proposed. | Referred to relevant Health and Building Departments for Comment. No concerns identified.  Not a planning consideration under a Development Application in accordance with the *Planning and Development Act 2005.* No Action required. |
| The plans propose the introduction of significant building bulk addressing the southern lot boundary. No architectural relief is proposed across the southern elevation. | 1 | See section 6.2.1 (Lot Boundary setback assessment) | Plans considered to satisfy the design principles of the R-Codes – see below.  Recommendation of development approval proposed |
| The development proposal does not respect the 6.0m rear setback required under a R15 zone and is uncharacteristic of the surrounding properties. | 1 | See section 6.2.1 (Lot Boundary setback assessment) | Plans considered to satisfy the design principles of the R-Codes – see below.  Recommendation of development approval proposed |
| The existing shed does not comply with the 6.0m rear setback requirement. | 1 | The existing ‘shed structure’ is not part of this application.  The shed is classified as an ‘Outbuilding’ under the R-Codes and is not subject to the 6.0m rear lot boundary setback requirement. | The ‘shed’ structure is not part of this application and is pre-existing.  No action required. |
| The proposed design does not allow for landscaping. | 1 | The City’s Residential Development Policy requires 20% landscaping of all single and grouped housing developments. The development application as proposed, provides greater than 20% landscaping of the lot and complies with the provisions of the Residential Development Policy. The Landscaping clause of the Residential Development Policy requires endorsement by the Western Australian Planning Commission (WAPC) prior to the 20% landscaping requirement becoming an enforceable ‘deemed to comply’ development requirement for all single and grouped dwellings. | The proposed development meets the requirement of the Residential Development Policy’s draft landscaping provision.  No action required. |
| The proposed design will require more energy for heating and cooling. | 1 | Energy efficiency is considered as part of a Building Permit application and is not considered at the development application assessment stage (planning approval). It is an Australian Standard that all new residential properties, or additions to established dwellings achieve a minimum 5-star energy efficiency rating.  The proposed building design and layout is considered to appropriately address the northern lot orientation, maximising access to northern light for habitable spaces. | Energy efficiency not a planning consideration for single and grouped dwellings for a Development Application and is considered at the Building Permit Stage.  No action required. |
| The proposed design compromises the southern neighbour’s access to natural light. | 1 | R15 permits overshadowing of the southern lot to a maximum of 25%. The proposed additions in combination with the existing dwelling will result in 15% of the southern lot being overshadowed at midday on 21 June (winter solstice). Overshadowing is not considered to intrude significantly into the outdoor living area of the southern lot. | Overshadowing of the southern lot is fully complaint with the ‘Deemed to Comply’ requirements of the R-Codes.  No action required. |
| The proposed carport is not setback sufficiently in relation to the existing streetscape. | 1 | The applicant has removed the proposed carport from the development proposal. The carport is not considered as part of this development application | Proposed carport structure withdrawn from development proposal. 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.

1. **Assessment of Statutory Provisions**

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

Schedule 2, Part 9, clause 67 (Matters to be considered 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, 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.

**6.2 Policy**

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

The applicant is seeking assessment under the Design Principles of the R-Codes for lot boundary setbacks as addressed in the below table:

**Lot Boundary Setbacks**

|  |
| --- |
| **Design Principles** |
| **5.1.3 Lot boundary setback**  P3.1 Buildings set back from lot boundaries or adjacent buildings on the same  lot so as to:   * 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. |
| **Deemed-to-Comply Requirement** |
| The following are the ‘deemed to comply’ lot boundary setback requirements based upon a wall’s length, height and presence of major openings as outlined within Tables 2A and 2B of the R-Codes.   1. Ground Floor North – Outdoor Living (Alfresco) – 1.0m proposed in lieu of 1.1m required. 2. Ground Floor South – (rear Bedroom) to Kitchen – 1.16m setback proposed in lieu of 1.5m required. 3. Ground Floor South – Formal Lounge – 0.8m setback proposed in lieu of 1.5m required. 4. Ground Floor East (Rear) – Entire Length – 3.97m proposed in lieu of 6.0m required. |

|  |
| --- |
| **Administration Assessment** |
| The proposed lot boundary setbacks of the additions, in combination with the existing dwelling’s setbacks, are considered to satisfy the ‘design principles’ of the R-Codes, providing adequate access to direct sunlight and ventilation to neighbouring land owners in relation to the built form and outdoor living areas. The submitted plans indicate full compliance with the overshadowing restrictions for properties zoned R15.  The proposed additions are fully compliant in relation to overlooking. No loss of visual privacy is identified as a result of the proposed additions.  In relation to the proposed lot boundary setbacks the applicant is seeking discretion for (points 1-3 above), the proposed setbacks are considered to meet the ‘design principles’ as follows:   * Setback 1 (above) the proposed outdoor living area addressing the northern lot boundary is covered by a roof (patio). The R-Codes require a patio to be measured as a ‘wall’, with its length being calculated from the outside of the posts for the purposes of determining the required lot boundary setback . The setback shortfall is present due to the patio structure having a height of over 3.5m (4.16m) triggering an additional setback requirement of 0.1m. The patio structure is proposed to be open on all sides, resulting in negligible building bulk addressing the northern lot boundary. Considering the technical nature of the proposed lot boundary setback and the proposed patio being open on all sides, the proposed 1.0m setback is considered to satisfy the ‘design principles’. * Setbacks 2 and 3 (above) are assessed concurrently under the requirements for wall articulation as per Figure Series 4 of the R-Codes. The proposed setback shortfalls are present due to the aggregate impact of the proposed additions and the existing dwelling. The southern lot boundary setbacks are considered to satisfy the ‘design principles’ of the R-Codes in relation to their bulk and scale. The proposed additions are single storey in nature and are designed to sympathetically integrate with the existing dwelling. The proposed additions addressing the southern lot boundary are considered to provide sufficient separation to the northern lot boundary in providing access to both natural light and ventilation.   The proposed eastern lot boundary setback (rear setback, point 4 above) is considered to meet the ‘design principles’ as follows:   * The proposed additions are considered to be minor in nature only, representing a single storey extension to an existing dwelling. * The proposed additions and rear setback intrusion are unlikely to negatively impact the neighbouring property’s access to natural light or ventilation, with overshadowing compliance being maintained as a result of the proposed additions. * The proposed additions maintain full compliance with the visual privacy requirements of the Residential Design Codes, preventing overlooking of the neighbouring property’s outdoor living areas and habitable spaces. * Immediate neighbouring properties within the same street block provide precedent of large outbuildings being located within the rear setback area, including 27 Weld St, 3 Weld St and 12 Robinson St. * The immediate adjoining eastern neighbouring landowner (19 Weld St) provided no objection to the proposed rear setback intrusion. |

1. **Conclusion**

Considering the above, the proposed additions to a single house at 20 Robinson St, Nedlands are considered to satisfy the ‘design principles’ of State Planning Policy 7.3 Residential Design Codes Volume 1 and relevant City of Nedlands Local Planning Policy.

The additions are minor in nature, being unlikely to have a negative impact on the amenity of adjoining landowners or the locality in terms of building bulk, visual privacy or access to natural light and ventilation.

Considering the above and having due regard to relevant planning policy, legislation and possible amenity impacts of adjoining landowners, it is recommended that Council resolves to approval the development application subject to the conditions and advice notes outlined above.

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| --- | --- |
| **PD32.20** | **No. 150 Stirling Highway, Nedlands - Change of Use – Recreation Private** |
|  | |
| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | Olivia Stell |
| **Landowner** | Jonathan Swain |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **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** | DA19-42964 |
| **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. Development Proposal (Change of Use) 2. Traffic Report 3. Applicant Justification Letter |
| **Confidential Attachments** | 1. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application received on 6 December 2019, for a proposed change of use at 3/150 Stirling Highway, Nedlands.

The applicants are proposing a change of use from ‘Office’ to ‘Recreation Private’ for the purposes of establishing a Pilates Studio.

The application was advertised to adjoining neighbours in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. One (1) objection was received during the advertising period.

It is recommended that the application be approved by Council as it is considered to satisfy the Scheme and Zone Objectives. The proposal is considered unlikely to have a significant adverse impact on the local amenity, being consistent with the intent and character of the locality.

1. **Recommendation to Committee**

**Council approves the development application dated 6 December 2019 to change the use of 3/150 Stirling Highway, Nedlands from ‘Office’ to ‘Recreation Private’ (Pilates Studio), subject to the following conditions and advice:**

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 pertains only to a change of use, from Office to Recreation Private (Pilates Studio).**
3. **The development, hereby approved, shall at all times comply with the requirements of ‘Recreation Private’ land use as defined by the City of Nedlands Local Planning Scheme No. 3.**
4. **All customer visits to the hereby approved Recreation Private (Pilates Studio) shall be during the following hours:**

* **6:00am – 7:20pm Monday to Friday**
* **7:30am – 10:00am Saturday and Sunday**

1. **A maximum of 32 staff and patrons (inclusive) shall be permitted on the premises at any one time.**
2. **There shall be a minimum 10-minute break between sessions.**
3. **Prior to occupation, the landowner/applicant is to enter into a legal agreement with surrounding business/the strata body for the purpose of ensuring the satisfactory provision and maintenance of shared parking through a parking management plan to the satisfaction of the City of Nedlands at the applicants cost in accordance with Clause 32.2 (4) of Local Planning Scheme No.3. (refer advice note ‘c’)**

**Advice Notes specific to this proposal:**

1. **In relation to condition 4, the applicant is advised that the definition of the Recreation Private land use is defined under the City of Nedlands Local Planning Scheme No. 3 as follows:**

**means premises that are -**

**(a) used for indoor or outdoor leisure, recreation or sport; and**

**(b) not usually open to the public without charge.**

1. **In relation to Condition (5) a separate development application is required to be submitted to and approved by the City prior to and increase in the number of staff and patrons.**

1. **In relation to condition 7, the applicant is advised that the shared parking legal agreement and management plan:**
2. **must be to the satisfaction of the local government;**
3. **must be made with the owner of the Shared Site, and any other person specified by the local government (which may include the local government);**
4. **must be prepared (and if necessary, registered and lodged) at the cost of the owner of the development site;**
5. **may, if required by the local government, provide for one or more of an easement, restrictive covenant, right-of-way, reciprocal access and circulation, lease, licence, notification, absolute caveat and any other provision necessary or convenient to ensure the shared parking arrangement is provided and maintained;**
6. **must not be amended, surrendered or terminated without the approval of the local government; and**
7. **must result in a net car parking provision of no less than 16 bays during the time periods where two (2) concurrent sessions are run (6:00am-6:50am and 5:30pm and 6:20pm)**

**A copy of the legal agreement is to be prepared and be provided to the local government and endorsed by the City, prior to applying for an occupancy permit.**

