******

***Agenda***

***Special Council Meeting***

***2 February 2021***

Dear Council member

A Special Meeting of the City of Nedlands is to be held on Tuesday 2 February 2021 in the Adam Armstrong Pavilion, Beatrice Road, Dalkeith commencing at 7.00 pm for the purpose of considering the following items:

1. Development Application - 31 Wavell Road Dalkeith
2. Development Application - 28 Beatrice Road
3. Responsible Authority Report – 97 Smyth Road
4. Scheme Amendment 10
5. CEO Recruitment and Selection Committee Recommendations
6. Any Available Responsible Authority Reports

Please be aware COVID-19 2m² restrictions with 1.5m social distancing rules apply. Once the venue is at capacity no further admission into the room will be permitted. Prior to entry, attendees will be required to register using the SafeWA App or by completing the manual contact register prior to entry - as stipulated by Department of Health mandatory requirements.

The public can continue to participate by submitting questions and addresses via the required online submission forms at:

<http://www.nedlands.wa.gov.au/intention-address-council-or-council-committee-form>

<http://www.nedlands.wa.gov.au/public-question-time>



Mark Goodlet

Chief Executive Officer

29 January 2021

**Table of Contents**

[Declaration of Opening 3](#_Toc62905395)

[Present and Apologies and Leave of Absence (Previously Approved) 3](#_Toc62905396)

[1. Public Question Time 4](#_Toc62905397)

[2. Addresses by Members of the Public 4](#_Toc62905398)

[3. Disclosures of Financial Interest 4](#_Toc62905399)

[4. Disclosures of Interests Affecting Impartiality 4](#_Toc62905400)

[5. Declarations by Members That They Have Not Given Due Consideration to Papers 5](#_Toc62905401)

[6. No. 31 Wavell Road, Dalkeith – Residential – Ground Floor Alterations and Upper Floor Addition to Single House 6](#_Toc62905402)

[7. No. 28 Beatrice Road, Dalkeith – Retrospective Amendments to DA19/41051 – Studio Extension, Feature Walls and Primary Street Fencing 18](#_Toc62905403)

[8. Consideration of Responsible Authority Report for 12 Multiple Dwellings at 97 Smyth Road, Nedlands 30](#_Toc62905404)

[9. Clarification of Council Resolution – Scheme Amendment No. 10 35](#_Toc62905405)

[10. Chief Executive Officer Recruitment 40](#_Toc62905406)

[Declaration of Closure 45](#_Toc62905407)

**City of Nedlands**

**Notice of a special meeting of Council to be held in Adam Armstrong Pavilion, Beatrice Road, Dalkeith on Tuesday 2 February 2021 at 7.00 pm for the purpose of considering the following items:**

**1. Development Application - 31 Wavell Road Dalkeith**

**2. Development Application - 28 Beatrice Road**

**3. Responsible Authority Report – 97 Smyth Road**

**4. Scheme Amendment 10**

**5. CEO Recruitment and Selection Committee Recommendations**

**6. Any Available Responsible Authority Reports.**

###### Special Council Agenda

# Declaration of Opening

The Presiding Member will declare the meeting open at 7.00 pm and will draw attention to the disclaimer below.

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

**Leave of Absence** None.

**(Previously Approved)**

**Apologies** None as at distribution of this agenda.

**Disclaimer**

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

Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.

# Public Question Time

A member of the public wishing to ask a question should register that interest by notification in writing to the CEO in advance, setting out the text or substance of the question.

The order in which the CEO receives registrations of interest shall determine the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

# Addresses by Members of the Public

Addresses by members of the public who have completed Public Address Session Forms to be made at this point.

# Disclosures of Financial Interest

The Presiding Member to remind Councillors and Staff of the requirements of Section 5.65 of the *Local Government Act* to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

# Disclosures of Interests Affecting Impartiality

The Presiding Member to remind Councillors and Staff of the requirements of Council’s Code of Conduct in accordance with Section 5.103 of the *Local Government Act*.

Councillors and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x ….. I disclose that I have an association with the applicant (or person seeking a decision). This association is ….. (nature of the interest).

As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

# Declarations by Members That They Have Not Given Due Consideration to Papers

Members who have not read the business papers to make declarations at this point.

# No. 31 Wavell Road, Dalkeith – Residential – Ground Floor Alterations and Upper Floor Addition to Single House

|  |  |
| --- | --- |
| **Council** | 2 February 2021 |
| **Applicant** | National Estate Builders (WA) Pty Ltd |
| **Landowner** | Sharon Wright |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff and the proponents or their consultants.  Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| **Reference** | DA20/54755 |
| **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 [amend accordingly] |
| **Attachments** | 1. Applicant’s Justification Report |
| **Confidential Attachments** | 1. Plans 2. Submissions 3. Assessment |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development Application received by the City of Nedlands on 29 September 2020, for ground floor alterations and an upper floor addition at No. 31 Wavell Road, Dalkeith (the subject site).

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

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) Volume 1 and is unlikely to have a significant adverse impact on the local amenity and character.

**Recommendation to Council**

**Council approves the development application received on 29 September 2020 with plans date stamped 29 September 2020 for ground floor alterations and an upper floor addition to a Residential (Single House) at Lot 820 (No. 31) Wavell Road, Dalkeith, 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.**

1. **This development approval only pertains to a Residential – alterations and upper floor addition to a Single house as indicated on the determination plans.**
2. **All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
3. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
4. **Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners and hot water systems shall be integrated into the design of the building and not be visible from the primary street, secondary street to the satisfaction of the City of Nedlands.**
5. **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.**
6. **This approval does not relate to any site works, decking or retaining walls 500mm or greater above the ground levels.**

**Advice Notes specific to this proposal:**

1. **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 under the Nature Strip Development approval.**
2. **An exterior fixture associated with any air-conditioning unit or hot water system is considered an appropriate location where it is positioned:**

* **outside of balcony/verandah areas (if applicable) and below the height of a standard dividing fence within a side or rear setback area; or within a screened rooftop plant area or nook.**

1. **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.**
2. **All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby 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.**
3. **Where the existing structures are to be demolished, 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 All works are required to comply with relevant statutory provisions.**
4. **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. 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.  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.**
5. **Where building works are proposed to the building, a building permit shall be applied for prior to works commencing.**
6. **The landowner is advised that all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the *Environmental Protection (Noise) Regulations 1997*, in relation to noise.**
7. **All swimming pools, whether retained, partially constructed or finished, shall be kept dry during the construction period. Alternatively, the water shall be maintained to a quality which prevents mosquitoes from breeding.**
8. **The applicant is advised to consult the City’s Acoustic Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours. Prior to selecting a location for an air-conditioner, the applicant the applicant is advised to consult the online fairair noise calculator at**[**www.fairair.com.au**](http://www.fairair.com.au/)**and use this as a guide to prevent noise affecting neighbouring properties.**
9. **A sewage treatment and effluent disposal system or greywater reuse or treatment system shall not be installed unless an Approval to Construct or Install an Apparatus for the Treatment of Sewage has been issued by the City beforehand.**
10. **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.**
11. **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.**
12. **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.**
13. **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.**
14. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 1409m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Existing – Residential use for a Single House  Proposed – Residential use for a Single House |
| **Use Class** | Permitted (P) |

**2.2 Locality Plan**

The subject property is located in Dalkeith, within the City of Nedlands. As shown in the map below, the subject property is coded R10.



