

Planning and Development Reports

Committee Consideration – 3 December 2019

Council Resolution – 17 December 2019

Table of Contents

Item No. Page No.

[PD48.19](#_Toc25848711) [No. 3 Circe Circle, Dalkeith – Additions to a Single House (Carport and Primary Street Fencing) 2](#_Toc25848712)

[PD49.19](#_Toc25848713) [No. 2 Burwood Street, Nedlands – Additions to a Single House (Ancillary Dwelling and Carport) 10](#_Toc25848714)

[PD50.19](#_Toc25848715) [No. 85 Clifton St, Nedlands – Change of Use (Residential to Short Term Accommodation, Holiday House) 18](#_Toc25848716)

[PD51.19](#_Toc25848717) [No. 7 Nidjalla Loop, Swanbourne – Additions to a Single House (Privacy Screen) 25](#_Toc25848718)

[PD52.19](#_Toc25848719) [Local Planning Scheme 3 - Local Planning Policy - Residential Development: Single and Grouped Dwellings 32](#_Toc25848720)

[PD53.19](#_Toc25848721) [Local Planning Scheme 3 – Local Planning Policy Waste Management and Guidelines 41](#_Toc25848722)

[PD54.19](#_Toc25848723) [Local Planning Scheme 3 – Residential Aged Care Facilities 44](#_Toc25848724)

[PD55.19](#_Toc25848725) [Mt Claremont North-East Structure Plan Investigation 47](#_Toc25848726)

[PD56.19](#_Toc25848727) [Local Planning Scheme 3 – Local Planning Policy Waratah Village Laneway Requirements 51](#_Toc25848728)

**Council: 17 December 2019**

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| **PD48.19** | **No. 3 Circe Circle, Dalkeith – Additions to a Single House (Carport and Primary Street Fencing)** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | Alex and Ruth Temelcos |
| **Landowner** | Alex and Ruth Temelcos |
| **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** | DA19/36044 |
| **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 Submission in Support of the Development Proposal 2. Plans (Confidential) 3. Assessment (Confidential) 4. Submission (Confidential) |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development application received from the applicant on the 20 May 2019, for a proposed carport and primary street fencing to a single residential property at No. 3 (Lot 749) Circe Circle, North Dalkeith.

The carport is proposed to occupy a floor area of 45.93m2, be setback 4.56m from the primary street and be setback 1.0m from the northern (side) boundary.

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, following conditions which modify the development proposal.

1. **Recommendation to Committee**

**Council approves the development application dated 20 May 2019, to install a carport within the front setback area at No. 3 (Lot 749) Circe Circle, Dalkeith, subject to the following conditions and advice/for the following reasons:**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **This development approval only pertains to the addition of a carport to a single dwelling, as indicated on the plans attached.**
3. **Revised drawings shall be submitted with the Building Permit application, to the satisfaction of the City, incorporating the following modifications as shown in red on the approved plans:**
4. **The proposed primary street fencing is to provide a minimum 1.5m visual truncation area in accordance with Clause 5.2.5 of the R-Codes (Sight Lines), where the driveway/crossover intersects with the proposed primary street fencing.**
5. **The carport shall remain open on all sides and shall not accommodate a door.**
6. **All footings and structures shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
7. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

**Advice Notes specific to this proposal:**

1. **Any development in the nature-strip (verge), including footpaths, will require a Nature-Strip Improvement Application and/or a Crossover Permit to be lodged with, and approved by, the City’s Technical Services department, prior to construction commencing.**
2. **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.**
3. **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.**
4. **This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.**
5. **Background**

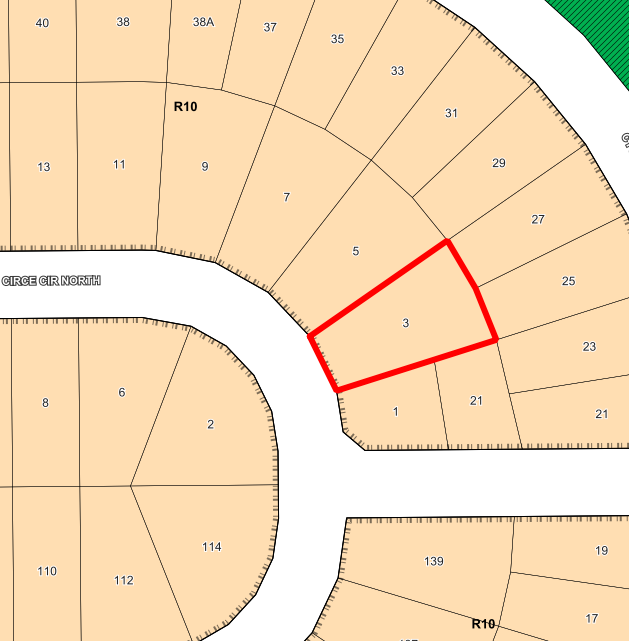
**3.1 Land Details**

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| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 1287.4 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Residential Single House |
| **Use Class** | Residential |

**3.2 Locality Plan**

The subject site is located within the suburb of Dalkeith, to the east of Dalkeith Primary School and to the south-east of the Waratah Local Centre. Circe Circle maintains a consistent streetscape, with minimal intrusions into the primary street setback area, resulting in a consistent streetscape character. The subject property is zoned Residential, R10, in accordance with Local Planning Policy No. 3 (LPS 3), permitting a single residential house.





1. **Application Details**

The applicant seeks development approval for a carport and primary street fencing, details of which are as follows:

* The proposed carport seeks to occupy an area of 45.93m2, with 36m2 being within the front setback area.
* The proposed carport has a width of 8.5m with a depth of 5.4m.
* The proposed carport is to be setback 4.56m from the primary street.
* The proposed carport is to be setback 1.0m from the northern lot boundary.
* The proposed primary street fencing is to be solid to a height of 1.6m for the northern 1.12m portion of the proposed fencing.

By way of justification in support of the development application the applicant has provided a design principles assessment and addressed the submissions received. This has been included as an attachment (Attachment 1) to this report.

1. **Consultation**

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

* Primary Street Setback
* Solid Primary Street Fencing

The development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 6 residents and landowners. One (1) objection was received with five (5) non-responses during the consultation period.

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 carport is substantially forward of the 9.0m required under an R10 density code as outlined within the City of Nedlands Local Planning Scheme No. 3 | 1 | The City of Nedlands Local Planning Scheme No. 3 (LPS3) modifies the primary street setback requirements as outlined within the Residential Design Codes for properties with a Residential Density code of R15 or less, to 9.0m.  The City is currently advertising a Draft Residential Development Policy, to modify the primary street setback requirements for carports located on properties with a residential density code of R15 or less. This policy seeks to reduce the required primary street setback of carports to 3.5m in lieu of the 9.0m as required under LPS3. | The proposed carport complies with the Draft Residential Development Policy, due regard should be taken of this policy in consideration in determining this this application. No action required. |
| The proposed carport occupies more than half of the lot frontage | 1 | The proposed carport is 8.5m in width, with the primary street lot boundary having a width of 18.5m. The proposed carport occupies 46% of the primary street frontage.  Carports are garages are permitted to occupy up to 50% of the primary street frontage. | The proposed carport design is compliant with the R-Code requirements. No action required. |
| The proposed carport exceeds 36m2 as required under the Draft Residential Development Policy | 1 | The proposed carport occupies an area of 45.93m2, with a floor area of 36m2 within the front setback area.  The draft residential development policy permits a maximum 36m2 of carport within the front setback area. | The proposed carport is compliant with the Draft Residential Development Policy, with the proposed development not exceeding 36m2 within the front setback area. No action required. |
| The proposed carport does not enhance the amenity or aesthetics of the area. In fact, it detracts from the streetscape, removes large existing trees which provide for good amenity, and provide a dominating 8.50m wide structure to park three vehicles. | 1 | The proposed carport does not exceed 50% of the primary street frontage as permitted under the Draft Residential Development Policy. | The carport width is compliant with the City’s Draft Residential Development Policy and the R-Codes. No action required. |
| It is clear that the proposed carport is not consistent with the established or desired 9m setback streetscapes | 1 | The proposed carport is setback in excess of the requirements of the Draft Residential Development Policy, featuring a 4.56m setback in lieu of 3.5m required under the draft policy. | The proposed carport setback is compliant with the draft residential development policy. No action required. |
| The proposed development does not contribute to, nor is consistent with, an established streetscape.  It is clear on this basis, that the proposed 4.556m setback is not consistent with the established streetscape and does not comply with this design principle. | 1 | The proposed carport is setback in excess of the requirements of the Draft Residential Development Policy, featuring a 4.56m setback in lieu of 3.5m required under the draft policy. | The proposed carport setback is compliant with the draft residential development policy. No action required. |
| The proposed development is not a minor projection. It is 8.50m long and extends into the setback area which many residences in the street comply with. In our view, it detracts from the character of the streetscape which has generous setback areas, and landscaping. | 1 | The proposed carport does not exceed 50% of the primary street frontage as permitted under the Draft residential Development Policy. | The proposed carport setback is compliant with the draft residential development policy. 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 Residential Design Codes – Volume 1 (State Planning Policy 7.3)**

The applicant is seeking assessment in accordance with the Design Principles of the R-Codes for primary street fencing as addressed in the below table:

**Primary Street Fencing – 5.2.4 Street Walls and Fences**

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| **Design Principles** |
| The application seeks assessment under the design principles which are as follows:  “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** |
| Front fences within the primary street setback area that are visually permeable above 1.2m of natural ground level, measured from the primary street side of the front fence. |
| **Proposed** |
| The proposed primary street fencing is to be solid for the northern 1.12m, with a height of 1.6m. The remainder of the proposed primary street fencing is compliant. |
| **Administration Assessment** |
| The solid portion of the primary street fencing is proposed to be utilised for the installation of a meter box. The existing development context of Circe Circle demonstrates a precedent of solid primary street fencing. The proposed fencing design does not negatively impact the surveillance of the street, nor the front setback area. Due to the small portion of the proposed primary street fencing, its low height and an existing precedent for solid primary street fencing it is considered that the development proposal will have a negligible impact on the character or amity of the existing/future streetscape. Condition 3 (recommended should this application be approved) requires the proposed plans to be modified to ensure compliance with the Australian Standards for sightlines at vehicle access points. |

**Primary Street Setback – 5.1.2 Street Setback**

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| **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. |

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| **Deemed-to-Comply Requirement** |
| Buildings are required to be setback a minimum of 9.0m from the primary street for properties zoned R15 or less. |
| **Proposed** |
| The proposed carport is to be setback 4.56m from the primary street. |
| **Administration Assessment** |
| The City has completed a Draft Residential Development Policy which seeks to modify the deemed to comply setback requirements for properties zoned R10-R15 from the 9.0m primary street setback to 3.5m for carport structures. The proposed carport is proposed to be setback 4.56m from the primary street and meets the requirements of the draft policy. Having due regard to the draft policy, the carport setback is considered an acceptable development outcome. |

1. **Conclusion**

The proposed carport is complaint with the R-Codes and the City of Nedlands Draft Residential Development Policy, in terms of setbacks and floor area.