1. **The applicant is advised that a building permit will be required for fit-out prior to proceeding.**
2. **Prior to occupying premises an occupancy permit will be required for a change in class from Class 7b to Class 9b.**
3. **The applicant is advised that the application requires a separate assessment under the Health (Public Buildings) Regulations 1992 including a form 1 Application to Construct, Extend or Alter a Public Building; Form 2 – Application For Certificate of Approval and Form 5 – Certificate of Electrical Compliance.**
4. **The applicant is advised that details will need to be provided to the City’s Environmental Health Department as to the number of patrons (and instructors) to be accommodated on-site at any one time to enable a full assessment of the Public Building requirements to be undertaken.**
5. **This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not occupied within the four-year period, the approval shall lapse and be of no further effect.**
6. **Background**

**3.1 Land Details**

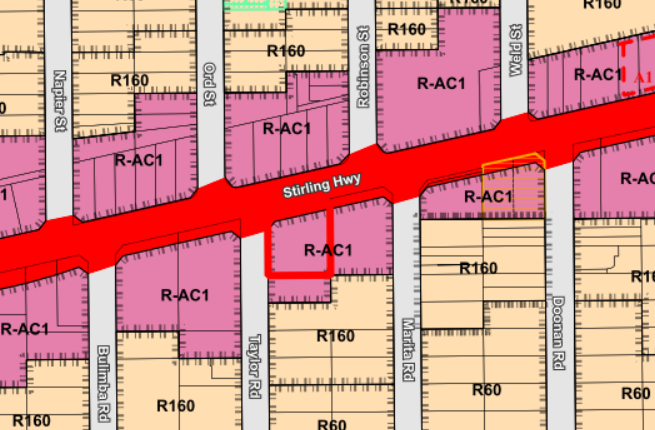
|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban, Primary Regional Roads |
| **Local Planning Scheme Zone** | Mixed Use |
| **R-Code** | R-AC1 |
| **Land area** | 2227m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Existing – Office  Proposed – Recreation Private |
| **Use Class** | Proposed – ‘A’ |

**3.2 Locality Plan**

The Subject site is located to the south of Stirling Highway, being located between Taylor Rd and Marita Rd. To the east of the subject site is Taylor Rd IGA. To the West of the site is City Farmers. Vehicle access for the site is obtained from Stirling Highway and Taylor Rd.



**Location of the proposed Pilates studio**



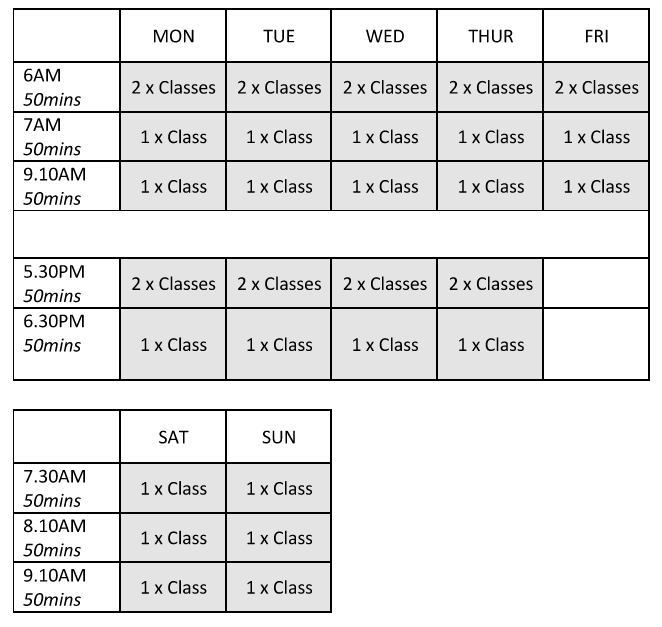
**Location of the proposed Pilates studio**

1. **Application Details**

The applicant seeks development approval to change to the use of the subject site (3/150 Stirling Highway) from ‘Office’ to ‘Recreation Private’.

The applicants have provided the following information:

* The proposed business is a Pilates studio.
* The business is proposed to host a maximum of 30 clients during a single period with 2 instructors on site at any one time.
* Sessions are proposed to run from 6:00am to 7:20pm weekdays and 7:30am to 10:00am on weekends. A timetable of proposed sessions is provided below:



* There is a proposed minimum 10-minute break between sessions.
* The lettable area of the subject site is 230m2.
* 150 Stirling Highway has a total of 33 car bays provided on site, of these, 6 bays are allocated exclusively to the subject site.

In support of the application, the applicants have provided a Traffic Impact Assessment, prepared by a suitable qualified Traffic Engineer. This report outlines the availability of parking within the immediate locality of the subject site. The applicants have also provided a justification letter, supporting the application. These supporting documents have been provided as an attachment to this report (attachments 2 and 3).

1. **Consultation**

The applicant is seeking assessment under the City’s *Local Planning Scheme No. 3* (LPS3) Mixed Use zone objectives and the City’s Parking Local Planning Policy objectives for the following:

* The proposed land use of ‘Recreation Private’ is an ‘A’ use under LPS3. An ‘A’ use requires consultation in accordance with Clause 64 of the Deemed Provisions and the City’s Consultation Local Planning Policy.
* The development proposes a 10 bay carparking shortfall under the City’s Parking Local Planning Policy.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 48 residents, business owners and landowners. One (1) objection was received during the consultation period. The submitting party resides outside of the consultation area.

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** | **No. of times issue raised** | **Officer Response** | **Action Taken** |
| The subject site does not provide adequate parking to service 30 clients and two staff members | 1 | e.g. See section 6.4.3 | Parking provision deemed to be acceptable for the proposed land use, subject to fulfillment of Condition 7 – see below.  Recommendation for approval for the development proposal. |

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

1. **Assessment of Statutory Provisions**

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

Schedule 2, Part 9, clause 67 (Matters to be considered 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.

If Council does not support the proposed development, the applicant will have a right of review (appeal) to the State Administrative Tribunal (SAT) under Part 14 of the *Planning and Development Act (2005)*

**6.2 Metropolitan Region Scheme**

The subject site is zoned ‘Urban’ by the Metropolitan Region Scheme (MRS). The proposal is an urban use and is consistent with the zoning classification under the MRS.

**6.3 Local Planning Scheme No. 3**

Part 3 clause 16 (Objective of Zone)

The subject site is zoned ‘Mixed Use’ by LPS3.

A mixed-use zone has the following objectives under the Scheme:

* To provide for a significant residential component as part of any new development.
* To facilitate well designed development of an appropriate scale which is sympathetic to the desired character of the area.
* To provide for a variety of active uses on street level which are compatible with residential and other non-active uses on upper levels.
* To allow for the development of a mix of varied but compatible land uses such as housing, offices, showrooms, amusement centres and eating establishments which do not generate nuisances detrimental to the amenity of the district or to the health, welfare and safety of its residents.

The proposed land use of a Recreation Private (Pilates studio) is considered to meet the objectives of the mixed-use zone. The proposed change of use does not constitute a new physical development. Therefore, it is not appropriate to require a ‘significant residential component’ for the site. The proposed land use promotes healthy activity and contributes to ground floor ‘active’ uses which address Stirling Highway.

Considering the above, the proposed land use is deemed to satisfy the objectives of the mixed-use zone.

Part 3, Table 3 (Zoning Table) and Interpreting Zoning Table

The proposed land use of a Pilates studio is classified as ‘Recreation Private’ under LPS3.

Recreation Private is defined as:

means premises that are -

(a) used for indoor or outdoor leisure, recreation or sport; and

(b) not usually open to the public without charge.

Recreation Private has an ‘A’ use permissibility within the Mixed-Use zone. An ‘A’ use:

means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.

The proposed land use has been advertised to adjoining landowners, residents, and business owners in accordance with the Deemed Provisions and the City’s Consultation of Planning Proposals Local Planning Policy.

Considering the proposed land use, the objectives of the mixed-use zone and the use class permissibility of the proposed land use on the subject site, the proposed change of use is considered to be appropriate for the site’s context and in accordance with the objectives and intent of the Scheme.

Part 4 – General Development Requirements

To mitigate the possible impact of the proposed car parking shortfall, a shared/reciprocal parking arrangement has been conditioned in accordance with Clause 32.2 of the City of Nedlands Local Planning Scheme No. 3.

Clause 32.2 states:

Shared car parking

1. Where an application for development approval is made for a non-residential use which does not provide the required number of on-site car parking spaces, the local government may permit part or all of the shortfall to be provided through an agreement to share car parking space(s) on an adjacent site (Shared Site).
2. When considering whether to permit a proposal for shared car parking, the local government must:
3. be satisfied that the hours of peak operation of the proposed development and those of the Shared Site do not substantially overlap;
4. be satisfied that adequate car parking will be available at all times for both the development site and the Shared Site;
5. be satisfied that the relationship between the development site and the Shared Site is such that the shared car parking space(s) is likely to be used by people visiting the development site; and
6. have regard to other relevant considerations in any applicable local planning policy.
7. An application for development approval which proposes shared parking must include:
8. information addressing the matters in the preceding sub-clause 2;
9. a draft parking management plan; and
10. any other relevant material referred to in an applicable local planning policy.
11. If the local government permits a shared car parking arrangement, it may require the owner of the development site to enter into a legal agreement for the purpose of ensuring the satisfactory provision and maintenance of the shared car parking. The legal agreement:
12. must be to the satisfaction of the local government;
13. must be made with the owner of the Shared Site, and any other person specified by the local government (which may include the local government);
14. must be prepared (and if necessary, registered and lodged) at the cost of the owner of the development site;
15. may, if required by the local government, provide for one or more of an easement, restrictive covenant, right-of-way, reciprocal access and circulation, lease, licence, notification, absolute caveat and any other provision necessary or convenient to ensure the shared parking arrangement is provided and maintained; and
16. must not be amended, surrendered or terminated without the approval of the local government.

Condition 7 and advice note ‘c’ of the City’s recommendation require creation of a formalised reciprocal shared parking arrangement for the subject site prior to occupation. This shared parking arrangement is required to be endorsed by the City, prior to the lodgement of an occupancy permit.

Creation of a shared parking arrangement will mitigate impacts of the proposed car parking shortfall as a result of the shortcomings of the parking designated for exclusive use.