The property is an irregular lot with a triangular shape. To the north-west is Cygnet Crescent and to the east is Wavell Road.

All adjoining properties in the vicinity are coded R10.

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

The western adjoining lot is at a lower ground level than the subject property due to the natural contours of the vicinity.

The subject site currently has a single storey Single House on the lot. There is a tennis court at the front of the property abutting Cygnet Crescent.



1. **Application Details**

The applicant seeks development approval for alterations to the existing dwelling, including the addition of an upper floor.

The ground floor alterations include:

* Removal of internal doors and walls
* Remove existing windows and French doors and works to brick up the walls
* Installation of staircase

The upper floor addition includes:

* Two bedrooms
* Two bathrooms
* Two walk in robes
* Activity room
* Staircase
* Balcony

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

1. **Consultation**

The development meets all relevant deemed-to-comply provisions of the Residential Design Codes (R-Codes) with the exception of Clause 5.1.2 – Street Setbacks and Clause 5.1.3 – Lot Boundary Setbacks. These elements have been assessed against the relevant Design Principles as outlined in Section 6.2.1 of this report.

The application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to three adjoining owners and occupiers. During the advertising period, three objections were received for the proposal. All three objections were received from one adjoining property.

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

|  |  |  |
| --- | --- | --- |
| **Submission** | **Officer Response** | **Action Taken** |
| Objection to a lot boundary setback variation which does not comply, resulting in building bulk, visual privacy impacts and resultant loss of privacy. | A detailed Design Principle assessment for Clause 5.1.3 – Lot Boundary Setbacks is provided under Section 6.3.2 of this Council Report. | Design Principle assessment provided under Section 6.2.1 of the report for Lot Boundary Setbacks |
| Difference of approx. 1.4m in ground height between subject property and adjoining property. The cumulative height of the development will be excessive from the adjoining property. | The site slopes downwards from an east to west direction. The City acknowledges that the adjoining lot to the west is at a lower ground level than the subject property due to the natural contours of the vicinity.  For the assessment of building height, the height is taken from the underside of the eave to the natural ground level directly at that point of where the wall intersects with the ground. The wall height and building height for this proposal are compliant. | No action required as building height is compliant.  As per Clause 2.5.4 of the R-Codes (Volume 1), the decision maker shall not refuse to grant approval to an application where the application satisfies the deemed-to-comply provisions of the R-Codes Volume 1. |
| Concern regarding overlooking from the upper storey additions to adjoining property. | The development achieves all the prescribed visual privacy setback provisions for a site coded R10.  Facing the western adjoining lot, there are three windows on the western elevation of the proposal. Two windows are to a staircase and its landing. Staircases are not considered major openings to “habitable rooms” as defined in the R-Codes and therefore are not subject to visual privacy requirements.  The other window is to a Bedroom which requires a 4.5m setback in the cone of vision and compliant setback of 7.5m is provided.  On the southern elevation, a bedroom window diagonally faces the western lot. The bedroom requires a 4.5m setback in the cone of vision and compliant setback of 5.5m is provided to the west. This same window also provides a compliant setback of 11.7m to the south.  All windows facing east look onto a secondary street – Wavell Road, which are not subject to visual privacy requirements as the overlooking would fall on the street. | No action required.  As per Clause 2.5.4 of the R-Codes (Volume 1), the decision maker shall not refuse to grant approval to an application where the application satisfies the deemed-to-comply provisions of the R-Codes Volume 1. |

*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**

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

Clause 67 of the Deemed Provisions stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the 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 amenity of the locality.

**5.2 Policy/Local Development Plan Consideration**

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

Volume 1 of the R-Codes apply to single and grouped dwellings. The document provides a 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 applicant is seeking assessment under the Design Principles of the R-Codes for Clause 5.1.2 – Street Setbacks and Clause 5.1.3 – Lot Boundary Setbacks as addressed in the below tables:

**Clause 5.1.2 – Street Setbacks**

|  |
| --- |
| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  *“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 to the Secondary Street – Wavell Road is 3.0m. |
| **Proposed** |
| A 1.6m setback is proposed to the Secondary Street – Wavell Road. |
| **Administration Assessment** |
| The application meets the Design Principles for the reasons outlined below.  The entire upper floor for this development application is situated over the existing ground floor footprint of the house. The ground floor is setback 1.0m from the secondary street – Wavell Road and the upper floor is setback 1.6m. The development is consistent with an established streetscape as the proposal does not encroach further into the secondary street setback area than what is currently existing on the site.  The portion of the development seeking discretion for the secondary street setback is a total length of 19.2m. The total length of the eastern portion of the lot abutting the secondary street is 88.5m. Therefore, discretion is sought for 22% of the lot length, which is considered minor in nature.  The upper floor addition setback 1.6m from the secondary street does not result in any negative impacts upon privacy to the dwelling as the rooms proposed are on the upper floor. The impacts upon privacy are considered negligible. The bedrooms proposed will have an outlook onto Wavell Road.  The proposal of the upper floor does not reduce any open space provision for the dwelling, especially in considering that the entire upper floor is situated over the existing footprint of the ground floor. A development in the R10 density requires 60% open space and the application proposes 65% open space.  Although the setback to the secondary street seeks discretion, the site is still able to accommodate parking, landscaping, utilities and the site allows safety clearances for easements for essential service corridors.  The development incorporates design features to reduce the impact of the size and scale of the building. These features include timber cladding, stone work, rendered walls and large windows. These design features also assist in creating a more aesthetic appearance of the dwelling from the streetscape.  The development also proposes articulated walls, with varying setbacks of 1.6m and 2.2m proposed to Wavell Road. These articulations assist in breaking up the wall so that the building does not detract from the character of the streetscape.  As the proposal is for upper floor additions, the development does not propose building services, vehicle entries, parking supplies of servicing infrastructure access.  In light of the above, the development positively contributes to the prevailing or future development context and streetscape as outlined in the local planning framework. The application is considered to successfully meet the Design Principles for Clause 5.1.2 – Street Setbacks. |