The proposed primary street fencing design is required to be revised in order to meet the Australian Standards for sightlines and vehicle manoeuvring areas. The proposed solid portion of the primary street fencing is considered to be an acceptable outcome and does not negatively impact the amenity or character of the existing streetscape.

Considering the above, **approval** for the development proposal is recommended subject to the Conditions recommended above.

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| **PD49.19** | **No. 2 Burwood Street, Nedlands – Additions to a Single House (Ancillary Dwelling and Carport)** |
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| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | Michael Cardinale |
| **Landowner** | John Edwards |
| **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** | DA19/37053 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to the City’s Administration recommending refusal for elements of this application. |
| **Attachments** | 1. Landowner Justification Letter 2. Alternate Recommendation (Confidential) 3. Plans (Confidential) 4. Assessment Sheet (Confidential) |

1. **Executive Summary**

The purpose of this report is for Council to determine a development application received from the applicant on the 1 July 2019, for a proposed garage conversion to an ancillary dwelling and an additional carport at 2 Burwood Street, Nedlands.

The proposed carport is to be setback 1.5m from the primary street lot boundary.

The application was advertised to adjoining neighbours in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. No objections were received during the advertising period.

It is recommended that the application for the Ancillary Dwelling be approved by Council subject to conditions outlined below and that the proposed Carport, setback at 1.5m from the primary street boundary be refused due to streetscape impact

1. **Recommendation to Committee**
2. **Council refuses the proposed installation a carport within the front setback area for the following reasons:**
3. **The City of Nedlands Draft Residential Development Policy varies the primary street setback requirement for carports on properties zoned R15 or less from 9.0m to a minimum of 3.5m (Clause 4.2). The applicant can provide a complaint 3.5m primary street setback, however, has proposed a 1.5m primary street setback which is inconsistent with this policy.**
4. **The proposed carport does not meet the objectives of the Draft Residential Development Policy or the objectives of the Residential Zone as outlined in LPS3. The proposed carport development is not considered to be appropriate in scale, bulk or setbacks as viewed from the street.**
5. **Council approves the proposed garage conversion to an ancillary dwelling subject to the following conditions and advice notes be observed for the partial approval:**

**Conditions**

1. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
2. **This development approval only pertains to a garage conversion to an ancillary dwelling and the installation of a carport as indicated on the plans attached.**
3. **All footings and shall be constructed wholly inside the site boundaries of the property’s Certificate of Title.**
4. **All stormwater from the development, which includes permeable and non-permeable areas shall be contained onsite.**

**Advice Notes specific to this proposal:**

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. **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.**

1. **The applicant is advised to consult the City’s Visual and Acoustic Privacy Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration and visual 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 is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as a guide to prevent noise affecting neighbouring properties.**

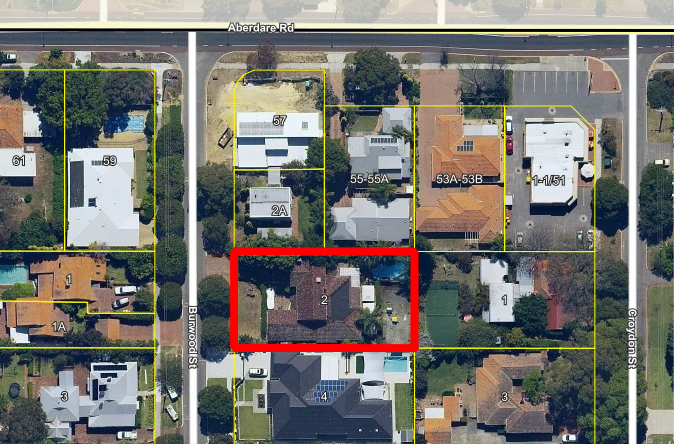
**Prior to installing mechanical equipment, the applicant is advised to consult neighbours, and if necessary, take measures to suppress noise.**

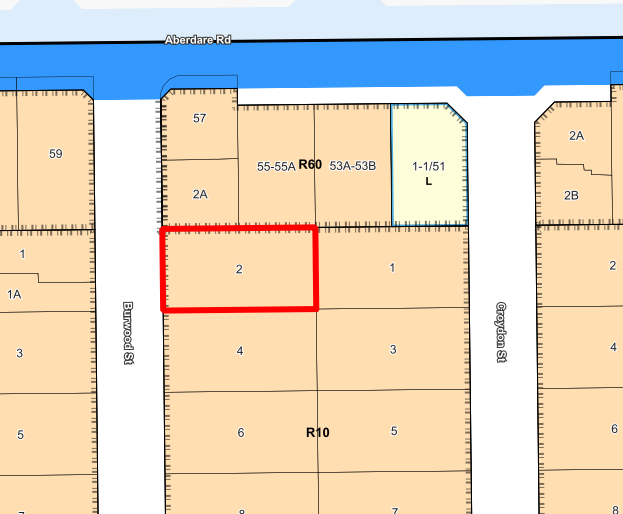
1. **A sewage treatment and effluent disposal system or greywater reuse or treatment system shall not be installed unless an Approval to Construct or Install an Apparatus for the Treatment of Sewage has been issued by the City beforehand.**
2. **This decision constitutes planning approval only and is valid for a period of two years from the date of approval. If the subject development is not substantially commenced within the two-year period, the approval shall lapse and be of no further effect.**
3. **Background**
   1. **Land Details**

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| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R10 |
| **Land area** | 1115m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Single Residential |
| **Use Class** | P |

**3.2 Locality Plan**

The subject site fronts Burwood Street and is zoned Residential, R10. To the north of the subject lot, is residential land zoned R60. Aberdare Road, to the north of the site represents the border between the City of Nedlands and the City of Subiaco.





1. **Application Details**

The applicant seeks development approval to convert a garage to an ancillary dwelling and install a carport to a single residential dwelling, details of which are as follows:

* The applicant proposes to convert the existing garage into an ancillary dwelling. The proposed conversion includes the addition of storerooms, bathroom, kitchen and bedroom. No change to the existing building’s footprint is proposed, with minimal external modifications being proposed.
* The proposed ancillary dwelling is fully complaint with the R-Codes and LPS3.
* The applicant has proposed the installation of a new, double carport addressing the primary street (Burwood Street). The proposed carport is to be installed in the north-western corner of the lot, being setback 1.5m from the northern and western (primary street) boundaries.
* The carport is to be integrated into the primary street fencing and accommodate a visually permeable door, addressing the primary street.

By way of justification in support of the development application the applicant has provided a justification letter. This letter has been provided as an attachment to this report.

1. **Consultation**

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

* Carport primary street setback

The development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 17 neighbouring owners and occupiers. No submissions were received during the consultation period.

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/Local Development Plan Consideration**

**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 primary street setbacks as addressed in the below table/s:

**Primary Street Setbacks**

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| **Design Principles** |
| **5.1.2 Street setback**  **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 R-Codes require a minimum 7.5m primary street setback for buildings. The City of Nedlands Local Planning Scheme No. 3 (LPS3) modifies the primary street setback requirements from 7.5m to 9.0m for properties zoned R10, R12.5 and R15. |
| **Proposed** |
| The submitted plans indicate the carport proposes a 1.5m primary street setback. |
| **Administration Assessment** |
| R10 zoned properties are characterised by generous primary street setbacks to their respective primary streets and neighbouring properties. The proposed carport setback represents a 7.5m primary street setback shortfall as required by LPS3. The proposed primary street setback of 1.5m is uncharacteristic of development within the R10 density code, being more in keeping with development typologies of R60 and R80 zoned land.  The applicant has land available behind the proposed carport which could be utilised to provide a greater primary street setback than the 1.5m proposed. The applicant could install a double carport (6m x 6m) within the front setback area and provide a 7.3m primary street setback.  The proposed carport setback of 1.5m is not characteristic of property zoned R10 or consistent with the prevailing existing streetscape of Burwood Street. |

**6.2.2 Local Planning Policy – (Draft) Residential Development Policy**

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| **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.  **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. |

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| **Policy Requirement** |
| **4.2** Setback of garages and carports  **4.2.1** In addition to Clause 26(1)(b) of LPS 3, Clause 5.2.1 of the R-Codes is amended to include the following additional deemed-to-comply requirements:  **C1.6** On land coded R10, R12.5 and R15, other than lots identified in Schedules 2 & 3 of LPS 3, carports may be setback forward of the 9m primary street setback line provided that the following is met:   1. the width of the carport does not exceed 50 percent of the lot frontage, and the carport allows an unobstructed view between the dwelling and the street, right-of-way or equivalent; 2. the carport is setback a minimum of 3.5m from the primary street; 3. the carport is not greater than 36m2 in floor area as measured from the outside of the posts;   **iv.** Side setbacks as per the R-Codes;   1. the carport complies with Table 1 - Maximum carport height; 2. the carport cannot be accommodated behind the street setback line and compliant with side setback provisions of the R-Codes. |
| **Proposed** |
| The submitted plans indicate a proposed 1.5m primary street setback. |
| **Administration Assessment** |
| The submitted plans are inconsistent with the City’s Draft Residential Development Policy, proposing a 1.5m primary street setback in lieu of the required 3.5m. The residential development policy seeks to protect and enhance the streetscape character and ensure future development meets the requirements of the property’s land zoning. The proposed carport would become a dominant intrusion into the established streetscape of Burwood Street, setting a precedent of development not only forward of the 9.0m required by LPS3 but forward of the 3.5m required under the residential development policy.  The proposed carport development is inconsistent with the existing streetscape character of Burwood Street and does not meet the desired future primary street setbacks outlined within the City’s Draft Residential Development Policy. |

1. **Conclusion**

The development application lodged by the applicant can be split into two (2) elements, a proposed garage conversion into an ancillary dwelling and installation of a new carport within the primary street setback area. The proposed garage ancillary conversion is supported by the City. The proposed primary street setback to the carport is not supported by the City.

