

Planning and Development Reports

Committee Consideration – 9 February 2021

Council Resolution – 23 February 2021

Table of Contents

Item No. Page No.

[PD01.21](#_Toc62124714) [Strategic Planning Framework - Gaps Analysis 2](#_Toc62124715)

[PD02.21](#_Toc62124716) [Establishment of a Design Review Panel, Final Adoption of the Design Review Panel Local Planning Policy and Appointment of Panel Members 7](#_Toc62124717)

[PD03.21 Local Planning Policy, Primary Controls and Community Benefits for Apartment Developments 20](#_Toc62124718)

[PD04.21 Broadway, Nedlands Town Centre and Waratah Village Context and Character Local Planning Policies 32](#_Toc62124719)

|  |  |
| --- | --- |
| **PD01.21** | **Strategic Planning Framework - Gaps Analysis** |
|  |
| **Committee** | 9 February 2021 |
| **Council** | 23 February 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 *Local Government Act 1995* and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | Nil.“the author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia”.  |
| **Director** | Tony Free – Director Planning & Development |
| **CEO** | Mark Goodlet |
| **Reference** | Nil |
| **Attachments** | * 1. Letter from Western Australian Planning Commission
	2. Strategic Planning Framework Gaps Analysis
	3. Community Working Group Minutes – 9 December 2020
	4. List of Council decisions not in accordance with strategic planning program of works
 |
| **Confidential Attachments** | Nil |

1. **Executive Summary**

This report is presented to Council to outline the City’s strategic planning framework gaps analysis which has been prepared by Administration in consultation with senior officers from the Department of Planning, Lands and Heritage (DPLH) and Council.

1. **Recommendation to Committee**

**Council:**

1. **endorses the strategic planning gaps analysis (Attachment 2) which is consistent with advice from the Chair of the West Australian Planning Commission.**
2. **instructs the CEO to:**
3. **continue to undertake the nominated programme of “required investigations” as outlined in Attachment 2;**
4. **liaise and collaborate with the Department of Planning, Lands and Heritage to review the findings of the investigations, and collectively establish the need for and nature of any new planning tools, where deemed necessary, to address the gaps identified in the local planning framework;**
5. **ensure that where a strategic planning project is covered by the GAPS Analysis, all previous council decisions relating to timeframe deliverables be superseded with this resolution; and**
6. **defer the initiation of any further strategic planning proposals including scheme amendments and finalisation of local planning policies where the determination of the WAPC is required, until agreement has been established on the planning tool in accordance with point 2(b).**
7. **Discussion/Overview**

Since Local Planning Scheme No 3 (LPS3) was gazetted in April 2019, a number of ‘gaps’ have been identified by Administration in the City’s strategic planning framework. These gaps have become apparent through the City’s difficulty in negotiating outcomes in the Development Application process that are satisfactory in terms of the local areas context and character.

On 21 September 2020, representatives from the City’s Planning team met with senior officers from the Department of Planning Lands and Heritage (DPLH) to discuss the challenges the City is facing in implementing the provisions of LPS3. Following this meeting, the City received a letter from the Chairman of the Western Australian Planning Commission (WAPC; included as Attachment 1) advising that the current approach to changing the strategic planning framework is untenable and ‘is creating potentially unrealisable expectation in the community and uncertainty for development outcomes.’ The letter identifies ‘Local Planning Policy (LPP) – Interim Built Form Design Guidelines – Broadway Mixed Use Zone’ and proposed Amendment No.7 to LPS 3 as two such strategic planning documents that are contributing to unrealistic expectation in the community and are not supported by necessary background investigations. The letter references the reactive manner in which Council resolved to prepare these documents, and the obvious lack of associated strategic intent and research. Attachment 4 highlights a number of decisions that have been made in a similarly reactive manner that have delayed or redirected the strategic planning teams program of works.

The WAPC recommended the City take an alternative path to resolving this matter:

1. Undertake a strategic analysis to identify the key issues that arise from implementation of LPS3; and
2. Define what ‘gaps’ exist in the City’s existing local planning framework and what planning instruments are best suited to support the implementation of the City’s Local Planning Strategy and LPS3 – to deliver long term positive outcomes in the City – supported by appropriate investigations, such as the built form modelling currently being undertaken.