**Clause 5.1.3 – Lot Boundary Setbacks**

|  |
| --- |
| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  *“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 deemed to comply setback after the articulation of the walk in robe on the western upper floor is 2.3m to the western lot boundary. |
| **Proposed** |
| After the articulation of the walk in robe on the western upper floor, the setback proposed to the western lot boundary is 1.8m. |
| **Administration Assessment** |
| The application meets the Design Principles for the reasons outlined below.  The proposal is seeking discretion for 0.5m of the deemed to comply setback to the western adjoining lot. The western elevation of the upper floor wall is articulated with four separate wall articulations which will assist in reducing the impact of building bulk on the adjoining lot.  In relation to the setback assessment, using Figure series 4b of the R-Codes, the setback proposed for the walk in robe is compliant with 1.2m provided. The portion of the wall seeking discretion is the wall for Bed 5 which is setback 1.9m and the wall for the staircase and void which is setback at 1.8m. The deemed to comply setback is 2.3m. As the lot boundary is at an angle as shown in the plans, the setbacks stated above are the minimum setbacks. With the articulations of the wall and angle of the lot boundary, the setbacks vary and increase along the upper floor.  Considering the above, the wall to Bed 5 is seeking discretion for a setback for a total length of 1.2m. The wall to the staircase and the landing is seeking discretion to the setback for a total length of 1.4m. The cumulative length seeking discretion is therefore 2.6m in length. Along the entire western lot length of 66.2m, the 2.6m portion seeking discretion which represents only 3.9% is considered very minor in nature and unlikely to contribute to building bulk to the adjoining lot.  The design of the dwelling will ensure that there is direct sun and ventilation to the building itself and the open space areas. The proposal does not contribute to any site cover on the ground floor and does not reduce any open space provision to the subject site. The design of the dwelling, with four separate wall articulations will also ensure there is sufficient ventilation to the adjoining building and open space to the adjoining site. Due to the north – south orientation of the lot, the development does not result in any non-compliant overshadowing which would impact on sun exposure to the adjoining site.  As discussed previously, the development does not result in any overlooking impacts and resultant loss of privacy on the adjoining properties. All the prescribed visual privacy setback provisions for a site coded R10 have been achieved.  Facing the western adjoining lot, there are three windows on the western elevation of the proposal. Two windows are to a staircase and its landing. Staircases are not considered major openings to “habitable rooms” as defined in the R-Codes and therefore are not subject to visual privacy requirements.  The other window is to a Bedroom which requires a 4.5m setback in the cone of vision. A compliant setback of 7.5m is provided.  On the southern elevation, a bedroom window diagonally faces the western lot. The bedroom requires a 4.5m setback in the cone of vision. A compliant setback of 5.5m is provided to the west. This same window also provides a compliant setback of 11.7m to the south.  All windows facing east look onto a secondary street – Wavell Road, which are not subject to visual privacy requirements as the overlooking would fall on the street.    In light of the above, the application is considered to successfully meet the Design Principles for Clause 5.1.3 – Lot Boundary Setbacks. |

1. **Conclusion**

The application for additions to the existing single house at No. 31 Wavell Road, Dalkeith has been submitted for Council consideration as objections have been received. The objections raise concerns with the lot boundary setback, building bulk and visual privacy. The proposal is fully compliant with the deemed-to-comply provisions of the R-Codes with the exception of a street setback and a lot boundary setback. These departures to the R-Codes have been assessed against the relevant design principles for street setbacks and lot boundary setbacks. The proposal demonstrates compliance with these design principles.

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

# No. 28 Beatrice Road, Dalkeith – Retrospective Amendments to DA19/41051 – Studio Extension, Feature Walls and Primary Street Fencing

|  |  |
| --- | --- |
| **Council** | 2 February 2021 |
| **Applicant** | Coastview Australia Pty Ltd |
| **Landowner** | Kenneth Young Campbell & Qian Li |
| **Director** | Tony Free – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff and the proponents or their consultants.  Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia. |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| **Reference** | DA20/54186 |
| **Previous Item** | DA19/41051 |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received [amend accordingly] |
| **Attachments** | 1. Applicant’s Justification Report |
| **Confidential Attachments** | 1. Plans 2. Submissions 3. Assessment |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development Application received by the City of Nedlands on 15 September 2020, for a Retrospective amendment to DA19/41051. The original application was approved in February 2020 for a two storey Single House, studio, primary street fencing and site works at No. 28 Beatrice Road, Dalkeith (the subject site).

This application is seeking an amendment to the previous approval for an extension of the approved studio into the rear setback area, the addition of feature walls in the rear setback area and amendments to the primary street fencing to Beatrice Road.

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

It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the Residential Design Codes (R-Codes) Volume 1 and is unlikely to have a significant adverse impact on the local amenity and character.

**Recommendation to Council**

**Council approves the development application received on 15 September 2020 with plans date stamped 9 December 2020 for the amendments to DA19/41051 – Studio Extension, Feature Walls and Primary Street Fencing at Lot 50 (No. 28) Beatrice Road, Dalkeith, 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.**

1. **This development approval only pertains to amendments to DA19/41051 – Studio Extension, Feature Walls and Primary Street Fencing as indicated on the determination plans.**
2. **The Studio is not to be used for Ancillary Accommodation without further Development Approval being obtained from the City of Nedlands.**

1. **All footings and structures to retaining walls, fences and parapet walls, shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
2. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**
3. **Prior to occupation of the development, all external fixtures including, but not limited to TV and radio antennae, satellite dishes, plumbing vents and pipes, solar panels, air conditioners and hot water systems shall be integrated into the design of the building and not be visible from the primary street, secondary street to the satisfaction of the City of Nedlands.**
4. **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.**
5. **Retaining walls, fences or other structures are to be truncated or reduced to no higher than 0.75m within 1.5m of where the wall, fences, other structures adjoining vehicle access points where a driveway meets a public street to the satisfaction of the City of Nedlands.**
6. **The proposed fencing within the primary street setback area shall not exceed 1.8m in height from natural ground level and is to be visually permeable in accordance with the Residential Design Codes (v1, 2019) above 1.2m in height from natural ground level (refer to advice note b).**