**6.4 Local Planning Policy – Parking Local Planning Policy**

|  |
| --- |
| **Policy Objective** |
| To facilitate the development of sufficient parking facilities for cars and other wheeled vehicles |
| **Policy Requirement** |
| The City’s Parking Local Planning Policy requires 1 car parking bay for every 2 persons present on site. The applicants have advised a maximum of 32 people will be on site at any one time. The required car parking provision for the site is therefore 16 bays. |
| **Proposed** |
| The subject site has a total of 6 bays allocated to the proposed tenancy. |
| **Administration Assessment** |
| It is acknowledged that the operating times for this development falls outside of normal operating hours for surrounding businesses. This allows for more vacant spaces available within the locality. The traffic report has been reviewed by the City’s Technical Services team which is satisfied as to the accuracy and competency of the report provided.  Whilst it is acknowledged that the development proposes a car parking shortfall when car bays of exclusive use are considered in the calculation of the business, a further 412 on street car parking bays were identified with a 400m radius of the subject site. Considering the availability of suitable street parking, the availability of 6 car parking bays on site, the proposed 10 bay car parking shortfall is unlikely to generate a noticeable negative car parking impact on the immediate locality.  The tenancy’s strata plan does not have a formally arranged reciprocal parking/shared parking arrangement. The strata management body and affected business owners have outlined an informal arrangement between business owners permitting the sharing of car parking bays outside of regular business hours. The City has recommended condition 7 and advice note ‘c’. This condition and advice note seeks to establish and enforce creation of a shared reciprocal parking arrangement between business owners, formalising the shared parking arrangements.  The proposed development runs 2 concurrent classes early in the morning and after usual business hours (6:00am-6:50 and 5:30pm-6:20pm). All other operating times run a single class (half the clients, 15) As result, parking demand is lower during these times (8 bays required under the City’s Parking Policy Local Planning Policy). Ample off-street parking is available within the immediate vicinity of the development and the bays of exclusive use are clearly marked on site.  This application was advertised to all adjoining business owners, occupiers and landowners, who provided no objections to the development proposal.  The Traffic Impact Statement, provided by the applicant, has been reviewed by the City’s Technical Services Department who are satisfied with the traffic report and have verified the assessment particulars and findings.  To reduce the parking demand and the impacts of session finishing times and session start times on parking demand, condition 7 is recommended. This 10-minute break between start and finish times allows for clients to leave the site before the new clients arrive, reducing parking demand.  Considering the above, the proposed land use is consistent with the objectives of the Mixed Use zone. The proposed car parking shortfall of 10 bays is only present when the clients run two (2) concurrent classes, which only occurs outside of regular business hours. During this time, the City has proposed to condition the formalisation of the shared parking arrangements through a legal agreement between the neighbouring business owners.  This legal agreement is to be ratified prior to the occupation of the development, mitigating the proposed car parking shortfall, when only car parking bays of exclusive use are utilised.  Considering the above, the proposed change of use application is considered to be an acceptable outcome in terms of traffic and car parking impacts. |

1. **Conclusion**

Considering the proposed land use, the property’s zoning, the proposed operating time of sessions and the number of staff and clients on site per session, it is unlikely that the health studio will have a negative impact of the amenity of the immediate locality.

The property contains various office and shop tenancies which operate outside of the proposed hours of operation of the proposed land use.

Based on the car parking assessment provided as part of the development application, an ample amount of car parking bays are likely to be available when the health studio and the other businesses on the property are all operating.

A formal shared parking agreement is to be prepared and endorsed by the City, prior to the occupation of the development, ensuing provision of ample parking, as required by the City’s Parking Local Planning Policy, is available for the subject site.

Considering the above, the proposal is unlikely to have a detrimental impact on the local amenity. Therefore, it is recommended that Council approves the application subject to the conditions identified above.

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| **PD33.20** | **No. 35 The Avenue – Five Two Storey Grouped Dwellings** |
|  | |
| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | Urbanista, Petar Mrdja |
| **Landowner** | Niche Living Projects Pty Ltd |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **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** | DA19-43081 |
| **Previous Item** | Nil |
| **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** | 1. Site Photos 2. Planning Report 3. Acoustic Report 4. Waste Management Plan 5. Landscape Plan |
| **Confidential Attachments** | 1. Plans 2. Submissions 3. Planning Assessment |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application received from the applicant on the 12 December 2019, for five proposed two-storey grouped dwellings at No. 35 The Avenue, Nedlands contained as Attachment 1 (the subject site).

Each grouped dwelling 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, street walls and fences, outdoor living area and landscaping. It is recommended that the application be approved by Council as these elements are considered to meet the design principles.

1. **Recommendation to Committee**

**Council approves the development application dated 12 December 2019 with amended plans received 11 June 2020 for five grouped dwellings at No. 35 (Lot 740) The Avenue, Nedlands, subject to the following conditions and advice:**

1. **This approval is for a ‘Residential’ land use as defined under the City’s Local Planning Scheme No.3 and the subject land may not be used for any other use without prior approval of the City.**
2. **The Landscaping plan (Attachment 5) forms part of this approval and shall be installed and maintained in accordance with the approved landscaping plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City.**
3. **Waste management for the development shall comply with the approved Waste Management Plan (Attachment 4) prepared by Dallywater Consulting dated June 2020 to the satisfaction of the City of Nedlands.**
4. **The acoustic report (Attachment 2) prepared by Sealhurst dated 2 June 2020 forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands. Recommendations contained within the acoustic report to achieve compliance with the Environmental Protection (Noise) Regulations 1997 are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**
5. **The responsible entity (strata/corporate) shall be liable for all bin replacement costs and/or repair costs relating to any damage which may occur as a result of the bin compaction process.**
6. **The location of any bin stores shall be behind the street alignment so as not to be visible from the street or public place and constructed in accordance with the City’s Health Local Law 1997.**
7. **All stormwater generated from the development shall be contained on site.**
8. **All footings and structures shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
9. **Prior to occupation of the development all fencing/visual privacy screens and obscure glass panels to major openings and unenclosed active habitable areas as annotated on the approved plans shall be screened in accordance with the Residential Design Codes by either;**
10. **fixed obscured or translucent glass to a height of 1.60 metres above finished floor level;**
11. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
12. **A minimum sill height of 1.60 metres as determined from the internal floor level; or**
13. **an alternative method of screening approved by the City of Nedlands.**

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

1. **Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**
2. **Face brick;**
3. **Painted render**
4. **Painted brickwork; or**
5. **Other clean material as specified on the approved plans.**

**And maintained thereafter to the satisfaction of the City of Nedlands**

1. **Prior to occupation of the development, the proposed car parking and vehicle access areas shall be drained and paved in accordance with the approved plans and are to comply with the requirements of AS2890.1 to the satisfaction of the City.**
2. **Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing ventes and pipes, solar panels, air conditioners, hot water systems and utilities shall be integrated into the design of the building and not be visible from the primary street to the satisfaction of the City.**
3. **Prior to construction or demolition works, a Construction Management Plan shall be submitted to the satisfaction of the City of Nedlands. The approved construction shall be observed at all times throughout the construction process to the satisfaction of the City.**
4. **Prior to the occupation of the development a lighting plan is to be implemented and maintained for the duration of the development to the satisfaction of the City.**
5. **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.**
6. **This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.**

**Advice Notes specific to this proposal:**

1. **This is a Planning Approval only and does not remove the responsibility of the applicant/owner to comply with all relevant building, health and engineering requirements of the City, or the requirements of any other external agency. The City encourages the applicant to speak with each department to understand any further requirements.**
2. **The applicant is advised that in relation to Condition 2, the landscaping plan shall detail the following:**
   1. **Species and maturity of landscaping within the front setback areas which have a minimum pot size of 100L;**
   2. **Species and maturity of landscaping proposed on the nature strip (verge) which have a minimum pot size of 200L;**
   3. **Species and maturity of landscaping within each lot; and**
   4. **Maintenance plan for all proposed landscaping on site and contingencies for replacement of dead and diseased plants.**
3. **The applicant is advised that in relation to condition 3, the maximum number of bins permitted on the verge is eight (8).**
4. **The applicant is advised that in relation to condition 4, as per the recommendations for air conditioning units to comply with the assigned levels of the Regulations at all times of the day, evening and night-time, the current air conditioner condenser unit specification is to be retained and the modified location and screening arrangement schematics detailed within the acoustic report are to be carried through to the Building Permit and construction documentation. Where any changes outside of these recommendations are proposed, assessment by an acoustic consultant is to be completed to confirm compliance with the Regulations.**
5. **The applicant is advised that in relation to Condition 13, the Construction Management Plan is to address but is not limited to the following matters:**
6. **Construction operating hours;**
7. **Contact details of essential site personnel;**
8. **Noise control and vibration management;**
9. **Dust, sand and sediment management;**
10. **Stormwater and sediment control;**
11. **Traffic and access management;**
12. **Protection of infrastructure and street trees within the road reserve and adjoining properties;**
13. **Dilapidation report of adjoining properties;**
14. **Security fencing around construction sites;**
15. **Site deliveries;**
16. **Waste management and materials re-use**
17. **Parking arrangements for contractors and subcontractors;**
18. **Consultation plan with nearby properties; and**
19. **Complaint procedure.**
20. **The responsible entity (strata/corporate body) is responsible for the maintenance of the common property (including roads) within the development.**
21. **Any development in the nature-strip (verge), including footpaths, will require a Nature Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to construction commencing.**
22. **Where parts of the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.**
23. **Prior to selecting a location for an air-conditioner, the applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as guide to prevent noise affecting neighbouring properties Prior to installing mechanical equipment, the applicant is advised to consult neighbours, and if necessary, take measures to suppress noise.**
24. **Background**

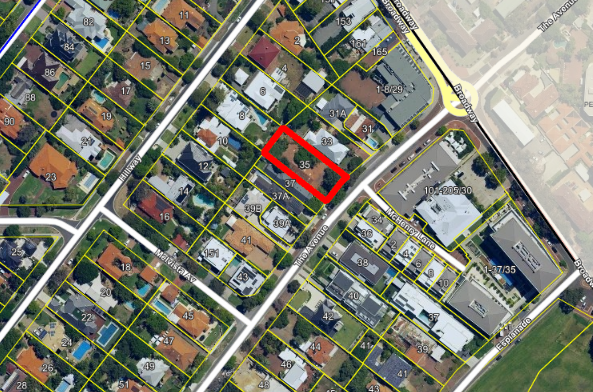
**3.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 1011.7m2 |
| **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) |

**3.2 Locality Plan**

* + 1. Site surrounds

The subject site is 1011.7m2 in area andis located within the street block bounded by Hillway to the north-west, Broadway to the north-east, The Avenue to the south-east, and Melvista Avenue to the south-west. The street block borders the City of Perth boundary to the east. The subject site has direct frontage to The Avenue and is situated approximately 70m from the Broadway intersection.



The surrounding area was previously coded Residential R20, Special Use and Retail. Following the gazettal of Local Planning Scheme No. 3 (the Scheme) in April 2019, the properties on Broadway were rezoned to Mixed Use R-AC3, while the properties adjacent to Broadway were recoded to Residential R60.

Although the surrounding area is predominated by single houses, it is not an intact streetscape, as there are a number of redeveloped homes (refer to Attachment 1)To the south-west of the site, several properties have been subdivided in accordance with the previous R20 density code, with redeveloped homes reflecting the various forms of subdivision. Directly opposite the site, 3 storey redeveloped homes have been constructed within the McHenry Lane precinct in accordance with the previous Special Use Zone provisions. A site visit to the property found that the character of the area is considered to be mixed, exhibiting offices, shops, restaurants, licenced premises, multiple dwellings and single houses.

Most dwellings within the immediate surrounds are redeveloped homes, predominated by contemporary styled homes.

Reflecting the diverse range of housing stock, the primary street setbacks of the buildings within the immediate locality range from nil 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 two or more storeys in height.

The verge areas contribute a significant number of mature trees to the streetscape. Although some of the single houses feature trees and small bushes, the immediate area has a significant amount of hardscaping, lawn and small bushes. Unlike many areas of the city, due to the number of redeveloped and subdivided homes, this particular locality is not considered “leafy-green”.

Given the above, the streetscape of this particular locality is considered varied – unlike other streetscapes within the City. The size, style and character of the homes, hardscape features and vegetative characteristics are mixed.