The City recommends a partial approval for the development application, approving the proposed garage to ancillary conversion and refusing the proposed carport.

The proposed 1.5m primary street setback to the carport is inconsistent with the established and desired streetscape of Burwood Street and does not meet the objectives of the City of Nedlands Local Planning Scheme No. 3 or the City’s Draft Residential Development Policy. The proposed 1.5m primary street setback, in combination with the proposed carport door would contribute to a significant intrusion into the street’s established streetscape character. The subject property has the capacity to provide a 3.5m primary street setback to a double carport (6m X 6m), ensuring compliance with the City’s Draft Residential Development Policy.

Considering the above, due to the significant intrusion of the proposed carport within the front setback area and the ability for the applicant to provide a compliant 3.5m primary street setback, which is consistent with the City’s Draft Residential Development Policy, it is recommended that the Council **REFUSES** the application for a carport addition and **APPROVES** the proposed garage to ancillary dwelling conversion.

|  |  |
| --- | --- |
| **PD50.19** | **No. 85 Clifton St, Nedlands – Change of Use (Residential to Short Term Accommodation, Holiday House)** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | Karen Morris |
| **Landowner** | Karen Morris |
| **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** | DA19/38823 |
| **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. Management Plan 2. Applicant Justification 3. Assessment Sheet (Confidential) 4. Submissions (Confidential) |

1. **Executive Summary**

The purpose of this report is for Council to determine a retrospective Development application received from the applicant on the 16 August 2019, for an existing short-term accommodation to a residential property at No. 85 Clifton St, Nedlands.

Short term accommodation is an ‘A’ use under the City of Nedlands Local Planning Scheme No. 3 (LPS3). As such, the application was advertised to adjoining neighbours in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. Two (2) objections were received during the advertising period.

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

1. **Recommendation to Committee**

**Council approves the retrospective development application dated 16 August 2019 for short term accommodation at 85 Clifton 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 only pertains to the use of 85 Clifton St, Nedlands as short-term accommodation.**
3. **A maximum of 6 guests are permitted on the premises at any one time.**
4. **The Management Plan forms part of this approval and is to be complied with at all times to the City’s satisfaction.**
5. **All car parking associated with the short-term accommodation being contained on site.**
6. **The proposed use complying with the Holiday House definition stipulated under the City’s Local Planning Scheme No. 3 (refer to advice note 1).**
7. **No materials and/or equipment being stored externally on the property, which is visible from off site, and/or obstructs vehicle manoeuvring areas, vehicle access ways, pedestrian access ways, parking bays and/or (un)loading bays.**
8. **Service and/or delivery vehicles are not to service the premises before 7.00 am or after 7.00 pm Monday to Saturday, and/or before 9.00 am or after 7.00 pm on Sundays and Public Holidays unless otherwise approved by the City beforehand.**

**Advice Notes specific to this proposal:**

1. **With regard to condition 6, the applicant and landowner are advised that the use Holiday House is defined as the following in accordance with Local Planning Scheme No. 3:**

**‘Holiday House means a single dwelling on one lot used to provide short-term accommodation for persons other than the owner of the lot’.**

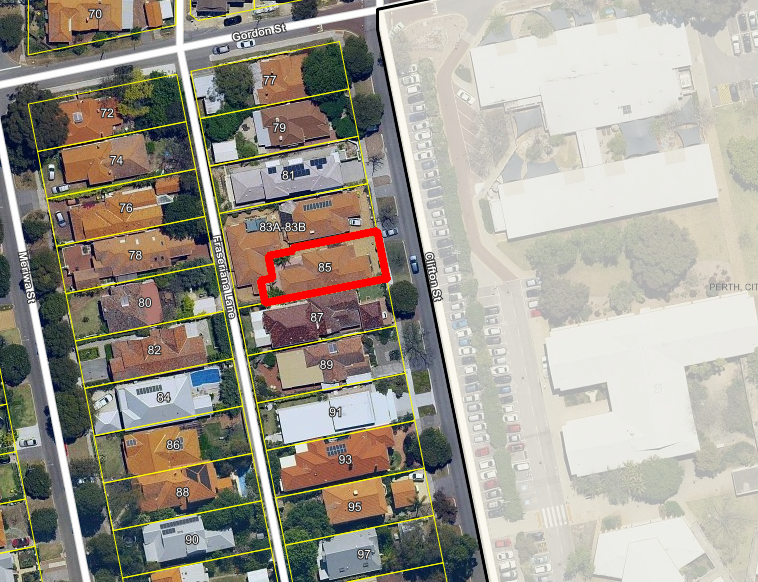
1. **This decision does not obviate rights and responsibilities of strata owners under the Strata Titles Act 1985, which may require additional consultation and/or permissions from the stratum, prior to the commencement of works.**
2. **Noise levels are to comply with the Environmental Protection (Noise) Regulations 1997.**
3. **Background**

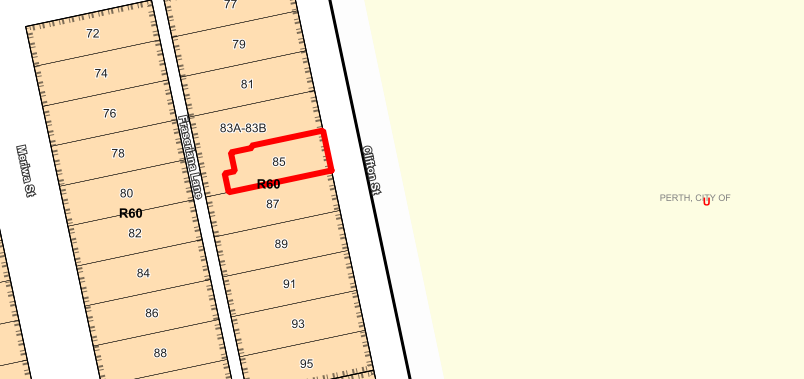
**3.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | 358m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Existing – Residential  Proposed – Residential and Short-Term Accommodation |
| **Use Class** | Proposed – ‘A’ use class for short term accommodation in a residential zoned area |

**3.2 Locality Plan**

The property at 85 Clifton St, Nedlands has its primary frontage addressing Clifton St. This street represents the boundary between the City of Perth and the City of Nedlands Local Government Areas. The subject property is part of a three-lot strata/grouped dwelling development.





1. **Application Details**

The applicant seeks retrospective development approval for a change of use from residential to short-term accommodation (Holiday House), details of which are as follows:

* 85 Clifton St, Nedlands has been operating as short accommodation (on ‘Air BnB’) since 2016.
* The applicant seeks retrospective approval for the use of the subject property as a ‘Holiday House’, operating as an ‘Air BnB’ for approximately 50% of the year and a single residential house, whilst not tenanted as short-term accommodation.
* A minimum booking of 3 days applies for all tenants.
* A maximum of 6 guests are permitted on site at any one time.
* LPS3 defines a ‘Holiday House’ as, “a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.”
* LPS3 defines ‘short-term accommodation’ as, “temporary accommodation provided either continuously or from time-to-time with no guest/s accommodated for periods totalling more than 3 months in any 12-month period.”

By way of justification, in support of the retrospective development application the applicant has provided a letter of response, addressing the submissions received. This has been provided as an attachment to this report.

1. **Consultation**

The applicant is proposing a change of use to ‘Holiday House’ from residential. A ‘Holiday House’ is a ‘A’ use under LPS3.

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 development application was therefore advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to 75 neighbouring owners. During the consultation period, two (2) objections were received 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 short-term accommodation will result in additional traffic movements and noise. | 1 | The proposed management plan indicates that the entire property is to be used as a holiday house, with no subletting of individual rooms proposed. Due to this configuration, it is likely that the property would be occupied by a single family or group, which would access the property via 1 or 2 vehicles. Residential dwellings are required to provide onsite parking for a minimum of two vehicles. The resulting traffic movements associated with the operation of the property as a holiday house are in keeping with those expected for a single residential dwelling and are unlikely to increase congestion and traffic movements in the area. | Condition 5 has been recommended, ensuring all car parking associated with the Holiday House are contained on-site. |
| Commercial activities should not be supported in a residential area as they attract higher traffic volumes and create additional noise. | 1 | To the east of the subject property is UWA campus. This campus attracts a high volume of vehicular traffic and commercial activity. A Holiday House is utilised for the similar purposes as a residential property, to house people, albeit on a short-term basis. The shorter time frames of a Holiday House are unlikely to have a negative impact on surrounding properties when compared to the permitted use of the property as a rental property. | Condition 4 has been recommended, requiring that the provisions of the management plan are adopted and enforced by the landowner, to mitigate potential negative amenity impacts and risks associated with the operation of short-term accommodation |

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

**6.2 Local Planning Scheme No. 3**

**Part 3 Clause 16 (Objective of Zone) (Residential)**

The residential zone objectives seek to provide a range of housing and to provide a range of no residential uses which are compatible with, and complementary to residential areas.

The application for Short Term Accommodation (Holiday House) is considered to satisfy the objectives of the residential zone. Short term accommodation provides a unique housing typology, which is considered to be complimentary to surrounding residential land uses.