In accordance with this recommendation, Administration have prepared a ‘Gaps Analysis’ of the City’s strategic planning framework in regular and iterative consultation with senior officers of the DPLH. The intent of the document is manifold; it seeks to secure agreement on the nature and associated objectives of perceived gaps. It also identifies the investigations required to substantiate the extent of the gap and demonstrate need for a new planning instrument to resolve the gap. It is also intended to establish an agreed priority of works (investigations and potential planning instruments, where there is demonstrated need). The Gaps Analysis focusses on four key areas of deficiency in the planning framework being built form, vegetation, traffic/ parking and land use/ centres. The Gaps Analysis document is included as Attachment 2.

After a final review of the Gaps Analysis document, the City received advice from DPLH on the 4 December 2020 advising that:

“The Department supports the strategic approach that the City is now taking in review of its local planning framework. The approach provides a clearer understanding of the potential implications that arise from implementation of Local Planning Scheme No.3; and importantly, how they can be responded to by properly prepared and appropriate planning instruments.

We have provided advice on the content of the Gap Analysis on a number of occasions, and the ‘Items’ (column 1 and 2) are acknowledged as being the City’s priority issues for resolution; albeit not all will require the involvement of the Western Australian Planning Commission (WAPC).

In undertaking the Required Investigations (column 3) we reiterate that the findings of the investigative work would need to clearly demonstrate need for a new planning instrument, as foreshadowed by the ‘Available Tools…’ (column 4), if these are to be supported by the Department and/or WAPC. The investigations should serve as the ‘evidence base’ that we have discussed with the City previously.  This is particularly important where the City seeks to replace or amend the acceptable outcomes of the R-Codes, or augment the objectives of the R-Codes, in accordance with 1.2.2; 1.2.3; or 1.2.4 of that document.

We note that the priority for consideration at this stage is columns 1-3 of the Gap Analysis and that any potential tools (column 4) that would appropriately refine, and/or guide the implementation of LPS 3, will be the subject of future separate discussion with the Department.

To provide support of the City’s review in the future, the Department will give focus to planning instruments deriving from the GAP Analysis.”

After receiving confirmation of DPLH’s support of the proposed strategic approach to the City’s planning framework, Administration presented the Gaps Analysis to Council for endorsement at the December 2020 OCM. At this OCM, Council unanimously resolved to defer the item for further discussion at the 9 February 2021 Committee Meeting. After discussion at this Committee Meeting, Administration now presents the GAPS analysis to Council for their endorsement.

In providing support for this document, Council is indicating their agreement to undertake the nominated investigations and review the outcomes of the investigations in consultation with DPLH to determine the need for and nature of any future specific planning instruments that are appropriate to resolving the identified gaps. Filling these gaps will become strategic priorities for the City’s Planning team, and the support from DPLH provides a clearer pathway to approval, where required.

1. **Consultation**

Administration presented a draft version of the Gaps Analysis to a Council Briefing Session on the 15 October 2020 to discuss and receive feedback on the proposed draft items. The document has undergone rigorous work since this Briefing to ensure that the gaps are captured succinctly and to accurately identify perceived deficiencies in the framework that require additional investigations and possibly, depending on the investigative findings, additional specific planning instruments.

The Gaps Analysis concept was initially introduced to the Community Working Group on the 25 November 2020 and was presented to them for a more in-depth discussion on the 9 December 2020. The minutes from the Community Working Group meeting are included as Attachment 3.

1. **Strategic Implications**

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

The Gaps Analysis identifies weaknesses and gaps in the City’s strategic planning framework. The items on this list are central to the City’s strategic planning direction and filling these gaps will be pivotal in the built form outcomes that the City experiences because of LPS3.

**Who benefits?**

The community will benefit from robust planning instruments that work for the City, providing a well-researched and evidence-based framework from which positive planning outcomes can be reasonably obtained.

**Does it involve a tolerable risk?**

The Gaps Analysis is not considered to pose a strategic risk to the City, as it is intended to reduce the risk the City is exposed to through a lackluster planning framework.

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

Yes.

1. **Budget/Financial Implications**

**Can we afford it?**

There are no costs associated with developing the Gaps Analysis, beyond standard administrative costs such as staff time. Investigations required to address the gaps identified may result in additional costs, and these will be budgeted for accordingly.