1. **Application Details**

The applicant seeks development approval to construct five, two storey grouped dwellings. Each grouped dwelling comprises:

* Three bedrooms;
* Two bathrooms;
* Two living areas;
* Garage with two car parking bays; and
* Storage.

By way of justification in support of the development application the applicant has provided a planning report contained as Attachment 2, an acoustic report contained as Attachment 3 and a waste management plan contained as Attachment 4.

1. **Consultation**

The applicant is seeking assessment under the Design Principles of the R-Codes Vol 1 for the following:

* Street setbacks;
* Lot boundary setbacks;
* Open space;
* Setbacks of garage and carports;
* Street walls and fences; and
* Landscaping.

The development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 74 residents, business owners and landowners. Six objections were received, while the remaining 68 did not make a submission as per below pie graph:

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

|  |  |  |
| --- | --- | --- |
| **Concern** | **Officer Response** | **Action Taken** |
| Lack of parking Car Parking (visitor and resident) | Due to the configuration of the development, no visitors’ bays are required. The Residential Design Codes - Explanatory Guidelines clarifies that visitor bays are required where 5 dwellings gain access from a single communal driveway. The subject application is for five grouped dwellings, with one dwelling gaining direct access from the primary street, with the remaining four dwellings gaining vehicle access from the communal driveway. Thus, the development does not trigger the need for a visitor bay.  Each dwelling is afforded two car parking bays and complies with element 5.3.3 – Parking. | Complies with element – no action required. |
| Tree removal | One objection requests the removal of the tree while another objects to the removal of trees. The subject application seeks to retain two trees, which is supported. | No action required. |
| Noise | The Acoustic Report, contained as Attachment 3, has been reviewed by the City’s Health Services which supports the recommendations of the Acoustic Report | A condition of approval will ensure that the recommendations of the report are undertaken. |
| Loss in property value | While Administration understands this commonly raised concern, it is not a valid planning consideration that a decision maker can have regard to. | No action required. |
| Lack of consistency with surrounding development | Administration is of the view that despite the different dwelling typology, the development would not be inconsistent with the streetscape given the number of contemporary replacement homes that have been built. | No action required. |
| Visual Privacy | The development achieves all the prescribed visual privacy setback provisions for a site coded R60. | No action required. |
| Number of dwellings | The number of dwellings is consistent with the Residential R60 density code. The development complies with the prescribed minimum and average site area in the R-Codes Vol. 1. | 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.

1. **Assessment of Statutory Provisions**

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

Schedule 2, Part 9, clause 67 (Matters to be considered 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, 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.

**6.2 Local Planning Scheme No. 3**

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Requirement** | **Proposal** | **Satisfies** |
| 9 – Aims of Scheme | 1. Protect and enhance local character and amenity | The surrounding area is characterised by painted/rendered dwellings, with pitched roofs and concealed roofs, although there are some brick homes. There are some character homes although most homes have been designed to a contemporary style. The City acknowledges that the proposed built form, which responds to the Residential R60 code is a departure from the existing built form in that it is proposing grouped dwellings. However, the development is limited to two storeys in height and presents as a single house to the street, rendering it relatively consistent with the existing streetscape. | Yes |
|  | 1. 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 |
|  | 1. Achieve quality residential built form outcomes for the growing population; | The built form of the development has been assessed and is considered to achieve or can be made to achieve all relevant design principles of the R-Codes Vol. 1 and is consistent with the expectations of the Residential R60 density coding. | Yes |
|  | 1. 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 is located in close proximity to the proposed QEII-UWA Specialised Activity Centre. | Yes |
|  | 1. To integrate land use and transport systems; | The development is located approximately 260m from a bus route on Broadway and 70m from the Broadway commercial area. | Yes |
|  | 1. Facilitate improved multi-modal access into and around the district; | The site is well located to walking and cycle networks. | Yes |
|  | 1. Maintain and enhance the network of open space; | The development does not impact the City’s network of open space. | Yes |
|  | 1. Facilitate good public health outcomes; | The development is not considered to adversely affect the desired public health outcomes. | Yes |
|  | 1. 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 |
|  | 1. 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 |
|  | 1. To maintain and enhance natural resources; | The development retains two trees, which is considered a positive outcome for this type of application. | Yes |
|  | 1. Respond to the physical and climatic conditions; | The development maintains solar access to adjoining properties by having appropriate setbacks. The dwelling design encompasses cross ventilation and adequate ceilings to allow for effective air circulation. | Yes |
|  | 1. Facilitate efficient supply and use of essential infrastructure; | The development does not negatively impact this objective. | Yes |
| 16.2 – Land Use | 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; | The development is considered to strike the balance between the existing streetscape character and the future character of this area. | Yes |
| 32.1(2-6) - Parking | Cash-in-lieu of parking | None | N/A – the City does not have a Car Parking Strategy to guide cash-in-lieu. Therefore, these scheme provisions cannot be applied. |

**6.3 Policy/Local Development Plan Consideration**

**6.3.1 Design of the built environment (State Planning Policy 7.0)**

|  |  |  |
| --- | --- | --- |
| **Design Principle** | **Officer Comment** | **Applicant response** |
| 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 features a dwelling that is oriented to the street, with its own driveway, entry, and fence, replicating features of a single house. The proposal includes a landscaped front garden, which includes a retained tree unlike many of the grouped dwelling applications the City has received which remove all trees on-site.  Further tree canopy could be achieved with a multiple dwelling outcome. Notwithstanding that, Administration is of the view that the development application strikes a balance between the existing development and the new density code.  This principle is considered to have been met. | Administration requested the Applicant to provide an assessment however, the applicant referred Administration to Attachment 2. |
| 1. **Landscape Quality**   Good design recognises that together landscape and buildings operate as an integrated and sustainable system, within a broader ecological context. | The development does not achieve the minimum draft landscape provisions, however, in making its recommendation to Council, Administration has considered the merit of retaining mature trees, which have greater streetscape and ecological value than lawn, small bushes. It is also further noted that Council’s proposed landscaping provision contained within the approved LPP – Residential Development has not yet been approved by the WAPC. As the provision is neither certain nor imminent and therefore it is only given due regard in consideration.  This principle is considered to have been met. |
| 1. **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. | Although the plot ratio of the development proposal exceeds that of the surroundings, the massing and height is entirely consistent with the existing and future built form.  This principle is considered to have been met. |
| 1. **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. | The development has been designed with aging-in-place in mind, with all dwellings having capacity for a lift should the need arise.  All rooms are of an appropriately size and the layout is simple and functional. |
| 1. **Sustainability**   Good design optimises the sustainability of the built environment, delivering positive environmental, social and economic outcomes. | The development retains two trees and provides adequate landscaping. There are no other identified sustainable initiatives.  This principle is considered to have been met. |
| 1. **Amenity**   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. | The gardens are located adjacent to the living areas, providing positive outlook, and softening the impact of the development as viewed from 33 The Avenue.  This principle is considered to have been met.  This principle is considered to have been met. |
| 1. **Legibility**   Good design results in buildings and places that are legible, with clear connections and easily identifiable elements to help people find their way around. | 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.  This principle is considered to have been met. |
| 1. **Safety**   Good design optimises safety and security, minimising the risk of personal harm and supporting safe behaviour and use. | 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.  This principle is considered to have been met. |
| 1. **Community**   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. | The development provides a degree of dwelling diversity within the City.  This principle is considered to have been met. |
| 1. **Aesthetics**   Good design is the product of a skilled, judicious design process that results in attractive and inviting buildings and places that engage the senses. | The proposed materials are considered high-quality, far higher 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.  This principle is considered to have been met. |

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

R-Codes Vol 1 applies to single and grouped dwellings in all density codes and for multiple dwellings in areas coded less than R40. The purpose of the document is to provide comprehensive basis for control of residential development. When assessing applications for development the City must have regard to the following policy objectives:

* to provide residential development of an appropriate design for the intended residential purpose, density, context of place and scheme objectives;
* to encourage design consideration of the social, environmental, and economic opportunities possible from new housing, and an appropriate response to local amenity and place;
* to encourage design that considers and respects heritage and local culture; and
* to facilitate residential development that offers future residents the opportunities for better living choices and affordability.

The development is considered to be consistent with all the objectives cited above. The development is of an appropriate design for the R60 density code, balances the existing streetscape character with the planned character of a medium-rise transitional area and satisfies all relevant scheme objectives. The development proposal is considered to cater for a wider range of demographics and responds to the local context by retaining a two-storey form, consistent with surrounding single houses.

The applicant is seeking assessment under the Design Principles of the R-Codes for as addressed in the below table/s:

Element 5.1.2 – Street setback

|  |
| --- |
| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  P2.1 Buildings set back from street boundaries an appropriate distance to ensure they:   * 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.   P2.2 Buildings mass and form that:   * 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** |
| The deemed to comply setback for dwellings from the communal street (driveway) is 2.5m. |
| **Proposed** |
| The ground floor of units 2-4 are set back 2m from the communal street.  The upper floor of units 2-4 are set back 0.5m from the communal street. |
| **Administration Assessment** |
| The development is considered to meet the design principles for the following reasons:   * The setbacks relate to internal communal street setback and do not adversely affect the streetscape; * The deemed to comply setback for communal street exceeds that required for the primary street setback; * The development complies with the primary street setback and contribute to the varied streetscape; * The development is sufficiently setback from boundaries to maintain privacy; * The development is provided with adequate open space; * The development is provided with adequate parking, landscape, and utilities; * The development utilises a range of materials – timber, render, stone and glazing as well as vertical and horizontal fenestration, thereby minimising bulk to the street and adjoining properties and making the development more consistent with the streetscape. Whilst larger in overall size, the height of development is more consistent with the surrounding area than an apartment development would otherwise be; * The portico projects over the entry to Unit 1 without impacting the street setback area; * 40% of the site is devoted to vehicle access. Whilst not an optimal outcome, it is not considered a reason for refusal. The façade is otherwise activated ad orientated to the street; * There is no adopted streetscape or built form policy specific to this area; and * Refusal based on street setback is unlikely to be upheld at SAT. |

Element 5.1.3 – Lot boundary setback

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| **Design Principles** |
| P3.1 Buildings set back from lot boundaries or adjacent buildings on the same lot so as to:   * 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.   P3.2 Buildings built up to boundaries (other than the street boundary) where this:   * 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** |
| Boundary walls are only permitted to one lot boundary  Boundary walls are to have a maximum height of 3.5m and an average height of 3m |
| **Proposed** |
| The north-west ground floor living-room to store wall is set back 1m from the rear boundary  Boundary walls are proposed internally  Boundary walls are proposed to two boundaries.  Unit 1’s garage boundary wall is 4.02m high, Unit 5’s kitchen wall (located on the rear boundary) is 4.09m. |
| **Administration Assessment** |
| The number and height of boundary walls is supported and is considered to meet the design principle for the following reasons:   * The development could have utilised the deemed to comply length and height permitted under Residential R60 which would have had a much greater impact on the adjoining properties. Instead the proposed boundary walls are relatively low and separated from one another to prevent bulk. It is noted that most of the boundary walls are only 0.3m above the height of the dividing fence, which is much lower than what could otherwise be built under the deemed to comply standards (3.5m). Therefore, the proposals impact on the amenity is considered lower than what is capable under the deemed to comply; * The non-compliant walls are relatively short, and have been designed with high quality materials, minimising their impact on the overall bulk and ventilation; * The boundary walls do not affect overshadowing as per element 5.4.2 of the R-Codes Vol. 1 as they cast shadow onto the subject site, not an adjoining property; * The boundary walls allow for an efficient use of space, especially with respect to the outdoor living areas; * The adjoining landowner objected to the proposal; however, it is noted that the objection did not cite the boundary wall or amenity; and * The walls otherwise have no material impact on adjoining properties privacy, sunlight, or ventilation. |