**6.3 Policy/Local Development Plan Consideration**

**6.4.3 Local Planning Policy – Short-Term Accommodation Policy**

|  |
| --- |
| **Policy Objective** |
| 3.1 To ensure the location and scale of short-term accommodation uses are compatible with the surrounding area.  3.2 To maintain a high standard of amenity for the surrounding neighbourhood through required management controls.  3.3 To ensure properties used for a short-term accommodation uses do not have an undue impact on the residential amenity of the area by way of noise, traffic, or parking.  3.4 To establish a clear framework for the assessment and determination of applications for short-term accommodation. |

|  |
| --- |
| **Policy Requirement** |
| 4.2 Applications for Holiday House, where a keeper does not reside on-site may be supported where:   1. The number of guests is limited to 6 persons; and 2. Bookings must be for a minimum stay of 2 consecutive nights. |
| **Proposed** |
| The proposed change of use application to short-term accommodation features the following:   * Guests numbers are restricted to a maximum of 6 individuals * Parties are prohibited. * A three-day minimum booking period applies. |
| **Administration Assessment** |
| The application for a change of use is considered to meet the objectives and requirements of a Holiday House under the short-term accommodation policy. The applicant has demonstrated through the submitted management plan that the use of the residential dwelling will likely have a negligible impact on neighbouring landowners and the surrounding amenity of the property. |

1. **Conclusion**

The application for a change of use from residential to short-term accommodation (Holiday House) is considered to satisfy the objectives and requirements of the City of Nedlands Local Planning Scheme No. 3 and the City of Nedlands (Draft) Short Term Accommodation Policy.

The proposed configuration of the single dwelling as a Holiday House is unlikely to cause additional traffic movements which are out of keeping with a single residential property. Considering the locality, the presence of UWA to the east of the subject site as a commercial centre, will likely further reduce the perceived impact of the proposed Holiday House. Having given due regard to the submissions received, the application’s management plan and the surrounding context of the development, **approval** for this application is recommended.

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| **PD51.19** | **No. 7 Nidjalla Loop, Swanbourne – Additions to a Single House (Privacy Screen)** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | Niche Living |
| **Landowner** | Halina and Paul Bitdorf |
| **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** | DA19/38434 |
| **Previous Item** | DA16/307 |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Applicants Justification 2. Assessment (Confidential) 3. Plans (Confidential) 4. Submission (Confidential) |

1. **Executive Summary**

The purpose of this report is for Council to determine a Development application received from the applicant on the 9 August 2019, for a proposed privacy screen to a single residential property at No. 7 (Lot 12) Nidjalla Loop, Swanbourne.

The application proposes a 4.67m tall privacy screen, to be located on the northern property boundary, with a nil lot boundary setback.

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 refused by Council as the application is not considered to satisfy the design principles of the Residential Design Codes (R-Codes) and is likely to have a detrimental impact on the local amenity of adjoining property owners.

1. **Recommendation to Committee**
2. **Council refuses the development application dated 9 August 2019 to install a privacy screen at No. 7 (Lot 12) Nidjalla Loop, Swanbourne for the following reasons:**
3. **The proposed screen is classified as ‘building on boundary’ and is not compliant with State Planning Policy 7.3 Residential Design Codes in terms of scale and setback requirements.**
4. **The proposed privacy screen does not meet the objectives of the City’s Fill and Fencing Policy, clauses 2.0 and 9.0.**

**Advice Notes**

1. **The applicant is advised that the City deems the screen to be unnecessary due to the screen obscuring non-habitable rooms, and therefore those rooms are not subject to visual privacy provisions as described by State Planning Policy 7.3, Residential Design Codes Volume 1.**
   1. **Background**

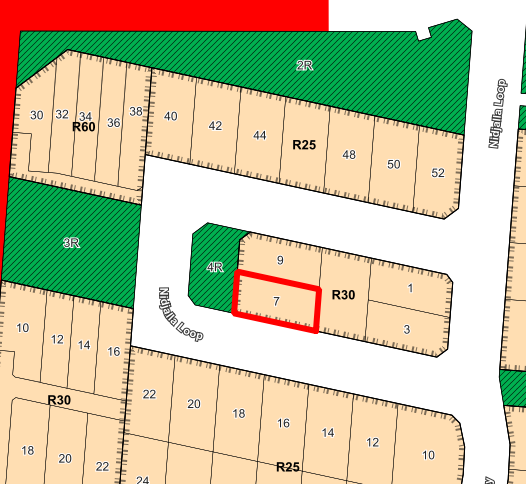
**3.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R30 |
| **Land area** | 310m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | Swanbourne Design Guidelines |
| **Land Use** | Residential |
| **Use Class** | Residential |

**3.2 Locality Plan**

7 Nidjalla Loop, Swanbourne is a residential zoned property with an existing single house, located within the Coastal Ward of the City of Nedlands. To the north of the site is the Cottesloe Golf Course and to the east of the site is the Swanbourne Primary School. The property has a direct frontage to Nidjalla Loop.





1. **Application Details**

The applicant seeks development approval to install a screen wall to the north of the lot, details of which are as follows:

* The proposed screen wall is to be 4.67m above the Finished Floor Level (FFL) within 7 Nidjalla Loop.
* The proposed screen wall is to have a width of 4.48m
* The proposed screen wall is to be located on the northern lot boundary with a nil lot boundary setback.
* The proposed screen wall is to be contained wholly within 7 Nidjalla Loop’s lot boundary.

By way of justification in support of the development application, the applicant has provided a design principle assessment, addressing the submissions received. This has been provided as an attachment to this report (Attachment 1).

1. **Consultation**

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

* Building on Boundary
* Dividing Fence Height

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to neighbouring owners and occupiers. One (1) objection was received during the consultation period.

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 screen wall is not compliant with the City of Nedlands Fill and Fencing Policy | 1 | * The City of Nedlands Fill and fencing Policy permits dividing fencing to a maximum height of 1.8m above any approved cut and/or fill levels at a property boundary. * The proposed screen wall, whilst not a ‘dividing fence’ is located on the northern property boundary, abutting the current dividing fence. The proposed screen wall exceeds the permitted dividing fence height by 2.87m and is considered to be excessive in this instance. | Recommendation that the application be refused. |
| The screen wall blocks access to light and ventilation. | 1 | * The screen wall is proposed to be constructed on the northern property boundary. Overshadowing, as a result of the proposed screen wall structure does not extend beyond the boundaries of the lot. * The proposed screen wall structure is to be 40% permeable, being constructed of a semi-permeable metal mesh. This material choice should permit the passage of air, reducing the possible impact on neighbouring property’s access to ventilation. | Recommendation for refusal. |
| The proposed screen will detract from the amenity of neighbouring properties. | 1 | The proposed screen wall is 4.67m tall by 4.48m wide and will be a significant structure located with a nil lot boundary setback to 9 Nidjalla Loop. The structure is inconsistent with its surroundings. There is no statutory requirement under the R-Codes of City of Nedlands Local Planning policy to screen bathrooms or stairwells. | Recommendation for refusal |
| The proposed screen wall is unnecessary | 1 | The proposed screen wall would obscure a bathroom and stairwell of the neighbouring lot. Under State Planning Policy 7.3 Residential Design Codes, a bathroom and staircase are not considered to be ‘habitable rooms’ and are therefore not subject to visual privacy setback and/or screening requirements. Considering the above, no screening is required under the R-Codes for the openings to these spaces. | Recommendation for refusal |

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.

* 1. **Policy/Local Development Plan Consideration**

**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** |
| 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 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. |
| **Deemed-to-Comply Requirement** |
| An R30 zoning permits structures to be built up to a single lot boundary provided:   * the boundary wall does not exceed 2/3 of the length of the lot boundary * the average boundary wall height does not exceed 3.0m |
| **Proposed** |
| Proposed screen wall to be constructed with a nil lot boundary setback to the northern lot boundary. The screen wall is proposed to have a height of 4.67m and a length of 4.43m. |
| **Administration Assessment** |
| The existing property contains boundary walls which address two (2) lot boundaries.  As a result, there are no additional ‘deemed to comply’ boundary walls permitted for the property.  The proposed screen wall is 4.67m high for its entire length of 4.48m. The screen wall structure exceeds the average 3.0m height requirement for a boundary wall.  The proposed screen wall does not meet the deemed to comply standards of the R-Codes under clause 5.1.3, P3.2 Lot Boundary Setback.  The screen wall is considered to be excessive in height and not compliant with the requirements for a boundary wall structure when assessed independently and in conjunction with the existing residence. |

**6.3 Local Planning Policy – City of Nedlands Fill and fencing Policy**

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| --- |
| **Policy Objective** |
| To outline the City’s requirements with regard to fill and the minimum standard of fencing to ensure that the amenity of neighbouring properties and the streetscape is maintained.  The City values the protection of the quality of the streetscape and the amenity of owners and occupants by minimising the visual impact of fill and/or fencing whilst allowing for adequate surveillance of public places. |
| **Policy Requirement** |
| Dividing fences shall have a maximum height of 1.8m above any approved or deemed-to-comply fill or retaining under the R-Codes. |
| **Proposed** |
| The proposed screen will have a height of 4.67m above the finished ground level (FGL) within 7 Nidjalla Loop |
| **Administration Assessment** |
| The proposed screen wall is considered to be excessive in height and out of character for the surrounding streetscape and development context. The proposed screen wall is to be 2.87m above the maximum permitted dividing fence height. The proposed structure is likely to negatively affect the surrounding amenity of neighbouring property owners and is unnecessary to prevent overlooking, as the structure screens non-habitable rooms of the neighbouring property. |

1. **Conclusion**

The proposed screen wall is assessed as superfluous and is not required for the purposes of visual privacy screening. The stated intent for the screening function is to prevent overlooking from the neighbouring property’s bathroom and stairwell is not accepted as sufficient justification, and as the stated overlooking is not from ‘habitable rooms’ under the R-Codes, and therefore not subject to visual privacy provisions.

The proposed screen wall is therefore considered to be excessive in height, being 2.87m taller than the permitted maximum dividing fence height. The subject lot has exceeded its permitted boundary wall development, resulting in any new boundary wall structures being considered an over-development of the site. Considering the above, the City recommends that the application be **refused** as the proposed structure is likely to negatively impact the amenity of neighbouring properties.

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| --- | --- |
| **PD52.19** | **Local Planning Scheme 3 - Local Planning Policy - Residential Development: Single and Grouped Dwellings** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | City of Nedlands |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Previous Item** | Item 6 – 2 May 2019 - Special Council Meeting  PD27.19 – 23 July 2019 – Ordinary Council Meeting  PD40.19 – 24 September 2019 – Ordinary Council Meeting |
| **Attachments** | 1. Draft Residential Development: Single and Grouped Dwellings LPP - tracked changes 2. Draft Residential Development: Single and Grouped Dwellings LPP 3. Submission 4. Fill and Fencing LPP – Comparison Table |

1. **Executive Summary**

The purpose of this report is for Council to adopt the draft Residential Single and Grouped Dwelling Development Local Planning Policy (draft LPP), following advertising. The draft LPP has been modified by Administration following advertising.