**Advice Notes specific to this approval:**

**Planning**

1. **In relation to Condition 9, "Visually Permeable" as defined in the Residential Design Codes (v1, 2019) means the vertical surface has:**

* **Continuous vertical gaps of 50mm or greater width occupying not less than one third of the total surface area;**
* **Continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or**
* **A surface offering equal or lesser obstruction to view as viewed directly from the street.**

**Services**

1. **An exterior fixture associated with any air-conditioning unit or hot water system is considered an appropriate location where it is positioned:**

* **outside of balcony/verandah areas (if applicable) and below the height of a standard dividing fence within a side or rear setback area; or within a screened rooftop plant area or nook.**

1. **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.**
2. **The location of any bin stores shall be behind the street alignment so as not to be visible from a street or public place and constructed in accordance with the City’s Health Local Law 1997**

**Demolition**

1. **Where the existing dwelling/building and structures are to be demolished, a demolition permit is required prior to demolition works occurring.**
2. **All works are required to comply with relevant statutory provisions. 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.  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.  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.**

**Building Permit**

1. **Where building works are proposed to the building, a building permit shall be applied for prior to works commencing.**
2. **Where building works proposes a “notifiable event” or are likely to affect neighbouring land or property, then the ‘Work affecting other land’ provisions of the *Building Act 2011* will apply. This information sets out the requirements for managing building work on or close to a boundary. This process is used to confirm agreement with the work and with the effects it may have on neighbouring land or property.**

**Noise**

1. **The landowner is advised that all mechanical equipment (e.g. air-conditioner, swimming pool or spa) is required to comply with the Environmental *Protection (Noise) Regulations 1997*, in relation to noise.**
2. **The applicant is advised to consult the City’s *Acoustic Advisory Information*in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours. Prior to selecting a location for an air-conditioner, the applicant the applicant is advised to consult the online fairair noise calculator at**[**www.fairair.com.au**](http://www.fairair.com.au/)**and use this as a guide to prevent noise affecting neighbouring properties.**

**General Advice**

1. **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.**
2. **The applicant is advised that all development must comply with** this **planning approval and approved plans at all times.**
3. **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.**
4. **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.**
5. **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.**
6. **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.**
7. **Background**

**2.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 870m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Existing – Residential use for a Single House  Proposed – Residential use for a Single House |
| **Use Class** | Permitted (P) |

**2.2 Locality Plan**

The subject property is located in Dalkeith, within the City of Nedlands. As shown in the map below, the subject property is coded R10.



The property is regular shaped lot. To the north is the Primary Street – Beatrice Road. The subject property is bounded by adjoining residential lots to the east, west and south. All adjoining properties in the vicinity are coded R10.

The subject site slopes down approximately 3 metres from the highest point in the south western corner to the lowest point in the north eastern corner of the lot.

The southern adjoining lot at 1 Haig Road is at a higher contour level than the subject property.

The subject site is currently under construction as seen in the aerial image below for the development of approval obtained under DA19/41051 in February 2020.



1. **Application Details**

The applicant seeks development approval for amendments to the previous Approval - DA19/41051

* Extension of the studio into the rear setback area. The previous approval of the studio proposed a 6m setback to the rear lot boundary. This application proposes the addition of a bathroom and a storeroom to the studio, which now proposes a 4m setback to the rear lot boundary.
* Addition of feature walls in the rear setback area
* Amendments to the primary street fencing addressing the Primary Street – Beatrice Road to the north.
* Addition of a garden bed to the western lot boundary.

By way of justification in support of the development application the applicant has provided a Justification Report, which is included as Attachment 1 to this report.

1. **Consultation**

The development meets all relevant deemed-to-comply provisions of the Residential Design Codes (R-Codes) with the exception of Clause 5.1.3 – Lot Boundary Setbacks. These elements have been assessed against the relevant Design Principles as outlined at Section 6.2.1 of this report.

The application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to four adjoining owners and occupiers. During the advertising period, one objection was received for the proposal.

During the advertising period, the City was made aware that the applicant had started construction works on the portion of the studio and feature works in the rear setback area which are subject of this development application.

The City undertook a site visit and noted that works subject to this application had begun. The City met with the Applicant and advised the Applicant in person and in writing that the construction works for the development which are subject to this application are to cease until a determination has been made on the planning application. The Applicant has also been advised by the Building Department that works on the unauthorised parts shall not recommence until a building permit has been granted.

Consequently, the City also requested a ‘Retrospective Development Application Fee’ to be paid to the City for works without an Approval. The Applicant paid the outstanding relevant Retrospective Fees as per the City of Nedlands Fees and Charges Schedule.

The City advised the Applicant that any development approved under DA19/41051 can continue as approval has been obtained for those works.

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

|  |  |  |
| --- | --- | --- |
| **Submission** | **Officer Response** | **Action Taken** |
| Concern regarding the location of the air-conditioning unit located on the roof of the studio which will result in visual and noise pollution.  The air-conditioner on roof will impact upon the peaceful enjoyment of adjoining property and adversely impact on property value.  Suggested to move unit to the north wall at ground level. | The applicant sent amended plans to the City of Nedlands on 9 December 2020 to remove the air-conditioner unit from the roof of the studio.  The air-conditioner is now located on the roof along the western elevation of the studio.  The City is satisfied with the location of the air-conditioning unit which shows compliance with Clause 5.4.4 – External Fixtures of the R-Codes as the unit:   * Is not visible from the primary street; * Is designed to integrate with the building; * Is located not to be visually obtrusive (it is now located on the ground and will be screened by dividing fencing). | No further action required. |
| The proximity of the studio wall to the rear boundary will impede upon enjoyment of submitters’ outdoor area and view.  The studio will have an adverse impact on enjoyment of adjoining property and property value. | A detailed Design Principle assessment for Clause 5.1.3 – Lot Boundary Setbacks is provided under Section 6.3.2 of this Council Report. | Design Principle assessment provided under Section 6.2.1 of the report for Lot Boundary Setbacks. |
| Proximity and height of feature wall to the rear lot boundary will be an  imposing structure and cause a significant visual aesthetic impact  Feature walls will create a feeling of being overcrowded.  The feature walls will have an adverse impact on our enjoyment of the submitters’ property and property value. | A detailed Design Principle assessment for Clause 5.1.3 – Lot Boundary Setbacks is provided under Section 6.3.2 of this Council Report.  The height of the feature walls is also considered in the Design Principles assessment for Clause 5.1.3.  In relation to a building height and wall height assessment, the feature walls are compliant with Clause 5.1.6 – Building Height and City of Nedlands Residential Development Local Planning Policy height provisions. | Design Principle assessment provided under Section 6.2.1 of the report for Lot Boundary Setbacks. |
| Submitter expressed concern that works appear to have already commenced on the planned structures and the development will be allowed to proceed. | As mentioned above, the City met with the Applicant and advised the Applicant in person and in writing that the construction works for the development which are subject to this application are to cease until a determination has been made on the planning application and a building permit has been approved.  A ‘Retrospective Development Application Fee’ has been paid to the City for works without an Approval.  The City advised the Applicant that any development approved under DA19/41051 can continue as approval has been obtained for those works. | No further 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**

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

Clause 67 of the Deemed Provisions stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the 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 amenity of the locality.