Element 5.1.4 – Open space

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| **Design Principles** |
| P4 Development incorporates suitable open space for its context to:   * 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** |
| The deemed to comply proportion of open space relative to the lot size is 40%. |
| **Proposed** |
| Lot 1: 40.6%  Lot 2: 29.6%  Lot 3: 31.3%  Lot 4: 30.5%  Lot 5: 48.9% |
| **Administration Assessment** |
| The proposal does not meet the minimum prescribed open space percentage, however, on balance, the development is considered to meet the design principles for the following reasons:   * Overall, the proposal achieves 37% open space for the site. Administration’s assessment has included portions of land below cantilevered upper floor space. The applicant has noted that the proposal would otherwise comply with this standard had this conservative approach not been taken. Given that the R-Codes Vol. 1 is silent on this issue, Administration sought guidance on this matter from the Department of Planning Lands and Heritage which confirmed this approach was reasonable in determining the deemed to comply percentage, however, DPLH further noted that space below the upper floor should be considered as part of the design principle assessment; * As noted previously, the development has made notable attempts to make the development as consistent as possible with the streetscape by orienting the dwelling and garage to the street, featuring a front garden with a fence, and retained tree; * The development achieves adequate light to the dwellings; * The proposal is consistent with the expected bulk and scale of a development within the Residential R60 code; * Each dwelling is provided with landscaping, vegetation, and hardscaping, and overall provides an attractive presentation to the street; * Each dwelling is provided with an outdoor living area; and * Each dwelling is provided with an external storage building. |

Element 5.2.1 – Setback of garages and carports

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| **Design Principles** |
| 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. |
| **Deemed-to-Comply Requirement** |
| Garages are to be set back 4.5m from the primary street except that the setback may be reduced:   1. In accordance with Figure 8B where the garage adjoins a dwelling provided that the garage is at least 0.5m behind the dwelling alignment (excluding porches, verandahs and balconies). |
| **Proposed** |
| The garage is set back 2.5m from the street, and 1.3m forward of the dwelling. |
| **Administration Assessment** |
| The development is considered to meet the design principles for the following reasons:   * The garage is now provided with further setback to prevent it dominating the streetscape. The City accepts the applicant’s justification of the merits of retaining the mature jacaranda tree. The variation could easily be made compliant, however that would be a far poorer outcome. The proposal is now consistent with the expectations of the R60 density code. * With respect to the safety of the driveway and overall vehicle access, the City’s internal Technical Services reviewed the proposal and no issues have been raised in this regard. |

Clause 5.2.4 – Street walls and fences

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| **Design Principles** |
| “P4 Front fences are low or restricted in height to permit surveillance (as per Clause 5.2.3) and enhance streetscape (as per clause 5.1.2), with appropriate consideration to the need:   * for attenuation of traffic impacts where the street is designated as a primary or district distributor or integrator arterial; and * for necessary privacy or noise screening for outdoor living areas where the street is designated as a primary or district distributor or integrator arterial.” |
| **Deemed-to-comply Requirement** |
| The deemed to comply height for a solid wall is 1.2m |
| **Proposed** |
| Masonry street wall up to 1.8m high. |
| **Administration Assessment** |
| The street fence is consistent with fences within the area, features the desired materials as per LPP - Residential Development and maintains passive surveillance. The section of wall that is over height screens what is likely to be used as an outdoor living area and is supported. |

Element 5.3.1 – Outdoor living areas

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| **Design Principles** |
| P1.1 Outdoor living areas which provide spaces:   * capable of use in conjunction with a habitable room of the dwelling; * open to winter sun and ventilation; and * optimise use of the northern aspect of the site. |
| **Deemed-to-Comply Requirement** |
| An outdoor living area is to be provided:   * in accordance with Table 1; * behind the street setback area; * directly accessible from a habitable room of the dwelling; * with a minimum length and width dimension of 4m; and * to have at least two-thirds of the required area without permanent roof cover. |
| **Proposed** |
| The assessment of the outdoor living areas is provided in the assessment sheet (see confidential Attachment 2).  The areas of discretion are as follows:  Unit 1   * Located in the front garden * Minimum dimension 3.28m   Unit 2-4   * 3.36m * 45.9% uncovered   Unit 5   * Minimum dimension – 2.7m |
| **Administration Assessment** |
| The units are considered to meet the design principles for the following reasons:   * All outdoor living areas can be used in conjunction with the living areas on the ground floor * The outdoor living areas are sufficiently open to allow areas of weather protection as well as ventilation and winter sun * Due to the orientation of the site all outdoor living areas are afforded access to northern light * With respect to Unit 1-5, the shortfalls are considered to be minor in nature and all meet the design principles |

Element 5.3.2 – Landscaping

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| **Design Principles** |
| P2 Landscaping of grouped and multiple dwelling common property and communal open spaces that:   * contribute to the appearance and amenity of the development for the residents; contribute to the streetscape; * enhance security and safety for residents; * provide for microclimate; and * retain existing trees to maintain a local sense of place. |
| **Deemed-to-Comply Requirement** |
| C2 Landscaping of grouped and multiple dwelling common property and communal open spaces in accordance with the following:   1. the street setback area developed without car parking, except for visitors’ bays, and with a maximum of 50 per cent hard surface; 2. separate pedestrian paths providing wheelchair accessibility connecting entries to all buildings with the public footpath and car parking areas; 3. landscaping between each six consecutive external car parking spaces to include shade trees; 4. lighting to pathways, and communal open space and car parking areas; 5. bin storage areas conveniently located and screened from view; 6. trees which are greater than 3m in height shall be retained, in communal open space areas which are provided for the development; 7. adequate sight lines for pedestrians and vehicles; 8. clear line of sight between areas designated as communal open space and at least two habitable room windows; 9. clothes drying areas which are secure and screened from view; and 10. unroofed visitors’ car parking spaces to be effectively screened from the street.   Draft C3 Single and grouped dwelling developments require a minimum of 20% of the site area as landscaping, measured in accordance with clause 7.2 of this policy. |
| **Proposed** |
| C2   * Approximately 46% of street setback area contains hard surface, no car parking bays are proposed; * No pedestrian path is provided; * No external bays are proposed; * A lighting plan has not been included but can be addressed by way of condition; * The bin store is accessible while being screened from view; * Two mature trees are retained; * The City’s Technical Services did not cite sightlines as an issue; * No communal open space is proposed; * There are areas for drying clothes that are screened from view; and * No visitor bays are proposed.   C3   * Lot 1 = 17.36% * Lot 2 = 8.8% * Lot 3 = 8.8% * Lot 4 = 8.9% * Lot 5 = 12.67% |
| **Administration Assessment** |
| The development is considered to meet design principle P2 for the following reasons:   * The proposed street setback is larger than prescribed allowing for a greater area of landscaping and the retention of a mature tree, which help to contribute to the streetscape and overall amenity. * The development proposal maintains safety and security by limiting areas of concealment. * The retention of existing trees will provide shade to the front garden and outlook for internal facing dwellings. * There is uncertainty as to whether draft C3 provision will be supported by the WAPC. |

**6.3.3 Local Planning Policy – Waste Management**

The application was sent to the Coordinator of Waste who has assessed the proposal against LPP – Waste Management and has approved the waste management plan.

1. **Conclusion**

The development is considered good example of a grouped dwelling development that features high quality materials and sufficient landscaping. The changes made through the application process have improved the streetscape presentation and the application now meets all relevant design principles. On balance, the development will positively contribute to the Residential R60 coded area and is recommended for approval.

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| --- | --- |
| **PD34.20** | **No. 92 Smyth Road, Nedlands - 5 Two Storey Grouped Dwellings** |
|  | |
| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | Peter Fryer Design |
| **Landowner** | Allure Property Group WA |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **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** | DA20-44804 |
| **Previous Item** | PD29.20 – 23 June 2020 - Local Planning Policy: Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council  is required to determine the application due to the number of  dwellings and an objection being received |
| **Attachments** | Nil |
| **Confidential Attachments** | * + - 1. Plans       2. Landscaping Plan       3. Waste Management Plan       4. Submissions |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development Application received on the 10 February 2020, for the proposed development of five two-storey grouped dwellings with a laneway located at No.92 Smyth Road, Nedlands.

The subject property is located within the area affected by the recently adopted Local Planning Policy: Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements. This has been created as a mechanism to enable the ceding of land and construction of a laneway, in order to avoid undesirable development of a multiple crossovers and vehicular dominated streetscapes. The applicant has proposed five grouped dwellings with a laneway which responds to this Policy.

The application was also advertised to adjoining land owners and occupiers in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals due to the need to consider the application against the design principles for site works, landscaping and visitor car parking bays. At the close of the advertising period 2 submissions had been received objecting to the development with respect to height, bulk and scale and visual privacy.

It is recommended that the application be approved by Council as it is considered to satisfy both the design principles of the Residential Design Codes (R-Codes) and is in line with Council’s recently adopted Local Planning Policy which is considered to set a desirable precedent within the locality.