The draft LPP provides guidance and supplementary requirements to the Local Planning Scheme No. 3 (LPS 3) and State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes Vol.1) in relation to single and grouped dwelling. The policy does not apply to multiple dwellings or mixed-use developments which are captured by the Residential Design Codes Volume 2 - Apartment Design (R-Codes Vol. 2).

The draft LPP was first adopted for consent to advertise to the community at the Special Council Meeting held on 2 May 2019. The draft LPP was advertised for a period of 21 days with 14 submissions being received.

Following advertising, the draft LPP was modified by Administration and presented back to Council on several occasions as discussed in this report. It was most recently presented to the Council Meeting in September 2019 where Council resolved to make further modifications and readvertise.

Following Council’s resolution, the draft LPP was then re-advertised for a period of 21 days. Further modifications were made to the draft LPP following advertising, and this modified version is now being presented to Council for final adoption. If adopted, a section of the LPP relating to landscaping will need to be forwarded to the Western Australian Planning Commission (WAPC) for approval prior to it having effect.

1. **Recommendation to Committee**
2. **Council proceeds to adopt the Residential Development: Single and Grouped Dwellings Local Planning Policy, with modifications as set out in Attachment 2, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4(3)(b)(ii);**
3. **Refers the Residential Development: Single and Grouped Dwellings Local Planning Policy to the Western Australian Planning Commission for final approval in accordance with State Planning Policy SPP7.3, Residential Design Codes Volume 2 – Apartments 2019 Clause 1.2.3 and the City’s Local Planning Scheme No 3 Clause 32.4(5); and**
4. **Revokes the current Fill and Fencing Local Planning Policy in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 6.**
5. **Background**

The draft LPP has been modified several times since being presented to the Special Council Meeting 2 May 2019. A summary of these modifications is provided below.

**2 May 2019 – Special Council Meeting**

Council resolved to prepare and advertise a series of policies, including the draft Residential Development LPP, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4. Council resolved to adopt the draft Residential Development LPP with a number of modifications.

|  |  |  |
| --- | --- | --- |
| **Issue** | **Presented to Council** | **Amendment by Council** |
| Carport setback from primary street | 2.5m. | 3.5m. |
| Building Height | 8.5m wall height & 10m to roof pitch (deemed to comply heights as were applicable in TPS 2). | 6m wall height & 9m to roof pitch (as per R-Codes Vol. 1). |
| Further guidance required for variations to 9m front setback clauses in LPS3. | Local Housing Objectives included as cl. 4.1.1 of the policy to provide further guidance for the assessment of development applications proposing less than 9m front setback. | cl. 4.1.1 deleted.  Proposed reductions to 9m front setback to be assessed against only the Design Principles of R-Codes. |
| St. Johns Wood & Hollywood | Location specific clauses have precedent. | None, as this clause was already provided in the Residential Development LPP. |
| Landscaping | No provisions proposed.  Officers did not consider landscaping requirements were required for single dwellings. Existing landscaping provisions for grouped dwellings are contained in the R-Codes. | Provision inserted to require 20% minimum landscaping requirement for all single house and grouped dwelling proposals. |

The draft LPP was advertised for a period of 21 days with 14 submissions being received.

**25 June 2019 – Council Meeting**

A Notice of Motion was placed which moved the following.

“Council:

1. resolves that, notwithstanding the removal of building height provisions from transitioning from Town Planning Scheme 2 to Local Planning Scheme 3, the height limits in Clause 2 below are to be taken as default policy provision for residential developments up to and including single and grouped dwellings; and
2. determines that the Residential Development Local Planning Policy should specify height limits for single and grouped dwellings in the residential zone as follows:

1. Maximum Building Heights
   1. Top of external wall (roof above)               8.5m
   2. Top of external wall (concealed roof)         8.5m
2. Top of pitched roof 10.0m

Gable walls above eaves height:

Less than 9m long: exempted

Greater than 9m long: add one third of the height of the gable, between the eaves and the apex of the gable wall, to the eaves height.

1. Applies to ridges greater than 6m long. Short ridges: add 0.5m height for each 2m reduction in length.

CARRIED 10/1

(Against: Mayor Hipkins)”

In response to the above resolution of Council, the building height provisions in the draft LPP were amended to reflect the approved changes.

**23 July 2019 – Council Meeting**

Following review of the submissions received and further investigation of the policy provisions, the draft LPP was further modified by Administration prior to the July 2019 Council Meeting. The changes were:

* Added guidance for assessing applications which seek a reduction to the 9m front setback requirement;
* Added guidance for assessment of buildings within the 6m rear setback area for low density lots; and
* Inserting building heights to reflect those previously applied under Town Planning Scheme No. 2 (TPS 2) as per the Council’s 25 June 2019 Notice of Motion.

This modified version of the draft LPP was presented to Council for adoption to readvertise at its 23 July 2019 meeting, where Council resolved as follows:

“That Council proceed to the next item of business.

CARRIED 10/2

(Against: Crs. Wetherall & Smyth)”

**6 August 2019 – Council Briefing**

The draft LPP was presented to a Council Briefing session on 6 August 2019 for further discussion. This discussion focussed on the following components of the draft LPP:

* Development within the front setback area;
* Carports within the front setback area;
* Building heights (acknowledging previous resolution on this matter); and
* Buildings within the rear setback areas.

**24 September 2019 – Council Meeting**

Following the 6 August 2019 Council Briefing, further modifications were made to the draft LPP based on suggestions from the Mayor and further review by Administration. The draft LPP was presented back to the Council on 24 September 2019, where Council resolved as follows:

“Council Resolution / Committee Recommendation

Council proceeds with the draft Residential Single and Grouped Dwelling Development Local Planning Policy, with modifications as set out in Attachment 1, with the deletion of clause 4.1.1 and in clause 4.4.2 (a) deletion of the words “ancillary dwelling”, and re-advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4(2).

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(Against: Cr. Hodsdon)”

The draft LPP was modified as per Council’s resolution and re-advertised for a period of 21 days.

Further modifications were made to the LPP following re-advertising and the draft LPP is now being presented to Council for final adoption. If adopted, a section of the LPP relating to landscaping will need to be forwarded to the Western Australian Planning Commission (WAPC) for approval prior to it having effect.

The most recent modifications to the draft LPP are discussed in further detail in the Discussion section of this report.

1. **Discussion**

Administration proposes several modifications to the LPP following re-advertising, including a number of minor modifications, as well as modifications relating to front setback provisions.

**Minor modifications**

The minor modifications to the LPP are outlined in Attachment 1 and are discussed in the table below.

|  |  |  |
| --- | --- | --- |
| **Clause** | **Proposed modification** | **Justification** |
| 2.1 – application of policy | Reword application area from ‘within all densities in the Scheme area’ to ‘anywhere the R-Codes Vol. 1 apply’ | Improves clarity. |
| 4.1.1 (a) – street setback | Replace ‘more than 50%’ with ‘50% or more’. | Specify that the clause can be applied if exactly 50% of dwellings have a setback of less than 9m. |
| 4.2.1 C1.6 – carports | Add ‘unenclosed’ to carport. | Specify that carports subject to this clause do not have walls. |
| Add vii – carports not to have visually permeable doors. | Carports with visually permeable doors are not considered appropriate to be exempt from needing development approval. |
| 4.3.2 C2.5 – pergolas and vergolas | Delete. | Pergolas and vergolas are not classified as ‘buildings’ under the R-Codes and therefore are not subject to development control. |
| 4.3.2 C2.6 - gatehouses | Reword and add maximum width requirement. | * Clarify that gatehouses are subject to sightline provisions in the R-Codes * Avoid excessively wide gatehouses, which detract from the streetscape * Specify that dimensions are measured from the street * Provide reference to new figure illustrating gatehouse requirements |
| 4.4.1 C3.1vii – pool fencing | Reword. | To require that the setback considers laneway widening, to allow pool fencing within the lot boundary and to replace ‘fill’ with ‘site works’. |
| 4.4.2 – buildings in rear setback area | Modify list to be ‘and/or’ | Clarify that more than one circumstance can be used to support buildings being located in the rear setback area. |
| 4.6 – street fencing | Reword. | Specify maximum height of fencing is 1.8m. |
| 4.6.1 C4.1(i) and (ii) – piers in a front fence | Add reference to piers forming part of vergolas and pergolas. | Whilst pergolas and vergolas are not subject to development control, if they have piers forming part of a front fence, then those piers are subject to development control. |
| 4.6.1 C4.3 – fencing to secondary streets | Remove reference to 6.2.3. | Part 6 of the R-Codes has since been replaced with Volume 2, relating to apartments which are not subject to this policy. |
| Clarify that height is measured from secondary street side of fence. | Ensure consistency with how height of primary street fencing is measured. |
| 4.7 – sightlines | Delete preamble. | Not required – already covered by R-Codes. |
| Reword C5.1. | Improves clarity. |
| Delete C5.1(ii). | Solid fencing is not permitted in the front setback area. |
| Reword C5.1 (iii). | Improves clarity. |
| 4.8 – landscaping | Reword. | Specify that clause applies to single and grouped dwellings, excluding multiple dwellings which are subject to Volume 2 of the R-Codes. |
| Add reference to explanatory assessment guide for grouped dwellings. | Clarify that required landscaping is to be provided for each grouped dwelling site (rather than being measured over the whole site). |
| Boundary Fencing | Delete requirements for boundary fencing. | Avoid duplication of existing provisions in the Dividing Fences Act 1961. |
| 7.0 – figures | Renumber figures and add figure illustrating gatehouse provisions. | Ensure consistency with the order figures are referenced in the policy. |

**Development within the front setback area**

Under Clause 26 of LPS 3 the front setback requirement under the R-Codes for R10, R12.5 and R15 densities has been modified (from an average 7.5m setback in the R-Codes Vol.1) to be a minimum of 9m.

As the 9m front setback is a discretionary requirement (rather than a non-discretionary requirement as previously under TPS 2), there is already the ability for landowners to seek approval for a reduced setback through an assessment under the Design Principles of the R-Codes Vol.1.