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

No impact.

1. **Conclusion**

A strategic planning framework must be built upon evidence-based research and thorough investigations. Reactive planning decisions and documents do not optimally serve the City’s community, Council or Administration, particularly as they are often not supported by DPLH and therefore cannot be implemented at a statutory level. The work undertaken on the Gaps Analysis by Administration, in regular consultation with DPLH and Council, seeks to bridge perceived gaps in the planning framework that limit the potential of LPS3 to govern planning outcomes within the City in an appropriate and effective manner.

Administration advises that Council resolve to support the recommendation to endorse the Gaps Analysis document as found in Attachment 2.

|  |  |
| --- | --- |
| **PD02.21** | **Establishment of a Design Review Panel, Final Adoption of the Design Review Panel Local Planning Policy and Appointment of Panel Members** |
|  |
| **Committee** | 9 February 2021 |
| **Council** | 23 February 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 *Local Government Act 1995* and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | Nil.“the author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia”.  |
| **Director** | Tony Free – Director Planning & Development |
| **CEO** | Mark Goodlet |
| **Previous Item** | PD14.19 - OCM 23 April 2019 Item: 16.1 – OCM 17 December 2019Item: 7 – SCM 30 January 2020Item: 14.4 – OCM 30 March 2020 Item: 14.1 – OCM 28 July 2020Item: 13.9 – OCM 15 December 2020 |
| **Attachments** | 1. Design Review Panel – Local Planning Policy
2. Summary of comments from Office of the Government Architect
 |
| **Confidential Attachments** | 1. Design Review Panel – Candidate Cumulative Scoring Sheet
2. Design Review Panel – Interview Forms (Collated)
3. Overview of Design Review Panel members interviewed
4. Design Review Panel – Recorded Interviews (MP4 video format)
 |

1. **Executive Summary**

The purpose of this report is for Council to:

1. Appoint the recommended members for the City of Nedlands inaugural Design Review Panel (DRP); and
2. Adopt the DRP Local Planning Policy.

The DRP will be appointed to provide independent expert design review advice for complex planning proposals received by the City.

This matter was last considered by Council at its 22 September 2020 meeting, where it was resolved to adopt the draft DRP Terms of Reference, with modifications, and to advertise the draft DRP Local Planning Policy for a period of 21 days. Council also resolved to progress with a call for expressions of interest for membership on the DRP, with final appointment of members being made by Council upon its adoption of the draft DRP Local Planning Policy.

During October 2020, invitations for expressions of interest for membership on the DRP were advertised. A total of 25 expressions of interest were received. Using selection criteria drawn from the DRP Terms of Reference, 13 of these applicants were shortlisted and interviewed. The interview panel members included the Manager Urban Planning, a Principal Planner and Senior Urban Planners. All interviews were recorded, with applicant consent. These recorded interviews have been made available to Council as a confidential attachment.

Final selection of the recommended panel members for the DRP was made by collating scores given for meeting the selection criteria and performance in the interview. A total of eight panel members are recommended to Council for consideration and appointment. This includes six general members and two specialist members, as prescribed by the DRP Terms of Reference.

The Draft DRP Local Planning Policy was also advertised for 21 days, following Council’s 22 September 2020 resolution. During this time, no submissions were received, and consequently no modifications have been made to the DRP Local Planning Policy post advertising.

At its 22 September meeting, Council resolved for the draft DRP Terms of Reference to be adopted, subject to a number of modifications. These modifications have now been made to the DRP Terms of Reference.

This Council report recommends adoption of the DRP Local Planning Policy and appointment of the recommended panel members to sit on the City of Nedlands inaugural DRP.

1. **Recommendation to Committee**

**Council:**

1. **proceeds to adopt the Design Review Panel - Local Planning Policy, as set out in Attachment 1, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4(3)(b)(i);**
2. **in accordance with Clause 2 of the Design Review Panel - Terms of Reference, appoints, for a period of two years, the following Design Review Panel members:**
3. **General members:**
	* **Tony Blackwell**
	* **Dominic Snellgrove**
	* **Samuel Klopper**
	* **Munira Mackay**
	* **Philip Gresley**
	* **Hans Oerlemans**
4. **Specialist members:**
	* **Graham Agar**
	* **John Taylor**
5. **Instructs the CEO to review the Design Review Panel Local Planning Policy and funding model after six months of the operation of the Panel.**
6. **Discussion/Overview**