**5.2 Policy/Local Development Plan Consideration**

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

Volume 1 of the R-Codes apply to single and grouped dwellings. The document provides a 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 applicant is seeking assessment under the Design Principles of the R-Codes for Clause 5.1.3 – Lot Boundary Setbacks as addressed in the below table:

**Clause 5.1.3 – Lot Boundary Setbacks**

|  |
| --- |
| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  “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 deemed to comply setback to the southern rear lot boundary is 6.0m. |
| **Proposed** |
| The studio proposes a 4.0m setback to the southern rear lot boundary.  The feature walls propose a 2.4m setback to the southern rear lot boundary. |
| **Administration Assessment** |
| The application meets the Design Principles for the reasons outlined below.  The studio is a single storey structure which is proposed to be setback 4m from the rear lot boundary. The studio is a total length of 7.4m.  The feature walls are setback 2.4m from the rear lot boundary and are proposed to be curved architectural features of the garden.  The studio has a maximum height of 3.9m and feature walls have a maximum height of 4.4m.  The City takes into consideration that the adjoining southern properties at 1 Haig Road, Dalkeith and 5 Iris Road, Dalkeith are situated on a higher portion of land than the subject property by approximately 1m.  Given that the adjoining properties to the south are situated higher, the studio is a single storey structure, and the feature walls are architectural features in the garden with arched openings, the proposals are not considered to negatively impact on the adjoining properties through building bulk.  It is also noted that the western adjoining property and eastern adjoining property both have existing development which is located closer than 4m to the rear lot boundary to the south. Therefore, there is existing precedence for development within the rear setback area in the vicinity.  The development in the rear setback area does not impede upon the sun and ventilation to the remainder of the development and does not reduce the amount of open space provision to the site as per the deemed to comply open space requirements of the R-Codes.  The development also does not result in any non-compliant overshadowing of the adjoining southern sites and therefore will not negatively impact on the sun and ventilation or open space to the adjoining properties.  As mentioned above, the studio is situated approximately 1m lower than the adjoining southern sites and the studio is not raised more than 0.5m above Natural Ground Level. On the rear elevation of the studio facing south, there is a bathroom and a storeroom which are not major openings of “habitable rooms” as defined in the R-Codes and are therefore not subject to overlooking requirements.  To the west, the studio does not propose any windows which does not result in any overlooking or resultant loss of privacy on the adjoining property.  In light of the above, the application is considered to successfully meet the Design Principles for Clause 5.1.3 – Lot Boundary Setbacks. |

1. **Conclusion**

The application for a Retrospective amendment to DA19/41051 which was approved in February 2020 for a two storey Single House, studio, primary street fencing and site works No. 28 Beatrice Road, Dalkeith has been submitted for Council consideration as an objection has been received.

The amendment is for an extension of the approved studio into the rear setback area, the addition of feature walls in the rear setback area and amendments to the primary street fencing to Beatrice Road.

The proposal is fully compliant with the deemed-to-comply provisions of the R-Codes with the exception of lot boundary setbacks. These departures to the R-Codes have been assessed against the relevant design principles and the proposal demonstrates compliance with these design principles.

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

# Consideration of Responsible Authority Report for 12 Multiple Dwellings at 97 Smyth Road, Nedlands

|  |  |
| --- | --- |
| **Council** | 2 February 2021 |
| **Applicant** | AoYo Real Estate Pty Ltd |
| **Landowner** | AoYo Real Estate Ptd Ltd |
| **Director** | Tony Free – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia*.* |
| **Report Type**  Information Purposes | Item provided to Council for information purposes. |
| **Reference** | DA20-52231 (DAP/20/01834) |
| **Previous Item** | Item 9.1 of Committee Meeting held 1 December 2020 |
| **Delegation** | Not applicable – Joint Development Assessment Panel application. |
| **Attachments** | 1. Responsible Authority Report (RAR) including attachments |

**Executive Summary**

An application for the development of 12 multiple dwellings in a three-storey building at No. 97 Smyth Road, Nedlands was received on 11 August 2020. A Responsible Authority Report (RAR) was considered by Council on 1 December 2020, at which it resolved to support the City’s recommendation to approve the development. The proposal was considered by the Metro Inner-North Joint Development Assessment Panel on 3 December 2020 at which it resolved to defer determination pending additional information. The additional information required is:

* To address all issues raised architectural peer assessment;
* Improve the impact on character and streetscape; and
* To address size and layout and circulation.

The Applicant has prepared revised plans that have been reconsidered by the reviewing architect. The application is considered to have addressed the information required and has now been returned to the JDAP for determination.

The purpose of this report is to provide Council the RAR as lodged with the JDAP on 1 February 2021 and to allow Council to consider making a submission to the JDAP.

**Recommendation to Council**

**That Council:**

* 1. **notes the revised Responsible Authority Report for the proposed 12 Multiple Dwelling development at 97 Smyth Road, Nedlands;**
  2. **agrees to appoint Councillor (insert name) and Councillor (insert name) to co-ordinate the Council’s submission and presentation to the Metro Inner-North JDAP;**
  3. **does/does not (remove one) support approval of the development; and**
  4. **provides the following reasons for the Council’s position on the application**

1. **...**

**Background**

The City originally received the JDAP application for No. 97 Smyth Road, Nedlands (the subject site) on 11 August 2020. The 3-storey building will comprise 12 multiple dwellings (apartments) of 1-2 bedrooms. The site is zoned Residential with a density code of R60. Surrounding properties to the north and west are coded R60. The property immediately to the south is coded R160.