1. **Recommendation to Committee**

**Council approves the development application received 10 February 2020 with amended plans dated 28 April 2020 and 15 June 2020 for five (5) two storey grouped dwellings at Lot 17 (No.92) Smyth Road, Nedlands, subject to the following conditions and advice notes:**

1. **This approval is for a ‘Residential’ land use as defined under the City’s Local Planning Scheme No.3 and the subject land may not be used for any other use without prior approval of the City.**
2. **Pursuant to clause 32.3 of the City’s Local Planning Scheme No. 3, the proposed laneway shown on the approved Site Plan, dated 15 June 2020 (Sheet 1 of 4), is to be ceded to the local government free of cost and constructed to the satisfaction of the local government, prior to the occupation of the development.**
3. **The laneway shall be constructed and drained to the specification and satisfaction of the City of Nedlands prior to the occupation of the development.**
4. **The laneway shall include the installation of lighting infrastructure at the cost of the owner, to the specification and satisfaction of the City.**
5. **Prior to the occupation of development, semi-mature trees (with a minimum height of 2.4m and species and pot size to be specified by the City) are to be planted in the laneway to the satisfaction of the City and maintained by the owner for a minimum of 2 years from the commencement of occupation.. Where a tree dies within the two-year establishment period, the tree shall be replaced at the owner’s cost.**
6. **Prior to the issue of a Building Permit, a revised Waste Management Plan for the development shall be submitted to and approved by the City. Waste Management for the development to comply with the approved Waste Management Plan to the satisfaction of the City.**
7. **Prior to the issue of a Building Permit, a revised Landscaping Plan for the development shall be submitted to and approved by the City. Landscaping shall be installed and maintained in accordance with the approved Landscaping Plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City.**
8. **All stormwater generated from the development shall be contained on site.**
9. **All footings and structures shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
10. **Prior to occupation of the development all fencing/visual privacy screens and obscure glass panels to major openings and unenclosed active habitable areas as annotated on the approved plans shall be screened in accordance with the Residential Design Codes by either;** 
    1. **fixed obscured or translucent glass to a height of 1.60 metres above finished floor level;**
    2. **Timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;**
    3. **A minimum sill height of 1.60 metres as determined from the internal floor level; or**
    4. **an alternative method of screening approved by the City of Nedlands.**

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

1. **Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:**
2. **Face brick;**
3. **Painted render;**
4. **Painted brickwork; or**
5. **Other clean material as specified on the approved plans;**

**And maintained thereafter to the satisfaction of the City of Nedlands**

1. **Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing ventes and pipes, solar panels, air conditioners, hot water systems and utilities shall be integrated into the design of the building and not be visible from the primary street or secondary street to the satisfaction of the City.**
2. **Prior to the construction or demolition works, a Construction Management Plan shall be submitted to the satisfaction of the City of Nedlands. The approved Construction shall be observed at all times throughout the construction process to the satisfaction of the City.**
3. **Prior to the occupation of the development a lighting plan is to be implemented and maintained for the duration of the development to the satisfaction of the City.**
4. **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.**
5. **This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.**

**Advice Notes specific to this proposal:**

1. **The owner and the applicant is advised that in relation to Condition 2, the proposed laneway shown on the approved Site Plan, dated 15 June 2020 (Sheet 1 of 4), is to be ceded free of cost pursuant to Section *152* of *the Planning and Development Act 2005*.**
2. **The owner and applicant is advised that in relation to Condition 6, a revised Waste Management Plan is required to address:**
   1. **Waste management in the event that through-access is achieved between No.92 Smyth Road and No.33 Langham Street, Nedlands.**
3. **The owner and applicant is advised that in relation to Condition 7, a revised Landscaping Plan is required to:**
4. **Relocate plant type number 4 (Pyrus Calleryana Pear) to within the laneway, to the satisfaction of the City.**
5. **The owner and the applicant is advised that in relation to Condition 13 the Construction Management Plan is to address but is not limited to the following matters:**
6. **Construction operating hours;**
7. **Contact details of essential site personnel;**
8. **Noise control and vibration management;**
9. **Dust, sand and sediment management;**
10. **Stormwater and sediment control;**
11. **Traffic and access management;**
12. **Protection of infrastructure and street trees within the road reserve and adjoining properties;**
13. **Dilapidation report of adjoining properties;**
14. **Security fencing around construction sites;**
15. **Site deliveries;**
16. **Waste management and materials re-use;**
17. **Parking arrangements for contractors and subcontractors;**
18. **Consultation plan with nearby properties; and**
19. **Complaint procedure.**
20. **Any development in the nature-strip (verge), including footpaths, will require a Nature Strip Works Application (NSWA) to be lodged with, and approved by, the City's Technical Services department, prior to commencing construction.**
21. **Where parts of the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring. All works are required to comply with relevant statutory provisions.**
22. **Prior to selecting a location for an air-conditioner, the applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as guide to prevent noise affecting neighbouring properties Prior to installing mechanical equipment, the applicant is advised to consult neighbours, and if necessary, take measures to suppress noise.**
23. **Background**

**3.1 Land Details**

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| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 908m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Residential (Grouped Dwelling) |
| **Use Class** | Residential (Grouped Dwelling) – “P” use |

**3.2 Locality Plan**

The subject lot is located at the corner of Smyth Road to the west and Gordon Street to the north, in the suburb of Nedlands. The subject property is located within a transitional density area (R60) which interfaces with lower coded (R12.5) residential properties located on the northern side of Gordon Street.



It is noted that No.92 & 94 Smyth Road and No.33 & 35 Langham Road is located within an area which has been identified to cede and construct a laneway in accordance with the Scheme provisions and recently adopted Local Planning Policy –

Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements.

1. **Application Details**

The City received a development application in February 2020 for four (4) Grouped Dwellings at No.92 Smyth Road, Nedlands comprising of individual crossovers to each dwelling via Gordon Street. Significant concerns were raised by Administration at lodgement as the application would pose an undesirable streetscape outcome on Gordon Street and at the time, not in line with the draft Policy.

Administration has been working with the applicant to amend their plans to address the adopted Local Planning Policy which has been created as a mechanism to enable the ceding of land and construction of a laneway, in order to avoid undesirable development of a number of crossovers. The proposal now been modified to include:

* Five (5) two storey terraced styled dwellings which have a northern orientation to Gordon Street;
* Vehicle access is consolidated and provided via Smyth Road which includes the ceding and construction of a laneway to the rear of the site;
* A new pedestrian pathway to the dwellings are proposed which delineate the entry to each dwelling, with an additional entry via the rear laneway; and
* Landscaping proposed within the front and rear setbacks

1. **Consultation**

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

* Landscaping;
* Visitor Parking; and
* Site Works & Retaining Walls.

Consequently, the development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 5 occupiers/landowners. At the close of the advertising period 2 submissions had been received.

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** |
| Visual Privacy and overlooking  **2 submissions** | **Not Supported**  All windows from habitable rooms are appropriately designed to be setback from the lot boundaries in a manner compliant with the deemed-to-comply provisions of clause 5.4.1 of the R-Codes, without the need for permanent screening or high sill heights.  As the visual privacy arrangements for the development meeting the deemed-to-comply provisions of the R-Codes, the application cannot be refused on visual privacy grounds. |
| The design of the development is considered basic and will reduce the overall appearance of Smyth Road. | **Not Supported**  Contrasting renders and materials, multiple openings facing the street and varying roof heights add visual interest to the design which is complementary to the locality. |
| Minimal landscaping contributed by the number of dwellings and laneway | **Not Supported**  On average, the development proposes in excess of 20% landscaping and is in line with the location and type of species recommended under the Smyth Road, Gordon Street and Langham Street Laneway and Built Form Policy requirements. This includes species within the primary street and the rear. In addition, the removal of 5 crossovers, with the implementation of a rear laneway is on balance considered a desirable precedent for the locality. |
| The number and type of units is not line with the single family dwelling character of Smyth Road. | **Not Supported**  The built form is considered to be sympathetic to its surrounding development and consistent with an R60 coded area. It is noted that the 908m² site could accommodate up to 6 grouped dwellings or 8-10 multiple dwellings in accordance with the requirements for R60. |

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

1. **Assessment of Statutory Provisions**

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

Schedule 2, Part 9, clause 67 (Matters to be considered 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, 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.

**6.2 Scheme Provisions**

**6.2.1 Current Local Planning Scheme Provisions**

The trigger to cede and construct a laneway is clause 32.3 (1) of the City’s Local Planning Scheme No.3 which requires -

‘the owner of land affected by a right of way or laneway identified by the Scheme or, a structure plan, local development plan, activity centre plan or local planning policy is to, at the time of developing or subdividing the land:

1. Cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and
2. Construct the relevant section of the right-of-way or laneway to the satisfaction of the local government

Each landowner is required to construct the portion of the laneway in accordance with clause 32.3(1)(b) that is ceded from the parent lot and is to be constructed and drained to the City’s specifications, prior to the creation of new titles (as a result of subdivision) or the occupation of the new development (as a result of development approval).

As there is also an adopted local planning policy (Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements), this provides the City the ability under clause 32.3 (1) and (2) to require the ceding and construction of the right-of-way (laneway) at the applicant’s expense and maintained by the City. As such, Conditions 2-4 is recommended to be included as a condition of planning approval to facilitate this process.

**6.2.2 Proposed Scheme Amendment No.6**

Council on 26 May 2020 initiated, for the purposes of advertising, a proposed standard scheme amendment, which aims to amend clause 32.3 by modifying clause (1) and adding a new clause (3).

The initiated Scheme Amendment No.6 is informed by legal advice and reinforces the City’s desire to consolidate access where the land identified by the Scheme, structure plan, local development plan, activity centre plan or local planning policy is affected by and benefits from the provision of a right-of-way or laneway. The modified wording provides more clarity and consistency to the existing scheme provision. It seeks to strengthen the connection between the requirement for the ceding of land free of cost to create a laneway and the public benefit derived from the laneway in a fair and reasonable manner.

**6.3 Policy Consideration**

**6.3.1 Design of the Built Environment (State Planning Policy 7.0)**

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| **Design Principle** | **Officer Comment** |
| * + - 1. **Context and Character** | The built form is considered to be sympathetic to its surrounding development and the expectation for an R60 coded area. The removal of 5 crossovers, with the implementation of a rear laneway is considered a desirable precedent for the locality. |
| * + - 1. **Landscape Quality** | This development guided by the adopted Policy encourages landscaping throughout the site both within the primary street setback area and the rear of the site. Particularly within the front setback area the type of vegetation proposed includes a number of mature feature trees (such as Capital Pear, Chinese Tallow and Crepe Myrtle) which is considered to be sympathetic and enhances the area. These are in line with the selection of species provided by the City. |
| * + - 1. **Built Form and Scale** | The proposed grouped dwellings built form is not considered to negatively impact the surrounding properties by way of overshadowing, under-provision of open space or being over height. As such, its built form and scale is considered acceptable in its context. |
| * + - 1. **Functionality and Build Quality** | The level of finish of the build proposes a  mix of materials and provides a well detailed build and well-designed living spaces. |
| * + - 1. **Sustainability** | North facing outdoor living areas and design is supported as it maximises the northern aspect of the site. |
| * + - 1. **Amenity** | Based on the design elements, the landscaping quality, built form and scale provides for an improved built form to that of the existing dwelling which is in a poor condition. The design of the dwellings, with landscaping to soften the built form and consolidated access to the rear is considered to enhance the amenity of the locality and is not considered to negatively impact the public realm. |
| * + - 1. **Legibility** | The design provides for a clear and definable pedestrian path to the primary street boundary and the rear of the laneway. A combination of lifts and stairs have been provided to the site. |
| * + - 1. **Safety** | Major openings face the public realm and are designed to offer passive surveillance of the street and laneway. |
| * + - 1. **Community** | This development seeks to avoid the construction of up to 5 double crossovers to Gordon Street, in the absence of a ceded and constructed laneway. It is considered the design of this development is in line with the adopted Policy which therefore would implement a desirable built form outcome for the community as a whole. |
| * + - 1. **Aesthetics** | Contrasting renders and materials, multiple openings facing the street and varying roof heights add visual interest to the design which is complementary to the locality. |

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

The applicant is seeking assessment under the Design Principles of the R-Codes for, Parking, Site Works and Landscaping as addressed in the below tables:

**Parking (5.3.3)**

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| **Design Principles** |
| P3.1 Adequate car parking is to be provided on-site in accordance with projected need related to:   * the type, number, and size of dwellings; * the available of on-street and other off-street parking; and * the proximity of the proposed development to public transport and other facilities   P3.2 Consideration may be given to a reduction in the minimum number of on-site car parking spaces for grouped and multiple dwellings provided:     * available street parking in the vicinity is controlled by the local government; and * the decision maker is of the opinion that a sufficient equivalent number of on-street spaces are available near the development |

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| **Deemed-to-Comply Requirement** |
| C3.2 – On-site visitor car parking spaces for grouped and multiple dwelling developments provided at a rate of one space for each four dwellings, or part thereof in excess of four dwellings served by a common access. |
| **Proposed** |
| The application seeks assessment under the design principles which are as follows:   * No visitor bays have been provided |
| **Administration Assessment** |
| Administration consider that this provision meets the Design Principles as -   * The closest parking embayment’s to the site is approximately 150m south. Whilst there are no embayment car parking bays directly in front of the property or parking permitted along Gordon Street or Smyth Road, the subject site is located within 250m from a high frequency bus route directly south of the subject site; * No objections have been received by residents within the locality or the City’s Technical Services Department; * The original plans provided by the applicant for 4 grouped dwellings with individual crossovers, which would have not required a visitor car parking bay. As a result of the ceding of the land, all access is via the rear with the inability to provide a usual tandem bay arrangement on a crossover; * At the time of subdivision, these lots will ultimately become green title lots and therefore, under this provision do not need an additional visitor car parking bay.   As such, the Design Principles are considered to be satisfactorily met. |

**Site Works (5.3.7) & Retaining Walls (5.3.8)**

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| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  **Site Works**  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.  **Retaining Walls**  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 regard to clauses 5.3.7 Deemed |
| **Deemed-to-Comply Requirement** |
| **Site Works**  C7.1 - Excavation and filling between the street and building, or within 3m of the street alignment, whichever is the lesser, shall not exceed 0.5m, except where necessary to provide for pedestrian or vehicle access, drainage works or natural light for a dwelling.  **Retaining Walls**  C8 – Retaining walls greater than 0.5m in height set back from lot boundaries in accordance with the setback provisions of Table 1 at 2m from the primary street boundary. |
| **Proposed** |
| The application seeks assessment under the design principles which are as follows:     * Fill and retaining within the primary street boundary of proposed Units B-E which range from a height between 0.55m – 0.88m |

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| **Administration Assessment** |
| Administration consider that the proposed site works meets the Design Principles as:   * The retaining walls and fill have been designed to appropriately respond to the natural topography when viewed from the street and to facilitate the rear laneway. The land slopes approximately 2m from the west (27AHD) to the east (25AHD) and each dwelling proposes a ‘stepped’ retaining level to reduce fill/retaining. * The retaining walls and fill have been designed to provide for additional mature landscaping treatments which is considered to benefit both internal residents and the public realm and maintain the existing character.   Accordingly, the fill and retaining is considered minor in its context and appropriately responds to the site’s typography. As such, the Design Principles are considered to be satisfactorily met. |

**Landscaping**

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| **Policy Objective** |
| **R-Codes**  P2 Landscaping of grouped and multiple dwelling common property and communal open spaces that:     * contribute to the appearance and amenity of the development for the residents; * contribute to the streetscape; * enhances security and safety for residents; * provide for microclimate; and * retain existing trees to maintain a local sense of place.   **Policy Objective**   * 3.1 - to enhance the amenity and aesthetics of areas within the City; * 3.2 - to provide for residential development that is consistent with established or desired streetscapes; * 3.3 - to reduce the dominance (scale, mass, and bulk) of buildings as viewed from the street; * 3.4 - to provide for building heights which are consistent with the character of the area and the topography of the site; and * 3.5 - to prevent inappropriate buildings within rear setback areas in order to protect the amenity of surrounding properties and maintain the spacious green character of the City’s Policy. |
| **Policy Requirement** |
| 4.8.1 Clause 5.3.2 of the R-Codes is modified to include the following additional deemed-to comply requirement:     * C3 - Single and grouped dwelling developments require a minimum of 20% of the site area as landscaping, measured in accordance with clause 7.2 of this policy. |
| **Proposed** |
| * Unit B proposes 15.4% landscaping * Unit C proposes 15.3% landscaping * Unit D proposes 15.1% landscaping   It is noted that Unit A proposes 27% landscaping and Unit E proposes 30% landscaping and therefore is has not been listed. |

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| **Administration Assessment** |
| The Residential Development Policy represents a Council adopted policy position. This clause does not apply as a deemed-to-comply provision under the Residential Design Codes (Volume 1) until the Western Australian Planning Commission (WAPC) have granted approval. The City is giving due regard to this requirement but at present contains limited weighting due to the lack of WAPC approval.  It is noted that the intent of this provision, included as an amendment to Administration’s recommendation to Council is to ensure that the ‘leafy green’ neighbourhood is maintained as this represents a sense of place to residents within the locality. Collectively on average there is 20.5% landscaping provided across the site which excludes the landscaping area south of the laneway. Whilst the physical area has not been provided in Units B-D individually, representative of a percentage, it is Administration’s view that the siting, selection and design of plant species still maintains the objective and intent of this provision.  Particularly within the front setback area the type of vegetation proposes a number of mature feature trees (such as Capital Pear, Chinese Tallow and Crepe Myrtle) and low hedging to ensure that passive surveillance is still maintained in order to enhance the security and safety for residents. The types of trees proposed require limited maintenance which satisfies providing for a microclimate and are consistent with the locations and treatments identified within the recently adopted Local Planning Policy – Smyth Road, Gordon Street, Langham Street Laneway and Built Form Requirements.  Due to the design, there is the inability to retain existing trees on site. Notwithstanding, it is pertinent to note that there no local law which prohibits the removal of these trees within the subject site. The applicant has provided additional landscaping that is mostly reflective or complementary of the local character to maintain a local sense of place which is supported.  Furthermore, the landscaping provision applied under this Residential Policy is an additional provision to the deemed-to-comply and has not yet been approved by the WAPC and is therefore not certain nor imminent having limited weight in decision making. On balance, Administration considers that the landscaping proposed satisfies the objectives of this Policy which this provision has been given due regard and considered on the merits of this application. |

**6.3.3 Local Planning Policy - Smyth Road, Gordon Street and Langham Street Laneway and Built Form Requirements**

This Policy details the requirements for the proposed laneway between Smyth Road and Langham Street which was recently adopted by Council on the 23 June 2020. This Policy sets out the land identified to be ceded for the creation of a laneway and the requirements for the ceding and subsequent construction. This will mean that although its primary purpose is providing vehicle access to dwellings, the laneway will avoid potential multiple crossovers to Gordon Street, as well as maintaining the character of Nedlands’ traditional streetscape, being pedestrian friendly, green, landscaped and a tree lined.

The Policy requires a 3.5m wide strip of land to be ceded by each of the affected properties, measured from the centre boundary line in order to create a 7m wide laneway in the ultimate scenario. City’s specifications including being sealed, drained, and provided with lighting and landscaping. The ceded land will then become a public road to be maintained by the City of Nedlands which will be created and constructed to the City’s specifications which is determined through detailed design stage.

In line with the Policy, the applicant has proposed a 4m wide ceded portion of the laneway which includes a 0.5m landscape strip to the southern portion of the site in the event that the ultimate scenario never eventuates. However, it is noted that the specific location and types of landscaping species proposed will be reviewed at the detailed design stage to ensure there are no conflicts with essential services or the manoeuvrability of vehicles.

It is noted that as the ceding of the laneway would become a public road under the *Land Administration Act 1997*, a 6x6m temporary turnaround to the rear eastern portion of the laneway would usually be required. However, Council can use discretion to deviate from the accepted road design standards. Administration recommend deviating on the basis that the laneway will be limited to serving 5 dwellings in the immediate term. Further, the proposed access arrangements will allow for vehicles to enter and exit in forward gear in a manner consistent with the R-Codes.

**6.3.4 Local Planning Policy – Waste Management**

A revised Waste Management Plan has been prepared by the applicant dated 15 June 2020 which proposes 2 bins for each dwelling. As such, a total of 10 x 240L bins comprising of 5 waste and 5 recycling bins are proposed and would be collected from Smyth Road and Gordon Street.

Section 3.1.5 of the Waste Management Guidelines recommends a maximum of 4 x 240L waste bins and 4 x 240L recycle bins to be placed on the verge for kerbside collection. Where more than 8 bins are provided, the Guidelines recommend internal service arrangements. Although the proposal includes an additional 2 bins, it is considered on the merits of this application to be considered acceptable. This is because there are two street frontages to the site, which on aggregate provides in excess of 50m in frontage thereby proportionally distributing the placement of bins. Furthermore, in the ultimate scenario, if No.33 Langham were to develop, bins would be likely be placed and collected via the rear laneway when the entire length of lane eventuates.

On balance, it is considered consistent with the intent of the Policy and has been supported by Technical Services. It is further noted that there is sufficient capacity on the verge to accommodate the maximum number of bins and on alternative weeks, there will be 4 bins on Smyth Road and 1 bin on Gordon Street.

1. **Conclusion**

This application proposes five two-storey grouped dwellings with a rear laneway located at No.92 Smyth Road, Nedlands. The site is coded R60 and is located within an area identified to cede and construct a laneway in accordance with the Scheme and recently adopted Policy provisions.

This application has been referred to Council for a decision by virtue of the number of grouped dwellings proposed (being five or greater) and two (2) objections having been received.

The application was also advertised to adjoining neighbours in accordance with the City’s Local Planning Policy – Consultation of Planning Proposals due to site works, landscaping, and visitor car parking bays. At the close of the advertising period 2 submissions had been received objecting to the development with respect to height, bulk and scale and visual privacy.

It is recommended that the application be approved by Council as it is considered to satisfy both the design principles of the Residential Design Codes (R-Codes) and is in line with Council’s recently adopted Local Planning Policy, which is considered to set a desirable precedent within the locality.

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| **PD35.20** | **Local Planning Scheme 3 – Local Planning Policy: Removal of Occupancy Restrictions** |
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| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | City of Nedlands |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | OCM 24 March 2020 – PD07.20 |
| **Attachments** | * 1. Draft Removal of Occupancy Restrictions LPP   2. Draft Planning Information Sheet – Removal of Notifications on Title – Over 55’s Accommodation/Ancillary Dwelling |

1. **Executive Summary**

The purpose of this report is for Council to adopt the Removal of Occupancy Restrictions Local Planning Policy, post advertising. It is proposed that the policy be adopted without modification. A copy of the draft Removal of Occupancy Restrictions Local Planning Policy is included as Attachment 1.

The purpose of this policy is to provide guidance and provisions for operators seeking to remove occupancy restrictions on residential properties.

Once Council adopts this Local Planning Policy (LPP) it must be taken into consideration by the decision maker in determining a Development Application. The information sheet, as per Attachment 2, is also provided as guidance for both the City and the applicant when considering the removals of caveats and other occupancy restrictions that the City is a party to.

The Removal of Occupancy Restrictions Local Planning Policy adopted as part of this report will have effect once the notification of adoption is published in a local newspaper.