Under the Design Principles, there are considerations for when a reduced front setback is acceptable, however, Administration recommends further guidance is provided in the draft LPP to qualify how a ‘prevailing development context and streetscape’ is interpreted for the purpose of this assessment. This will ensure that the assessment of an established streetscape is consistent.

Under TPS 2 and the previous TPS 2 front setback policy, a reduced front setback was permitted where more than half the lots on the same side of the street block had a setback of less than 9m. Notably, TPS 2 and the policy did not specify how much the front setback could be reduced in these instances.

Clause 4.1.1 of the LPP presented at the 24 September 2019 Council Meeting set out that an established streetscape of less than 9m is described as occurring when more than 50% of the dwellings on one side of the street are forward of the 9m setback line, which is consistent with TPS 2 and the previous TPS 2 front setback policy.

Clause 4.1.1 differs from TPS 2 and the previous TPS 2 front setback policy as it specifies how much the front setback can be reduced when 50% of the dwellings are forward of the 9m setback line. When this occurs, the setback of the proposed dwelling is considered to be appropriate if it accords with the average setback distance of the dwellings on that side of the street. By considering the existing setbacks of dwellings on the street, this provision allows for an equitable assessment of a proposal for a reduced setback.

At the 24 September 2019 Council Meeting, Council resolved to delete clause 4.1.1 of the draft LPP, for the reason that it would allow dwellings to progressively encroach into the front setback area. In the absence of this clause, the assessment of a reduced setback is dependent on the Design Principles of the R-Codes which are broad in nature. Therefore, Administration considers that this clause should be retained in the draft LPP.

**Fill and Fencing Local Planning Policy**

The City’s current Fill and Fencing Local Planning Policy requires revoking upon adoption of the new Residential Development Local Planning Policy. If both policies are in effect concurrently there are issues with the two policies conflicting with one another. The clauses under the Fill and Fencing Policy which have been carried across or are covered under the Residential Design Codes or other legislation are shown in Attachment 4. Administration believes that the necessary provisions have been carried across under the new Local Planning Policy and other provisions which have not are adequately covered under separate legislation.

1. **Consultation**

The draft LPP was advertised for a period of 21 days, prior to being presented to Council at its 23 July 2019 meeting. A total of 14 submissions were received during this time, which were considered in the 23 July 2019 report Council.

Following the 24 September 2019 Council meeting, Council’s modifications were incorporated into the LPP and it was re-advertised for a period of 21 days. During this time, one submission was received, which raised a number of concerns with, and suggested modifications to, the draft LPP. The submission, and Administration’s response is summarised in the table below.

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| **Submission** | **Administration’s response** |
| The LPP would be easier to assess if a comparison table was provided in the policy, comparing the proposed provisions to the existing provisions in the R-Codes. | Noted. The LPP makes specific reference to those clauses of the R-Codes which it seeks to replace or add to, but it does not replicate those clauses in the LPP. This approach is considered appropriate, as it balances brevity of the LPP and clarity as to which clauses of the R-Codes are being replaced or added to. |
| Where modifications to the R-Codes are proposed in the LPP, specific objectives should be provided for each modification. | The City’s LPP template provides for objectives at the start of the policy (clause 3.0) which apply to the policy as a whole. |
| Objects to clause 4.1.2 of the LPP, which allows reduced street setbacks for lots with site constraints, as it seems to allow for awkwardly shaped and undersized lots to be developed as grouped dwellings. Only large lots should be suitable for grouped dwellings. | Irrespective of clause 4.1.2, lots will still need to comply with the minimum site area requirements of the R-Codes to be developed for grouped dwellings. Where clause 4.1.2 of the LPP is applied to a grouped dwelling development, the clause requires that the reduced setback is only considered where the impact of bulk and scale on the streetscape is minimised. |
| Allowing smaller blocks to have a reduced front setback is discrimination against larger lots. | Reduced street setbacks are also possible for larger lots by meeting the Design Principles of the R-Codes. |
| The reduced front setback provision should be capped to not allow a setback reduction of more than 40%. | Administration does not intend to quantify the maximum reduction in street setback allowed under clause 4.1.2. Instead, the appropriate setback would be assessed on a case-by-case basis, considering the impact of bulk and scale on the streetscape. |

1. **Budget/Financial Implications**

Nil.

1. **Statutory Provisions**

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

Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations) Schedule 2, Part 2, Clause 4(3), 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:

a) Proceed with the policy without modification;

b) Proceed with the policy with modification; or

c) Not to proceed with the policy.

Administration recommends that Council resolves to proceed with the Residential Development LPP with modifications as shown in Attachment 1.

The modifications proposed to the draft LPP, which the public have not had the opportunity to comment on, are considered minor in nature and are not considered to warrant further advertising of the draft LPP.

**Elements requiring WAPC approval**

As per clause 7.3.1 (a) of the R-Codes Vol.1, provisions relating to landscaping are not listed as an element that a Local Government can amend without the approval of the WAPC.

Accordingly, WAPC approval is required prior to the proposed clause 4.8 relating to landscaping of the draft LPP, taking effect. Once the draft LPP is adopted by Council, it will be forwarded to the WAPC for approval of this clause. All other parts of the LPP will be operational upon Council adoption.

1. **Conclusion**

The Residential Development LPP provides guidance and supplementary requirements to LPS 3 and R-Codes Vol.1 in relation to single and grouped dwelling development.

The proposed modifications include guidance for assessing applications which seek a reduction to the 9m front setback requirement alongside other minor modifications.

Following re-advertising one submission was received, which has been addressed in this report.

Once adopted, the LPP will be referred to the WAPC for approval in accordance with clause 7.3.1 (a) of the R-Codes, given that it seeks to incorporate provisions relating to landscaping.

It is recommended that Council adopts the draft LPP with the modifications as set out in Attachment 1, and directs Administration send the draft LPP to the WAPC for final approval.

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| **PD53.19** | **Local Planning Scheme 3 – Local Planning Policy Waste Management and Guidelines** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | City of Nedlands |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Previous Item** | PD38.19 – OCM 24 September 2019 |
| **Attachments** | * 1. Draft Waste Management LPP   2. Draft Waste Management Guidelines |

1. **Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) the Waste Management and guidelines Local Planning Policy required under Local Planning Scheme 3 (LPS 3).

This policy details the requirements relating to waste management and minimisation which is to be considered in the design of any proposed development within the City of Nedlands.

This policy was presented to Council at their Council Meeting on 24 September 2019 where Council resolved for this item to be deferred to a Council Briefing. Following this decision Council was briefed on this matter at the 5 November Council Briefing Session.

The policy seeks to augment section 4.17 Waste Management of the Residential Design Codes Volume 2, augmentation of this section requires the West Australian Planning Commissions (WAPC) approval. Once the policy is adopted by Council, it will be forwarded to the WAPC for approval.

1. **Recommendation to Committee**

**Council prepares, and advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4, the Waste Management and Guidelines Local Planning Policy (refer to Attachments 1 & 2).**

1. **Background**

Waste Management Plans have been required by the City on an ad hoc basis for development applications which the City believes will generate surplus waste above the normal household. Prior to Local Planning Scheme No.3 (LPS 3) there were fewer opportunities to develop grouped or multiple dwellings, therefore the waste management of development of that nature was dealt with on a case by case basis.

The City has had issues in the past with regarding surplus rubbish bins being placed on the verge and blocking areas used by both pedestrians and vehicles with no set guideline being adhered to.

The proposed policy guidelines will support a higher standard of waste management with associated benefits for the community and it will also benefit property developments for developers by clearly setting out what is expected by the City as a minimum standard.

With the introduction and application of the City’s new Local Planning Scheme No.3 (LPS3) this has introduced greater opportunities for the development of grouped and multiple dwellings as well as large-scale mixed-use development. This has necessitated the need for a Local Planning Policy and subsequent technical Guidelines to set out the requirements for waste management plans, when they must be prepared, and what specifications are expected by the City.

1. **Detail**

The policy details the requirements for waste management and minimisation which are to be considered in the design of any proposed development in accordance with the City’s Waste Minimisation Strategy 2017-2020.

All aspects of waste management should be considered in the initial design stage of a development, including but not limited to waste generation, recycling, storage, truck accessibility and collection options.

Early consideration of waste management requirements will ensure effective integration of facilities into the design, so that visual amenity, convenience, efficiency and health and safety is maintained at a high standard for the development.

The policy details when a waste management plan is required and the overall objectives of waste management within the City, whereas the guidelines component (Appendix One) provide the technical information in relation to the City’s specifications for waste management and what must be included in the waste management plan.

1. **Consultation**

If Council resolves to prepare the draft LPP, it will be advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 4 of the Planning and Development (Local Planning Scheme) Regulations 2015 (P&D Regs.2015) and the City’s Consultation LPP. This will include a notice being published in the newspaper, details being included on the City’s website and the Your Voice engagement portal. In accordance with the City’s Consultation LPP we will not undertake advertising between December 15 and January 15.

Following the advertising period, the policy will be presented back to Council for it to consider any submissions received and to:

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

As per Residential Design Codes Volume 2 part 1.2.3, section 4.17 Waste Management is an element that a Local Government cannot amend without WAPC approval. Accordingly, WAPC approval is required prior to these provisions taking effect. Once the policy is adopted by Council, it will be forwarded to the WAPC for approval.

1. **Statutory Provisions**

Planning and Development (Local Planning Schemes) Regulations 2015

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

Once Council resolves to prepare a local planning policy is must publish a notice of the proposed policy in a newspaper circulating in the area for a period not less than 21 days.

1. **Conclusion**

The Waste Management LPP and guidelines are the preferred mechanism to guide decision making and advise the community of the Council’s position in relation to waste management within the City and what the waste management plans must cover. In order to properly manage an increased number of applications for medium and higher density, the City is required to manage waste using current best practice. This policy and associated guidelines provide the necessary framework to manage appropriate information and advice regarding waste.

As such, it is recommended that Council endorses administration’s recommendation to prepare (adopt to advertise) the Waste Management LPP and Guidelines.

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| **PD54.19** | **Local Planning Scheme 3 – Residential Aged Care Facilities** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Applicant** | City of Nedlands |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Draft Residential Aged Care Facilities LPP 2. WAPC Draft Position Statement Residential Aged Care |

1. **Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) the Residential Aged Care Facilities Local Planning Policy required under Local Planning Scheme 3 (LPS 3).