The application was advertised for public comment from 19 September to 16 October 2020.

Council considered the RAR at its Committee Meeting held on 1 December 2020, at which it resolved as follows:

“That Council:

* 1. notes the Responsible Authority Report for the proposed 12 Multiple Dwelling development at 97 Smyth Road, Nedlands.
  2. agrees to appoint Councillor Hodsdon to co-ordinate the Council’s submission and presentation to the Metro Inner-North JDAP.
  3. supports approval of the development; and
  4. should the JDAP approve this development application condition 23 d) be replaced with the following:

23d) Prior to occupation, the solid vertical fin screening on the approved plans is to be installed to prevent sidewards views into the adjoining properties; and

14 becomes 14a and the following conditions of approval be added:

14b) Dilapidation Reports shall be conducted prior to demolition and/or excavation works for all adjoining property owners at the cost of the development applicant.

14c) All adjoining property owners, as listed in 14b, will be notified in writing at least 14 days prior to the commencement of demolition and/or excavation works.”

The Metro Inner-North Joint Development Assessment Panel considered the application on 3 December 2020. It resolved to defer the application for 60 days to allow the applicant to address the following:

* To address all issues raised architectural peer assessment;
* Improve the impact on character and streetscape; and
* To address size and layout and circulation.

The revised plans are included in the attached RAR. The design review conclusions for the initial plans and the revised plans are outlined in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| 3 | *Supported*  *Supported with conditions*  *Pending further attention*  *Not yet supported*  *Yet to be addressed* | | |
| 2 |
| 1 |
| 0 |
|  |
|  | | Initial Plans | Revised Plans |
| Principle 1 – Context & Character | | 0 | 2 |
| Principle 2 – Landscape Quality | | 0 | 2 |
| Principle 3 – Built Form & Scale | | 2 | 3 |
| Principle 4 – Functionality & Built Quality | | 1 | 3 |
| Principle 5 – Sustainability | | 0 | 1 |
| Principle 6 – Amenity | | 0 | 3 |
| Principle 7 – Legibility | | 2 | 3 |
| Principle 8 – Safety | | 2 | 3 |
| Principle 9 – Community | | 0 | 2 |
| Principle 10 – Aesthetics | | 0 | 2 |

It is noted that all principles have been supported or are supported with conditions with the exception of sustainability. However, as Element 4.15 of the R-Codes addresses energy efficiency, it is considered that sustainability can be addressed.

Character and streetscape have been addressed in the revised plans. Principle 1 Context and Character is now assessed as supported with conditions. The revised landscape plan seeks to address context and character further. This plan was not available at the time of preparing this report. However, the landscape architect preparing the plan has liaised with the reviewing architect to ensure context and character is addressed. The final landscaping plan will be forwarded to Council once received from the Applicant on 29 January 2021.

The size and layout of all habitable rooms now meet acceptable outcomes. The common circulation corridors are now provided with a minimum 1.5m width as recommended by acceptable outcomes.

There have been no changes to minimum setbacks, building height or plot ratio. There have also been no changes to window or balcony locations that affect the visual privacy settings for the development. Windows on the ground floor apartments have been adjusted to reflect modified apartment layouts in order to address the design principles. However, these changes do not trigger overlooking.

**Application Details**

The applicant seeks development approval for a residential development comprising 12 multiple dwellings over 3 storeys, with ground level parking. The building is proposed as follows:

* A ground floor comprising one 1-bedroom 1-bathroom apartment and one 2-bedroom 2-bathroom apartment. The layouts for these apartments have changed.
* Two upper floors will each comprise two 1-bedroom 1-bathroom studio apartments and three 2-bedroom 2-bathroom apartments.
* Communal facilities comprising open space, alfresco with BBQ and indoor communal area.
* A total of 14 resident car parking spaces will be provided at ground level. Three visitor car parking spaces are to be provided. This is a reduction of one resident space. This is required to allow for the provision of two universal access spaces. Car parking continues to exceed acceptable outcomes.

**Consultation**

In accordance with the City’s Local Planning Policy – Consultation of Planning Proposals, the development proposal is considered a Complex Application. The application was advertised for over three weeks, commencing on 19 September 2020 and concluding on 16 October 2020.

Administration received a total of 12 submissions during the public consultation period, of which 10 objected, 1 supported and 1 provided neither support nor objection to the development.

**Recommendation to JDAP**

The proposal was assessed against the element objectives of the Residential Design Codes Volume 2. This found that the development is compliant with the element objectives. Although generally consistent with the acceptable outcomes for visual privacy, a number of conditions are recommended to address the concerns of neighbouring properties. The conditions have been updated to include the changes to Conditions 14 and 23 required by Council in its 1 December 2020 decision.

Given the compliance with the element objectives of the R-Codes and the aims and objectives of the Scheme, Administration is recommending the application be approved with conditions.

**Conclusion**

Administration has prepared a Responsible Authority Report to the Metro Inner-North Joint Development Assessment Panel recommending conditional approval for the development of 12 multiple dwellings at 97 Smyth Road, Nedlands. Council may wish to make a submission to the Panel on the application. This submission will be presented to the Panel for consideration at its meeting on 15 February 2021.

# Clarification of Council Resolution – Scheme Amendment No. 10

|  |  |
| --- | --- |
| **Council** | 2 February 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 of the Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | Nil.  The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. OCM Report – Scheme Amendment No. 10 and Attachments - 15 December 2020 |
| **Confidential Attachments** | 1. Community Consultation – Full Submissions |

**Executive Summary**

This report is being presented to Council to confirm their intent with regards to Scheme Amendment No. 10. Points from within the Resolution made at the Ordinary Council Meeting on the 15 December 2020 contradict each other and are not considered to accurately reflect the discussion had by Council at the meeting.

The points from the Resolution at the Ordinary Council Meeting on the 15 December 2020 that require clarification are:

1. Point 1 and Point 6 of the Resolution: Point 1 requires the removal of the built form provisions proposed. Point 6 seeks to re-include the built form provisions, with a 9m street setback.

Council is requested to provide clarification as to whether the built form provisions are to be removed or retained so the Resolution is absolutely clear.

1. Point 2 and Point 7 of the Resolution: Point 2 states that the Amendment should be re-advertised to the Community. However, Point 7 states that the changes to the Amendment are not considered significant (and therefore are not required to be advertised as per the *Planning and Development (Local Planning Schemes) Regulations 2015*. Council is requested to provide clarification as to whether advertising should be undertaken for any proposed changes resolved to the Amendment.