1. **Recommendation to Committee**

**Council proceeds to adopt the Removal of Occupancy Restrictions Local Planning Policy, 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).**

1. **Background**

Under Town Planning Scheme No. 2 (TPS2), a number of single residential properties were granted additional land use rights to build two Aged and Dependent Persons Dwellings in place of a single house on a single lot (colloquially known as over 55’s accommodation). A condition of the Development Approval for these sites required a notification to be placed on the Certificate of Title for the property, restricting occupation of the dwelling to those aged 55 years and over.

As a result of the gazettal of LPS 3 in April 2019, the additional land use rights allocated for Aged and Dependent Persons Dwellings (Over 55’s accommodation) are no longer in effect. However, the individual restrictions on occupation of the dwelling are still in effect and will be until the process to remove them from the property’s Certificate of Title has been completed.

The R-Codes defines an Aged Person as ‘a person who is aged 55 years or over’, and Dependent Person as ‘a person with a recognised form of disability requiring special accommodation for independent living or special care’. The R-Codes and LPS3 do not provide a definition for Aged and Dependent Persons Dwellings (over 55’s accommodation). However, for the purposes of this LPP it is considered to be accommodation for those persons aged 55 years and over in accordance with the definition of the R-Codes, and these dwellings are bound by the deemed to comply requirements and design principles of clause 5.2.5 Aged or dependent persons dwellings of the R-Codes Volume 1.

Additionally, under TPS2 several single residential properties were granted Development Approval to build an Ancillary Dwelling on the site, with occupation of the Ancillary Dwelling restricted to members of the property owner’s family via a condition of Development Approval.

Ancillary Dwellings are defined in State Planning Policy 7.3 – Residential Design Codes Volume 1 as,

Self-contained dwelling on the same lot as a single house which may be attached to, integrated with or detached from the single house.

In response to LPS3, Administration has resolved to prepare a Local Planning Policy and associated planning information sheet to outline the requirements for amending and/or removing conditions from a Development Approval, and for removing notifications from Certificates of Title.

At the Council Meeting of 24 March 2020, Council resolved to prepare and advertise the draft Occupancy Restrictions Local Planning Policy for a period of 21 days, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4.

1. **Detail**

This policy applies to all occupancy restriction removals related to Aged and Dependent Persons Dwellings (over 55’s accommodation) and Ancillary Dwellings within the City of Nedlands.

The purpose of this policy is to provide guidance and development provisions for owners seeking to remove occupancy restrictions from their Certificate of Title and remove or amend conditions of development approval in relation to these restrictions. This policy is also intended to provide guidance to assist officers in assessing applications for the removal and amendment of conditions of development approval in line with Council’s position.

The draft LPP is accompanied by an attachment, the Planning Information Sheet – Removal of Notifications on Title – Over 55’s Accommodation/Ancillary Dwelling. This information sheet provides guidance for property owners on the steps they will be required to undertake to remove notifications from their Certificates of Title. It is noted that these processes are under the jurisdiction of the state agency Landgate, and the City is not permitted to undertake these processes on behalf of the property owner.

1. **Consultation**

This policy was advertised from the 25 April 2020 until the 16 May 2020 in accordance with the City’s Consultation Local Planning Policy and the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4. A notice was published in the newspaper, and details were included on the City’s Your Voice engagement portal and the City’s social media accounts.

No submissions were received during the advertising period.

The policy is being presented to Council following the conclusion of the advertising period. Council can now choose how to progress with the policy. It is recommended that the policy is adopted without modification as proposed in Attachment 1.

As per Residential Design Codes Volume 1 2019 Clause 7.3.2, this policy may be adopted by the Council without further consent from the WAPC, as it proposes no variations to the built form requirements of the Residential Design Codes.

1. **Statutory Provisions**

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

Schedule 2, Part 2, Clause 4(3) of the Regulations, sets out that after the expiry of the 21-day advertising period, the local government must review the proposed policy in light of any submissions made and resolve to:

1. Proceed with the policy without modification; or
2. Proceed with the policy with modification; or
3. Not to proceed with the policy.

Administration recommends that Council resolves to proceed with the Occupancy Restrictions Local Planning Policy without modifications, having been advertised from the 25 April 2020 until the 16 May 2020.

1. **Strategic Implications**

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

The City’s Local Planning Strategy establishes urban growth areas and transition areas within the City, which have been reflected in rezoning and up-coding through LPS 3. This Local Planning Policy will allow properties burdened by over 55’s occupancy restrictions to realise their full potential through their zoning and density codes.

**Who benefits?**

The City and its residents will benefit from this Local Planning Policy. The removal of caveats will decrease the involvement of the City in properties where they are no longer required to limit occupancy. The Policy will allow residents to remove occupancy restrictions from their site, and their properties will no longer be limited to occupancy by those 55 and over.

**Does it involve a tolerable risk?**

The removal of over 55’s caveats is not considered to pose a strategic planning risk to the City.

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

Yes.

1. **Budget/Financial Implications**

**Can we afford it?**

The costs associated with this Local Planning Policy are only in relation to advertising.

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

As above.

1. **Conclusion**

The Removal of Occupancy Restrictions Local Planning Policy is the best mechanism to guide decision making and advise the community of the Council’s position in relation to the removal of occupancy restrictions on current Aged and Dependent Persons Dwelling (over 55’s accommodation) and Ancillary Dwellings.

It is recommended that Council endorses Administration’s recommendation as set out in the resolution.

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| **PD36.20** | **Built Form Modelling, Broadway, Waratah Village and Nedlands Town Centre** |
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| **Committee** | 14 July 2020 |
| **Council** | 28 July 2020 |
| **Applicant** | City of Nedlands |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | SCM 30 January 2020 - Item 6  OCM 26 May 2020 - PD18.20 – Local Planning Policy: Interim Built Form Design Guidelines – Broadway Mixed Use Zone |
| **Attachments** | Nil |

1. **Executive Summary**

This report is presented to Council to provide an update on the built form modelling work currently being undertaken to inform precinct planning for the Nedlands Town Centre, Broadway and Waratah Village precincts.

1. **Recommendation to Committee**

**Council instructs the Chief Executive Officer to continue with the planned schedule of works relating to built form modelling for the Nedlands Town Centre, Broadway and Waratah Village precincts and that such work is to inform the development of the Draft Precinct Local Plans and be presented back to Council as soon as possible**

1. **Background**

Local Planning Policy: Interim Built Form Design Guidelines – Broadway Mixed Use Zone (Interim Broadway LPP) was presented to the 26 May 2020 Ordinary Council Meeting for adoption following advertising. In addition to adopting the Interim Broadway LPP, Council also resolved as follows:

1. **present to Council for adoption at the July Council Meeting, a report on Deliverables 1 and 2, as part of the work Hassell Consultants are undertaking for the Broadway Precinct, to assist decision-makers in assessing Development Applications in the Precinct.**

The purpose of this report is to update Council on the progress of the work which Hassell is currently undertaking.

1. **Discussion**

The City has engaged Hassell to undertake built form modelling for the Broadway Activity and Transition Areas. This work is comprised of the following deliverables:

1. **Local character and distinctiveness study**
   * Includes a block-by-block, on-the-ground survey of the existing built form within the precinct.
   * Reviews the characteristics of the existing built form that informs the character of place.
2. **Context analysis**
   * Identifies the key physical, community and governance considerations relevant to the precinct.
   * Reviews the existing location and quality of the public realm within the precinct.
3. **Built form modelling**

* Assess the most appropriate massing, typology and building height for each street block within the precinct.
* Built form controls based on modelling.
* A suite of diagrams and text to illustrate the most appropriate building envelope for each street block, which can be used to inform community engagement (community engagement itself is not included in this deliverable).

The built form modelling will test three different development intensity scenarios for each precinct: low, medium and high. The details of the three scenarios are unique to each precinct, based on the existing zoning under LPS 3, and existing policy work undertaken. By basing modelling around these scenarios, the consultants will be able to test different forms of development in each precinct and derive the most appropriate building envelope for each street block.

This work is intended to inform the development of local planning policies for each precinct as detailed below:

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| **Precinct** | **Stage of policy development** |
| Nedlands Town Centre | Community engagement undertaken August 2019;  Draft local planning policy adopted by Council for advertising September 2019;  Draft local planning policy advertised March - April 2020; and  Detailed context analysis and built form modelling currently being undertaken to inform revision of the draft local planning policy. |
| Broadway Activity and Transition Areas | Interim Broadway LPP adopted by Council for advertising January 2020 (Mixed Use-zoned portion only);  Interim Draft LPP advertised February – March 2020;  Interim Broadway LPP adopted by Council May 2020;  Detailed context analysis and built form modelling currently being undertaken to inform revision of the Interim Broadway LPP; and  Community engagement still required to inform preparation of revised Interim Broadway LPP. |
| Waratah Village Activity and Transition Area | Community engagement undertaken November 2019; and  Detailed context analysis and built form modelling currently being undertaken to inform preparation of the draft local planning policy. |

The built form modelling body of work was intended to be complete by June 2020 but has experienced delays due to the COVID-19 pandemic and contractual issues, which have now been resolved. The intended completion date for this work is now August 2020. Draft local planning policies (Precinct Plans) for each precinct are tentatively scheduled to be presented to Council for adoption to advertise at the September, October, and November Council Meetings.

Further to the above, Deliverables 1 and 2 (local character and distinctiveness study and context analysis) are still in draft form at the time of writing this report. Consequently, these are not ready to be adopted by Council as resolved at the 26 May 2020 Council Meeting. Therefore, Administration recommends that Council instructs the Chief Executive Officer to continue with the planned schedule of works relating to built form modelling for the Nedlands Town Centre, Broadway and Waratah Village precincts and that this work informs the development of the Draft Precinct Local Plans and that they be brought to Council as soon as possible.

1. **Consultation**

Each precinct has its own community engagement strategy, as noted in the Discussion section above and the community will continue to be consulted as the Precinct Plans are developed into a logical draft.

1. **Strategic Implications**

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

The built form modelling work, once complete, will inform the development of local planning policies for areas which have been rezoned and up coded under Local Planning Scheme No. 3.

**Who benefits?**

The community within and surrounding the precinct areas will benefit once the local planning policies are in place.

**Does it involve a tolerable risk?**

The built form modelling work is considered to reduce the risk of developing policies which are not based on sound town planning principles.

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

As identified in the comment section above, Deliverables 1 and 2 of the built form modelling body of work are not yet ready to be adopted by Council.

1. **Budget/Financial Implications**

**Can we afford it?**

Funding for the built form modelling work has already been approved.

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

There will be no impact on rates as the work is covered by the approved budget.

1. **Statutory Provisions**

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

Following completion of the built form modelling body of work, the resultant local planning policies for each precinct will be prepared in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

1. **Conclusion**

This report is presented to provide Council with an update on the built form modelling work currently being undertaken to inform precinct planning for the Nedlands Town Centre, Broadway, and Waratah Village precincts. Noting some delays with this work, there are no components ready to be adopted by Council. As such, Administration recommends that Council resolve to instruct the Chief Executive Officer to continue with the planned schedule of works relating to built form modelling for the Nedlands Town Centre, Broadway, and Waratah Village precincts.