**Background**

The City continues to experience a significant number of large-scale and complex development applications following the gazettal of Local Panning Scheme No.3, which saw the introduction of higher residential densities throughout the City. These applications have a higher impact on the City’s urban form and character and are subject to the new State Planning Framework of Design WA. The input of expert design advice, such as architecture, heritage, landscape design and sustainability, supports the City to effectively assess development applications under this framework. A DRP comprising of experts in these design fields can assist with improving design outcomes and mitigating any potential impact on established neighbourhoods. Whilst the DRP will not have any decision-making power, the relevant decision maker will need to have due regard to its advice.

**Key Relevant Previous Council Decisions:**

This matter was first considered at the Ordinary Meeting held on 23 April 2019, at which Council resolved not to establish a DRP. This matter was re-tabled for consideration at the City’s December 2019 Ordinary Council meeting (Item 16.1) where the following was resolved:

“*That Council reconsider its decision PD14.19 dated 23April 2019 ‘That Council does not establish a Design Review Panel’ and resolves to:*

1. *Instructs the CEO to recommend to Council a Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals;*
2. *Instructs the CEO to prepare a Local Planning Policy outlining the types of development, policies and projects that will be referred to the Panel, a set of Design Principles that the panel will use for a basis for review and relevant operations and procedures for the panel;*
3. *The cost of the Design Review Panel be borne by the applicants;*
4. *That the Design Review Panel be reviewed in 9 months from the date of establishment; and*
5. *That the CEO investigates opportunities for a cooperative arrangement with other Western Suburbs Councils to share the use of a Design Review Panel if established*. “

A recommendation to Committee was subsequently prepared and put to Council on 30 January 2020 at a Special Council Meeting, where Council resolved to adopt the officer’s recommendation, subject to amendments as outlined below:

“*Regulation 11(da) - Council determined that the amendments better reflected the earlier intent.*

*That Council:*

1. *Adopts the City of Nedlands Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals as per attachment 2;*
2. *Prepares and advertises Design Review Panel Local Planning Policy for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4 as per attachment 1;*
3. *Instructs the Chief Executive Officer to call for expressions of interest for six (6) members for the City of Nedlands Design Review Panel, with appointment to the Panel to be made by Council upon its adoption of the Design Review Panel Local Planning Policy;*
4. *Instructs the Chief Executive Officer to:*
	1. *refer the options for funding of a Design Review Panel to a Councillor Workshop to assess costs, benefits and risks, and report back to Council in March 2020 for a decision on funding; and*
	2. *make arrangements for complex planning proposals to be considered by another Western Suburbs Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel.*
5. *Notes that a budget amount of $30,000 is to be set aside in the Mid-Year Review to allow for the operation of the Design Review Panel from February – June inclusive; and*
6. *Instructs the Chief Executive Officer to make arrangements for complex planning proposals to be considered by another Western Suburbs Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel”*

At the 31 March 2020 Ordinary Meeting of Council, the Design Review Panel process ceased, with Council resolving as follows:

1. *“does not support the introduction a City of Nedlands Design Review Panel;*
2. *instructs the CEO to cease new referrals to Design Review Panels of other Local Governments and the State Design Review Panel; and*
3. *instructs the CEO to cease all work related to implementation of a Design Review Panel;*
	1. *for the City of Nedlands; and*
	2. *as a cooperative arrangement for the Western Suburbs Local Governments.”*

At the July 28 2020 Ordinary Meeting of Council, Council resolved to proceed with the DRP process. Council resolved as follows:

1. *“resolves to establish a Design Review Panel; and*
2. *instructs the CEO to; Review and revise the City of Nedlands Previously Draft Design Review Panel Terms of Reference in light of the Advice Notes below;*
3. *review and revise the Previously Draft Design Review Panel Local Planning Policy in light of the Advice Notes below;*
4. *review and reschedule a call for expressions of interest members for the City of Nedlands Design Review Panel, with appointments to the Panel made by Council following its adoption of the Design Review Panel Local Planning Policy;*
5. *Council requires funding options (Clause 4) to include 100% cost recovery for development applications, from the applicant; and*
6. *refer Design Review modes and thresholds options to a Councillor Workshop, that is based on “Design Review Guide Chapter 7” where levels of escalation and the role of a City Architect are contemplated;*
7. *Make arrangements, where appropriate, for complex planning proposals to be considered by another Western Suburbs Design Review Panel or the State Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel; and*
8. *Give due regard to the following Advice Notes concerning the implementation and management of a Design Review Panel for the City of Nedlands.*