**Recommendation to Council**

As per Administration’s report to Council at the 15 December Council Meeting, it is recommended that Council resolve as follows regarding Scheme Amendment No 10:

**Council:**

1. **in accordance with Regulation 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015,* proposes the following modifications to Scheme Amendment No. 10:**
2. **Removal of Part 3(a)-(b) of Scheme Amendment No. 10;**
3. **pursuant to section 75 of the Planning and Development Act 2005 and in accordance with Regulation 51(1) of the *Planning and Development (Local Planning Schemes) Regulations 2015* resolves to advertise proposed modifications to Scheme Amendment No. 10 to amend Local Planning Scheme No. 3 for 21 days as follows:**
4. **As detailed in Attachment 2 – Scheme Amendment No. 10 Justification Report (with modifications);**
5. **instructs the CEO to undertake required research and processes to initiate a separate Scheme Amendment process to provide Lot 25 (69) Melvista Avenue, Nedlands, Lots 10 (16) and 11 (18) Betty Street, Nedlands and Lots 19 (73) and 18 (75) Doonan Road, Nedlands with a Residential Density Code of R12.5; and**
6. **instructs the CEO to undertake a review of the Local Planning Policy Residential Aged Care Facilities to ensure consistency with proposed Scheme Amendment No. 10 and that the policy provisions support the optimal development of a Residential Aged Care Facility. The findings and recommendations of the review are to be presented to Council for approval.**

**Discussion/Overview**

**Key Relevant Previous Council Decisions:**

Scheme Amendment No. 10 was presented to Council for their final consideration at the 15 December 2020 Ordinary Council Meeting. Council resolved as follows:

“Council:

1. in accordance with Regulation 50(3) of the Planning and Development (Local Planning Schemes) Regulations 2015, proposes the following modifications to Scheme Amendment No. 10:
2. Removal of Part 3(a)-(b) of Scheme Amendment No. 10.
3. pursuant to section 75 of the Planning and Development Act 2005 and in accordance with Regulation 51(1) of the Planning and Development (Local Planning Schemes) Regulations 2015 resolves to advertise proposed modifications to Scheme Amendment No. 10 to amend Local Planning Scheme No. 3 for 21 days as follows:
4. As detailed in Attachment 2 – Scheme Amendment No. 10 Justification Report (with modifications).
5. instructs the CEO to undertake required research and processes to initiate a separate Scheme Amendment process to provide Lot 25 (69) Melvista Avenue, Nedlands, Lots 10 (16) and 11 (18) Betty Street, Nedlands and Lots 19 (73) and 18 (75) Doonan Road, Nedlands with a Residential Density Code of R12.5.
6. instructs the CEO to undertake a review of the Local Planning Policy Residential Aged Care Facilities to ensure consistency with proposed Scheme Amendment No. 10 and that the policy provisions support the optimal development of a Residential Aged Care Facility. The findings and recommendations of the review are to be presented to Council for approval.

1. Modify the Scheme Map to include the A9 area within the R12.5 density coding; and

1. Replace 3b with 3 (noting 3a has been deleted) to read as follows:

Where there is no approved local development plan, structure plan, and/or activity centre plan, the following development standards apply:

1. A minimum 9m street setback;
2. A minimum 6m side and rear boundary setback;
3. A maximum building height of two storeys with an external wall height of 8.5m and maximum overall height of 10m applies, as measured from NGL. A storey is defined in accordance with Residential Design Codes; and
4. A maximum plot ratio of 1.0.”
5. Council resolves that these amendments are not significant.

**Administration Requests Clarification on the Resolution from 15 December OCM**

1. Point 1 and Point 6 of the Resolution: Point 1 requires the removal of the built form provisions proposed. Point 6 seeks to re-include the built form provisions, with a 9m street setback.

Council is requested to provide clarification as to whether the built form provisions are to be removed or retained so the Resolution is absolutely clear.

1. Point 2 and Point 7 of the Resolution: Point 2 states that the Amendment should be re-advertised to the Community. However, Point 7 states that the changes to the Amendment are not considered significant (and therefore are not required to be advertised as per the *Planning and Development (Local Planning Schemes) Regulations 2015*. Council is requested to provide clarification as to whether or not they wish advertising to be undertaken for any proposed changes Resolved to the Amendment.

**Consultation**

No new consultation has been undertaken since this item was presented at the 15 December 2020 Ordinary Council Meeting.

**Strategic Implications**

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

The City’s Local Planning Scheme identifies the area surrounding the sites specified in A9 as low-density residential lots. This Scheme Amendment seeks to apply built form provisions that are in keeping with this low-density style of development.

**Who benefits?**

The community benefits from this Scheme Amendment, as it controls the potential for commercial development to impact upon the residential amenity of their local area.

**Does it involve a tolerable risk?**

This Scheme Amendment is not considered to pose a strategic risk to the City.

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

Yes.

**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.

**Conclusion**

Administration seeks clarification from Council on their Resolution made at the 15 December 2020 Ordinary Council Meeting.

Specifically, Council is asked to clarify their intent in regard to the inclusion or exclusion of the built form provisions, and also in regard to the advertising of any changes made to Scheme Amendment No. 10.

# Chief Executive Officer Recruitment

|  |  |
| --- | --- |
| **Council** | 2 February 2021 |
| **Applicant** | City of Nedlands (unless otherwise) |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | Nil |
| **CEO** | Mark Goodlet |
| **Attachments** | 1. Local Government Operational Guidelines – Appointing a CEO (updated April 2019). 2. CEO Recruitment & Selection Committee Terms of Reference. 3. Timeline for recruitment process |
| **Confidential Attachments** | 1. Executive Recruitment Quote – Beilby Downing Teal 2. Executive Recruitment Quote – Hunter Executive 3. Executive Recruitment Quote – Lester Blades 4. Executive Recruitment – comparison table |

**Executive Summary**

Chief Executive Officer (CEO) Mark Goodlet has resigned his position at the City of Nedlands and his last day of work will be 24 February 2021.

At Council Meeting 15 December 2020, Council formed a CEO Recruitment and Selection Committee in order to coordinate the process of organising the engagement of both an Interim CEO and a Long-term CEO. Council requested the appointment of an Executive Recruitment agency to assist with the recruitment processes.

The City arranged a quotation process through invitations to quote by executive recruitment agencies with the brief to assist Council with the engagement of the CEO roles.

The CEO Recruitment and Selection Committee met on 19 January 2021. The Committee 1. Reviewed the Committee’s Terms of Reference and 2. Received and reviewed responses from the executive recruitment companies to assist.