The purpose of this policy is to provide guidance and development provisions for operators seeking to establish a Residential Aged Care Facility land use within the City of Nedlands.

1. **Recommendation to Committee:**

**Council prepares, and advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4, the Residential Aged Care Facilities Local Planning Policy (Attachment 1).**

1. **Background**

A product of the gazettal of LPS 3 in April 2019 was that an Additional Use for residential aged care facilities was approved over several sites within the City. However, LPS3 hasno requirement for a Local Development Plan or other development provisions on these sites. Due to this, administration resolved to prepare a report addressing residential aged care facility land uses and providing parameters which will guide the development and re-development of sites for the purposes of the land use Residential Aged Care. The draft policy has been prepared in response to a proponent's intention to apply to develop a residential aged care facility on a residential site within the City, and the current absence of any specific development requirements for this proposal.

Residential aged care facilities are defined in LPS3 as,

‘A residential facility providing personal and/or nursing care primarily to people who are frail and aged and which, as well as accommodation, includes appropriate staffing to meet the nursing and personal care needs of residents; meals and cleaning services; furnishings, furniture and equipment. May also include residential respite (short term) care but does not include a hospital or psychiatric facility.’

It does not include aged and dependent persons dwellings, as defined by the R Codes and is not retirement accommodation.

Residential aged care facilities are capable of approval within the Residential and Mixed-Use zones, where they are listed as ‘A’ uses, requiring the local government to exercise its discretion regarding the use within these zones. In all other zones residential aged care facilities are an ‘X’ use and are therefore not permitted.

With the gazettal of LPS 3 the following sites were granted a Residential zoning and an Additional Use, which states that residential aged care facilities are a Permitted use on the following sites:

* Lots 101 (118) and 102 (108) Monash Avenue Nedlands
* Lot 103 (15) Karella Street Nedlands
* Lot 416 (1) Heritage Lane Mount Claremont
* Lot 11605 (17) Lemnos Street Shenton Park
* Lots 12830 (5), 12829 (7), 11329 (9), 701 (11), 702 (13A), 703 (13B), 9722 (6) and 10024 (4) Bedbrook Place Shenton Park
* Lots 104 (53) and 105 (57) Lisle Street Mount Claremont
* Lot 93 (125) Alfred Road Mount Claremont
* Lot 169 (80) Mooro Drive Mount Claremont
* Lot 25 (69) Melvista Avenue Nedlands
* Lots 10 (16) and 11(18) Betty Street Nedlands
* Lots 19 (73) and 18 (75) Doonan Road Nedlands

It is anticipated that the City may receive applications for residential aged care facilities at these sites in the future. This policy is crucial in helping to guide decision making and advise the community of Council’s position in relation to residential aged care facilities.

1. **Detail**

This policy applies to all residential aged care facility proposals as defined under LPS 3 within the Residential and Mixed-Use zones.

The purpose of this policy is to provide guidance and development provisions for operators seeking to establish or redevelop residential aged care facilities within the City of Nedlands, and to help officers assess development applications for residential aged care facilities in line with Council’s position.

The Western Australian Planning Commission (WAPC) released their Draft Position Statement: Residential Aged Care in October 2019. This document outlines the WAPC’s interim requirements to support the provision of residential aged care facilities within the local government planning framework. The documents intent is to encourage the appropriate supply of residential aged care facilities within Western Australia.

The City’s draft policy seeks to respond to the position statement by clearly stating design criteria for residential aged care facilities including the standards of the Residential Design Codes that development is required to comply with in terms of height, setbacks and plot ratio. Further specific design criteria have been included for visual privacy, landscaping, boundary fencing, location of services, traffic impact, pedestrian access, signage and car parking. The policy focusses on these aspects of development as it is considered that they have the greatest potential to impact the residential amenity of the surrounding area. Car parking, and the potential traffic generated by a residential aged care facility, have the potential to significantly impact upon the residential amenity of an area. The policy requires that vehicle parking areas shall be located to the rear of a residential aged care facility, and that a development application for such a facility must include a Traffic Impact Assessment, in order to mitigate this potential impact.

It is noted that the City would treat a development application for a residential aged care facility as a complex application in terms of the requirements of Local Planning Policy Consultation of Planning Proposals.

The policy requires the submission of a waste and traffic management plan with development applications, which will set out details of how waste and traffic will be managed to minimise their impact on the adjoining properties. This is considered particularly important due to the potentially high amount of waste and traffic generated by a residential aged care facility.

1. **Consultation**

If Council resolves to prepare the draft LPP, it will be advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 4 of the Regulations. This will include a notice being published in the newspaper and details being included on the City’s website & the Your Voice engagement portal.

Following the advertising period, the policy will be presented back to Council for it to consider any submissions received and to:

1. Proceed with the policy without modification;
2. Proceed with the policy with modification; or
3. Not to proceed with the policy.
4. **Statutory Provisions**

Planning and Development (Local Planning Schemes) Regulations 2015

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

Once Council resolves to prepare an LPP it must publish a notice of the proposed policy in a newspaper circulating the area for a period not less than 21 days.

1. **Conclusion**

The Residential Aged Care Facilities LPP is the best mechanism to guide decision making and advise the community of the Council’s position in relation to development applications for residential aged care facilities throughout the City.

As such, it is recommended that Council endorses administration’s recommendation to prepare (consent to advertise) the Residential Aged Care Facilities LPP.

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| **PD55.19** | **Mt Claremont North-East Structure Plan Investigation** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Previous Item** | OCM 26 June 2018 – 14.4  PD53.18 – 23 October 2018 |
| **Attachments** | 1. Mt Claremont subject site map 2. Mt Claremont subject site map with zoning 3. Letter from the City to the DPLH 4. Response letter from the DPLH |

1. **Executive Summary**

This report details investigations into planning for the Mt Claremont East area following advice from the Department of Planning Lands and Heritage (DPLH).

This report follows a Notice of Motion by Council at its meeting of 26 June 2018 where it resolved to instruct the CEO to investigate the creation of a Local Structure Plan for the Mt Claremont North-East area and provide to Council a report that scopes the delivery of the Local Structure Plan and include with it an Engagement Strategy. There was also an investigation report on this matter put to Council on the 23 October 2018 where Council resolved for the preparation of a project plan and community engagement plan to explore further options for future development and planning for the Mt Claremont East area.

Administration have investigated the need for a Local Structure Plan for the Mt Claremont East area and gathered information from DPLH which is detailed further in this report. Following these investigations, it is recommended that Council provide its approval for the City’s Administration to cease work on this project at this time as the City is unable to establish a Statutory Planning document over the land of concern.

1. **Recommendation to Committee**

**Council resolves to instruct the CEO to cease current work on the Mt Claremont Structure Plan Investigation until such time as critical priorities of developing Local Precinct Plans can be resolved and when a Statutory Planning Mechanism can be established over the land of concern.**

1. **Background**

This report follows a Notice of Motion by Council at its meeting on the 26 June 2018 where it resolved to instruct the CEO to investigate the creation of a Local Structure Plan for the Mt Claremont North-East area and provide to Council a report that scopes the delivery of the Local Structure Plan and include with it an Engagement Strategy. Following the Notice of Motion there was a report put to Council on the 23 October 2018 where Council resolved for the preparation of a project plan and community engagement plan to explore further options for future development and planning for the Mt Claremont East area. Council was also briefed on the item at the 1 October 2019 Council Briefing, where Administration discussed the view of ceasing work on the project.

The report which was put to Council in October 2018 discussed the various Strategic Master Planning documents and reports which sit over the various parcels of land within the study area as requested by the Notice of Motion. Each of the documents discussed high level plans and designs for the specific parcels which it was in relation to. This included:

* Shenton Park Study (1989)
* Shenton Park Structure Plan (2001)
* Town of Cambridge Redevelopment of Perry Lakes Stadium / AK Reserve Redevelopment Plan
* Christ Church Playing Fields Outline Development Plan (ODP)
* John XXIII College Outline Development Plan (ODP)
* Mt Claremont Sports Precinct Structure Plan
* Mt Claremont Bus Depot
* Graylands Hospital Decommissioning
* Ideas for the Subiaco Strategic Resource Precinct – Wastewater Treatment Plant

The October 2018 report also discussed the various zones and reserves within the study area. These can be viewed in Attachment 2. The land comprises of a mix of land zoned under the Local Planning Scheme No.3 (LPS 3) such as Private Community Purpose, Service Commercial and Urban Development. There is also land reserved under the Metropolitan Region Scheme (MRS) such as land reserved for Public Purposes.

The City’s Local Planning Strategy sets out a vision for the Mt Claremont East area which is to:

* Retain and enhance the character and streetscape of the existing residential areas.
* Comprehensively plan for the remaining non-residential areas.
* Land uses and development within this area shall not conflict with the urban character being predominantly of sporting, research and educational facilities.
* Prevent the encroachment of sensitive land uses and residential development within the Subiaco Wastewater Treatment Plant odour buffer area.
* Consider opportunities to consolidate and improve access throughout the precinct.

The issues suggested within the Notice of Motion were a lack of overall planning for the area and that many developments such as the new bus depot were not in line with the vision of the area being used for recreation and research. The issue arisen is that most of the approvals that do not conform with the Local Planning Strategy’s vision for the area are within the land reserved under the MRS shown in yellow in Attachment 2. Land reserved under the MRS is not subject to development approval by the City. In this process the City is merely a referral agency on which we recommend refusal if proposals are not in line with the vision for the area. The West Australian Planning Commission (WAPC) as the approving body can then decide whether or not to take our comments on board as the Local Planning Strategy is a strategic planning instrument.

Through the Planning and Development (Local Planning Schemes) Regulations 2015 Strategic planning instruments such as strategies and master plans are not given as much weight when assessing development applications as statutory planning instruments. The City can only create a statutory planning document such as a Structure Plan for land reserved under the MRS with the approval of the WAPC and in this instance that approval has not been forthcoming.

1. **Detail**

Following Councils’ resolution in October 2018 the City contacted the Department of Planning, Lands and Heritage (DPLH) to ascertain whether they would provide consent for the City to create a structure plan over the study area including the land reserved under the Metropolitan Region Scheme (MRS). This letter can be viewed in Attachment 3. The DPLH wrote back to the City to discuss that a strategic mechanism such as a master plan would be suggested whereas a statutory document such as a structure plan would not be supported.