*Advice Notes:*

1. *Council requires a Design Review Panel member to be connected to the City as either a ratepayer, resident or elector;*
2. *Council expects the Design Review Panel presiding member to be highly regarded in their profession and respected by the community;*
3. *Council requires final approval of panel members.*
4. *Council requires modes and thresholds options (Clause 5) to include:*
	1. *a tiered approach to Design Review Panel involvement diminishing with large, medium and small developments;*
	2. *consideration of a part-time City Architect role; and*
	3. *consideration of Community Reference Group role.*
5. *present a re-scoped recommendation to the September 2020 Council meeting***.”**

Based on the 28 July 2020 Council resolution, the revision of the Terms of Reference, Local Planning Policy, expressions of interest for Panel members and opportunity for an interim solution was progressed.

At the 22 September 2020 Ordinary Meeting of Council, Council resolved to proceed with the DRP process. Council resolved as follows:

* + - 1. *“adopts the City of Nedlands Draft Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals subject to the following amendments:*
			2. *at the end of Clause 1 add the words “including in the TOR an additional paragraph ‘Code of Conduct - All panel members are required to abide by the local government’s Code of Conduct.”;*
			3. *amend the TOR by adding an additional clause 2.11 to read “A chair and deputy chair will be appointed by the election of the panel.”;*
			4. *amends clause 4.2 of the TOR to remove the words “as nominated by the Director of Planning & Development”;*
			5. *in clause 2.7 of the TOR the word “preferably” be added to after the word “shall”; and*
			6. *advertises the Draft Design Review Panel Local Planning Policy for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4 subject to the removal of headings under 4.0;*
			7. *instructs the Chief Executive Officer to call for expressions of interest for the City of Nedlands Design Review Panel, with appointment to the Panel to be made by Council upon its adoption of the Design Review Panel Local Planning Policy; and*
			8. *notes that a budget amount of $20,500 is to be set aside in the mid-year Review to allow for the operation of the Design Review Panel, for strategic matters, for the remainder of the financial year up to June 2021 inclusive.”*

The DRP Local Planning Policy was presented to the 15 December 2020 Council Meeting for final adoption. The report to this meeting also included a recommendation to appoint eight DRP members, following a rigorous selection process. At this meeting, Council resolved to defer the item to the February Council Meeting.

**Comments from the Office of the Government Architect**

The Office of the Government Architect (OGA) provided comments to the City on the draft DRP Local Planning Policy and Terms of Reference on 17 September 2020. These comments were received too late to be included in the report to the 22 September 2020 Council meeting, and so are summarised below:

1. The draft DRP Local Planning Policy and Terms of Reference are generally well developed.
2. The focus on residents and ratepayers as DRP members is not supported.
3. The fully proponent-funded model is not supported.
4. Consideration should be given to reducing the threshold for grouped dwellings being presented to the DRP from ten to six to eight dwellings.

A more detailed summary of these comments, together with Administration’s response, is included as **Attachment 2**.

**Design Review Panel Selection and Appointment Process**

In response to Council’s 22 September 2020 resolution, the City advertised for expressions of interest for membership on the DRP. The advertising period ran for 21 days, ending 23 October 2020.

The City received 25 applications during the expression of interest period. An evaluation panel, comprising the Manager Urban Planning, Principal Planner and a Senior Urban Planner undertook a review of all applications received. The selection criteria used in the assessment of applications is discussed below.

**Selection Criteria**

In assessing the applications received, the City’s officers were guided by the DRP Terms of Reference, as well as the Office of Government Architect’s Design Review Guide which outlines the following considerations:

* appropriate qualifications and demonstrated expertise in the relevant professional area.
* ability to work in a multi-disciplinary team.
* highly regarded among professional peers.
* demonstrated expertise in design review, design critique or the provision of strategic advice on design quality issues.
* knowledge or understanding of the State’s Planning Framework, relevant local government policies, development controls and design issues in the local area.
* ability to analyse, evaluate and offer objective and constructive feedback on complex design quality issues in design review, for evaluation of complex development applications and on strategic planning matters.
* good written and verbal communication to ensure that advice provided to proponents is clear and concise.
* where relevant, it is desirable that the applicant is eligible for registration with an appropriate professional body or organisation in Western Australia and/or holds good standing with the relevant professional body.