The Committee recommended:

1. Changes to the Terms of Reference (as below);
2. Lester Blades to assist with the engagement an Interim CEO; and
3. Hunter Executive to assist with the engagement of a Long-term CEO.

The recommendations of the CEO Recruitment & Selection Committee are presented in the recommendation to Council below.

**Recommendation to Council**

**Council:**

1. **adopts the CEO Recruitment & Selection Committee (Committee) Terms of Reference (TOR) outlined below, with the Committee’s changes shown in bold below:**

**CEO Recruitment and Selection Committee (2020/2021)**

1. **The CEO Recruitment and Selection Committee is to be an interim Committee for the life of the CEO recruitment and selection processes.**
2. **In accordance with Local Government Operational Guidelines Number 10 – Appointing a CEO (updated April 2019) and in the interests of professionalism for all parties and the reputation of the City, matters discussed and information relating to executive search companies that are commercial in confidence or relating to applicants and their details will be treated in the strictest confidence. All Councillors and staff dealing with the CEO recruitment and selection processes are to sign a confidentiality agreement.**
3. **The role of respective members of the Committee are to be clarified and confirmed – that is, the roles of the Mayor and Committee members and the roles of alternate Committee members, including whether the alternate Committee members are to act as proxies.**
4. **The CEO Recruitment and Selection Committee with the assistance of the HR Manager as required will refine the requirements for the selection of the CEO and will assist with coordination of the process.**
5. **The CEO Recruitment and Selection Committee will coordinate the end-to-end recruitment process, including working with an Executive Search consultancy as required to advertise for and search and select appropriate candidates.**
6. **The CEO Recruitment and Selection Committee will report back to Council at important points in the process as approved by Council and enable Council to make the final decision regarding selection and appointment of the interim CEO and the long-Term CEO.**
7. **approves the appointment of Lester Blades to assist with the engagement an Interim CEO; and**
8. **approves the appointment of Hunter Executive to assist with the engagement of a Long-term CEO.**

**Discussion/Overview**

City of Nedlands Chief Executive Officer, Mark Goodlet has resigned and his last day of work will be 24 February 2021.

At the Ordinary Council Meeting of the 15 December 2020, Council resolved the following:

That Council:

1. forms a CEO Recruitment & Selection Committee comprising the Mayor and four Councillors, being one Councillor from each ward:
2. appoints the members of this Committee:
3. Mayor de Lacy with alternate Deputy Mayor McManus.
4. Coastal Ward Councillor Smyth with alternate Councillor Horley.
5. Hollywood Ward Councillor Wetherall with alternate Councillor Poliwka.
6. Melvista Ward Councillor Coghlan with alternate Councillor Senathirajah.
7. Dalkeith Ward Councillor Mangano with alternate Councillor Youngman.
8. appoints the Mayor as Chair of the Committee.
9. instructs the CEO Recruitment & Selection Committee to review and confirm the Terms of Reference at their first meeting and recommend to Council for adoption; and
10. requests the CEO to immediately procure the services of a recruitment agency for the purpose of recruiting an interim CEO. The recruitment agency is to support the CEO Recruitment & Selection Committee.

**Selecting and Appointing a CEO**

Although there has been a review of the of the WA Local Government Act including the introduction of draft mandatory minimum standards for CEO recruitment and selection and these were distributed for further comment in December 2020, they are not yet passed into law.

Local Government Operational Guidelines – Appointing a CEO (updated April 2019) continues to apply (**Attachment 1**) as guidance to Councils.

The Guidelines outline the following:

* outsourcing the recruitment process
* reviewing the documentation – job description form
* identifying the performance criteria
* formulating the employment contract (with advice)
* including the remuneration as set by the Salaries and Allowances Tribunal
* advertising the vacancy
* managing the selection and appointment process
* conducting the interview
* making the decision based on all the information
* finalising the appointment

**Terms of Reference**

Terms of Reference are attached for review as per the Council’s Resolution of 15 December 2020. (**Attachment 2**).

**Executive Search and Recruitment**

While a broad range of recruitment agencies were considered, invitations to quote to assist the City to source an Interim CEO and a substantive CEO were invited from four suitable executive search and recruitment companies, being:

* Beilby Downing Teal;
* Hunter Executive;
* Lester Blades; and
* Derwent Search

Beilby Downing Teal, Hunter Executive and Lester Blades submitted quotes to perform the work (**Attachments 4, 5 and 6**). Derwent Search declined to quote.

For ease of reference, a basic comparison table of the three Executive Search & Recruitment companies who are available to assist is attached (**Attachment 7**).

*Beilby Downing Teal* expressed interest in assisting with the long-term CEO recruitment process but declined to assist with the interim CEO recruitment process.

Both *Hunter Executive* and *Lester Blades* responded with interest in assisting with both the interim CEO recruitment and long-term CEO recruitment and selection processes.

Following discussion by the Committee about the quoted pricing and the qualitative characteristics presented by the respective executive search and recruitment companies, the Committee proposed the following:

* Lester Blades is the preferred company to assist Council with the recruitment and selection process for the interim CEO position; and
* Hunter Executive is the preferred company to assist Council with the recruitment and selection of the long-term CEO position.

**Indicative Timeline for Recruitment of Interim CEO and Long-term CEO**

An indicative timeline for the recruitment of an Interim CEO and a long-term CEO is attached (**Attachment 3**).

It is to be noted that even with an expedited timeline for recruitment of an interim CEO it is very likely that a higher duties Acting CEO position will be needed for a short time. If this eventuates the current CEO will determine the person to be Acting CEO until the interim CEO is onboard. A report will be presented to Council’s February Ordinary Meeting should this occur.

**Strategic Implications**

Good governance.

**Budget/Financial Implications**

CEO salary within existing budget.

Additional funds of $30,000 for engagement costs have been identified in the City’s Mid-Year Budget Review and a further $30,000 to be included in the 2021/22 budget for progress payments for engagement costs.

**Conclusion**

It is critical for the ongoing functioning of the City’s administration that the CEO role is backfilled by an appropriate person/s in a timely manner, both for an interim period and for a longer-term contract.

The revised CEO Recruitment and Selection Committee Terms of Reference are submitted for approval.

It is recommended that the appointment of an executive search and selection company for the recruitment for the role of interim CEO (Lester Blades) and executive search and recruitment for the longer-term CEO (Hunter Executive) is expedited.

# Declaration of Closure

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