Although another strategic planning document could be created over this land this would be given the same weight in the development application process as the Local Planning Strategy which the City already has in place. Without the ability to create a statutory planning document over the MRS reserved land Administration believe that the desired outcome of the Notice of Motion will not be achieved and therefore work on this process should cease until such time that this can be created or where the position of the DPLH changes in this regard.

1. **Consultation**

Nil.

1. **Statutory Provisions**

Planning and Development (Local Planning Schemes) Regulations 2015

A structure plan provides a basis for zoning (including residential density) and subdivision of land. Schedule 2, Part 4, clause 15 of the Planning and Development (Local Planning Schemes) Regulations 2015 (the Regulations) outlines that a structure plan may be prepared for an area that is:

* identified in a local planning scheme as being suitable for urban or industrial development (through zones such as Urban or Industrial Development);
* for other areas as identified in a scheme prior to subdivision or development of land;
* as requirement under a State Planning Policy (SPP); or
* as required by the WAPC for orderly and proper planning purposes.

1. **Budget/Financial Implications**

Due to the current capacity of the City’s Urban Planning Department with the suite of documents needing to be progressed under LPS 3, if a strategic master plan document was desired by Council, the City would likely need to get an external consultant to undertake this work and this is not considered to be a strategic priority by Administration.

1. **Conclusion**

Due to the inability to create a statutory planning mechanism which would hold weight through the development application process and already having the Local Planning Strategy to provide an overall vision for the area Administration would recommend that this project cease until such time that a statutory mechanism can be explored over all of the subject land.

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| **PD56.19** | **Local Planning Scheme 3 – Local Planning Policy Waratah Village Laneway Requirements** |
|  | |
| **Committee** | 3 December 2019 |
| **Council** | 17 December 2019 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Draft Waratah Village Laneway Requirements Local Planning Policy (LPP) |

1. **Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) the Waratah Village Laneway Requirements, Local Planning Policy required under Local Planning Scheme 3 (LPS 3).

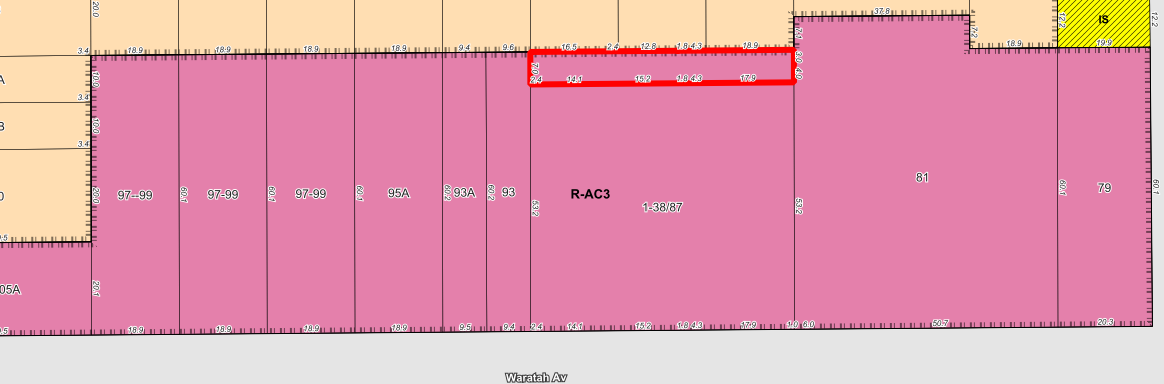
This policy details the requirements relating to the ceding and creation of a laneway for the Waratah Village. This policy has been created as an interim measure to capture the ceding of land for the laneway in Waratah Village with the absence of both the mechanisms under the previous Town Planning Scheme No. 2 (TPS 2) and the proposed Waratah Village Precinct Local Planning Policy.

1. **Recommendation to Committee**

**Council prepares, and advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4, the Waratah Village Laneway Requirements Local Planning Policy (Attachment 1).**

1. **Background**

Under TPS 2 Appendix 6 Dalkeith Redevelopment Special Control Area Provisions, the City required a 7m laneway in the location as currently suggested in the Waratah Village Laneway Requirements Policy. The following image shown below illustrates how the parcel was ceded to the City when the Waratah Apartments at 87 Waratah Avenue were developed.



The City’s LPS 3 Clause 32.3 allows the City to acquire land free of cost for the purpose of creating rights of way or laneways which are identified by the scheme or a, structure plan, local development plan, activity centre plan or local planning policy at the time of the owner developing or subdividing the land.

The previous provisions outlined in the Dalkeith Redevelopment Special Control Area under TPS 2 and the identified laneway location were not carried over into LPS 3. The vision of the City is that the laneway designation would be included as part of the current work being undertaken on the Waratah Village Precinct, Local Planning Policy. The Precinct Local Planning Policy is not scheduled to be presented to Council for adoption to advertise until February 2020 at the earliest. The City has current development applications lodged within the Waratah Village precinct adjacent to the proposed laneway location, as identified under TPS 2, however, there is no mechanism to acquire the land or for it to be constructed at this time.

Therefore, this policy has been put forward as an interim measure to aid the City in gaining the land at the rear of these developments for a laneway in the absence of the Precinct Local Planning Policy.

1. **Detail**

This draft policy details the laneway requirements for Waratah Village which were previously identified under Appendix 6 of the City’s TPS 2. The draft policy sets out the land identified to be ceded for the creation of a laneway and the requirements for the ceding and development of the identified laneway. These provisions and the location are based on what was previously adopted in 2012 as Scheme Amendment 192 to TPS 2. Through the scheme amendment process the City consulted the community before both Council and the Minister supported the insertion of the amendment into TPS 2.

The City seeks to further engage with the community and Council in relation to the laneway location through the Waratah Village Precinct Local Planning Policy. A draft of this document will not be completed prior to the Responsible Authority Report (RAR) deadline for the Joint Development Assessment Panels (JDAP) decision on a significant development application adjacent to the proposed laneway. Without this policy in place the City lacks the ability under LPS 3 Clause 32.3 to mandate the ceding of land for the creation of a laneway through the rear of the blocks along Waratah Village not owned by the City. This could compromise the orderly and proper planning for this precinct. This policy is proposed to address this issue and its aim is to act as an interim measure to capture the development applications which will need to be determined prior to the adoption of a draft Waratah Village Precinct Local Planning Policy and so the City is still able to acquire the land for the laneway.

Part of the laneway abutting 87 Waratah Avenue was ceded free of cost to the City under TPS 2 when the site was redeveloped for the Dalkeith on Waratah Apartments. Without the other Mixed-Use landowners on Waratah Avenue ceding the land for the laneway at development stage the City will have no use for the portion at the rear of 87 Waratah Avenue which is currently land locked and only gains access to the street utilising a private agreement between two land owners.

The proposed laneway will provide improved moveability and access through the precinct. Encouraging access from the rear of developments will take vehicular pressure off Waratah Avenue and limit the number of crossovers needed from the primary frontage of the developments.

This also includes the ability to establish a pathway and access for delivery vehicles. The City aims to achieve a more pedestrian friendly and walking environment for the precinct. The desire to create a laneway across the rear of the sites was previously supported resulting in the addition of those provisions under TPS 2 and was also generally supported at the most recent engagement in relation to the Waratah Avenue Precinct Local Planning Policy undertaken in November 2019.

The proposed location of the laneway has been referenced from TPS 2. Through the Waratah Village Precinct Local Planning Policy, the City can seek to reconfigure the laneway location including in relation to its exit point through the Dalkeith Hall site owned by the City. This Policy is as discussed, an important interim measure so that the City has a mechanism to require the ceding of land identified for the laneway from developers who are looking to develop prior to the Precinct Plan being in place. Without this interim policy, the City has little power to require the ceding of land for the laneway in Waratah Village currently.

Once this policy is adopted for advertising as per Administrations recommendation it can be given due regard for development applications. The City envisages that the laneway location will be later implemented through the Waratah Village Precinct Local Planning Policy at which time this policy can be revoked upon final adoption of the precinct plan.

1. **Consultation**

If Council resolves to prepare the draft LPP, it will be advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 4 of the Planning and Development (Local Planning Scheme) Regulations 2015 (P&D Regs.2015) and the City’s Consultation LPP. This will include a notice being published in the newspaper, details being included on the City’s website and the Your Voice engagement portal. In accordance with the City’s Consultation LPP we will not undertake advertising between December 15 and January 15.

Following the advertising period, the policy will be presented back to Council for it to consider any submissions received and to:

1. Proceed with the policy without modification;
2. Proceed with the policy with modification; or
3. Not to proceed with the policy.
4. **Statutory Provisions**

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

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

Once Council resolves to prepare a local planning policy is must publish a notice of the proposed policy in a newspaper circulating in the area for a period not less than 21 days.

**City of Nedlands Local Planning Scheme No. 3**

Under Clause 32.3 of the City of Nedlands Local Planning Scheme No. 3, the City requires the ceding of land of laneways identified through a Local Planning Policy. This policy will give effect to this clause and require developers to cede land identified for a laneway in the Waratah Village Precinct before development approval will be granted. Clause 32.3 is shown below.

**Clause 32.3**

Ceding of rights-of-way and laneway widening.

1. The owner of land affected by a right-of-way or laneway identified by the scheme, structure plan, local development plan, activity centre plan or local planning policy is to, at the time of developing or subdividing the land:
2. cede to the local government free of cost that part of the land affected by the right-of-way or laneway; and
3. construct the relevant section of the right-of-way or laneway to the satisfaction of the local government.
4. The intention expressed in sub-clause (1) may be reinforced by a condition of subdivision or development approval.
5. **Conclusion**

The Waratah Village Laneway Requirements LPP are the preferred interim mechanism to provide for the enforcement of Clause 32.3 in the City’s LPS 3 to create a laneway through the Waratah Village Precinct. Without this policy the City will lack the mechanism to enforce a laneway through the rear of the sites even though part of the laneway has already been ceded. The City already has a Development Application on an affected site and this policy is needed to be adopted to advertise now so that the determination of this application doesn’t proceed without the ceding of land for the laneway.

As such, it is recommended that Council endorses Administration’s recommendation to prepare (adopt to advertise) the Waratah Village Laneways Requirements LPP.