Based on the above criteria, a scoring system was devised which considered expertise and general experience. Additional points were awarded for residents and/or ratepayers within the City of Nedlands, which was included as a preference in Council’s 22 September 2020 resolution (i.e. it is not a mandatory requirement for a DRP member to be a resident and/or ratepayer).

Additional points were also awarded for specific experience with design review panels. Providing design advice on large and complex planning proposals in a panel setting is a skillset in and of itself, and so selecting members with previous DRP experience will increase the likelihood of the City’s DPR running efficiently and effectively. Noting that the participation in multiple DRPs may present a capacity issue for members, candidates were queried in the interviews as to their ability to contribute to the City’s DRP in addition to other commitments. All recommended members indicated that they had capacity to take on the time commitment of the City’s DRP.

Based on the above considerations, the following point system was used in the selection process:

* Expertise = 10 points
* General experience = 10 points
* DRP experience = 5 points
* Resident/ratepayer = 2 points

Expertise and general experience were assigned the highest scores (10 points each), in recognition of the considerations outlined in the Office of Government Architect’s Design Review Guide. DRP-specific experience was awarded 5 points, noting that it is not as critical as general design experience and expertise. Being a resident/ratepayer attracted an additional 2 points, noting that this criterion is a preference only and is not a mandatory prerequisite. There is also potential risk for a panel being comprised of solely residents due to the higher potential of conflicts of interest.

Using this scoring system, the top thirteen applicants were invited to participate in an interview. A synopsis of each candidate who was interviewed has been provided to Council as a confidential attachment.

In the interviews, each candidate was asked the following questions to enable them to demonstrate the value they would bring to the DRP.

*Q1. Please tell us a bit about your design expertise – what type of projects have you worked on, your areas of expertise, and whether you have been involved in design review previously.*

*Q2. Being a Design Review Panel member requires excellent communication skills and the ability to provide advice to many different people including industry colleagues and lesser experienced applicants who may not understand architectural and design language. Please tell us about your communication skills and whether you think you have the communication skills to provide design advice within a panel format.*

*Q3. The City of Nedlands deals with a diverse range of development, including multi-residential, mixed use and commercial. These are the type of applications which may be referred to our DRP. Do you have suitable experience and knowledge to provide expert design advice to the City of Nedlands for these types of development? And as an additional question, can you please provide an overview of how you might deal with a conflict of interest – both perceived and real? (Please prompt to support their response with examples)*

*Q4. Are you interested in acting as the Chair or Deputy Chair of the Design Review Panel? If yes, please provide examples of how you have operated in a Chair position previously.*

All interviews were conducted via MS Teams and were recorded, with the interviewees’ consent. The interview panel was comprised of a combination of the Manager Urban Planning, Principal Planner and Senior Urban Planners. Council has been provided with the completed interview forms and recorded interviews as confidential attachments to this report.

**Scoring**

Following completion of the interviews, the interview panel reviewed and combined all scores for each candidate. These final interview scores were then added to the initial selection criteria score, resulting in a total overall score out of 55. A summary of the breakdown of scores and the overall scoring has been provided to Council as a confidential attachment to this report.

**Recommended Members**

From the 13 candidates interviewed, the following eight members are recommended based on their overall score:

1. General members:
	* Tony Blackwell
	* Dominic Snellgrove
	* Samuel Klopper
	* Munira Mackay
	* Philip Gresley
	* Hans Oerlemans
2. Specialist members:
	* Graham Agar
	* John Taylor

Of these recommended members, three meet the criteria of being a resident, ratepayer or elector. The other five are from outside the City of Nedlands, but still scored higher than the remaining interviewed candidates. Three resident/ratepayer DRP candidates who were interviewed are not included in the recommended list, as their overall scores from the selection criteria and interview scores were lower than those candidates that are recommended.

Consistent with the Office of Government Architect’s Design Review Guide, the City’s Administration acknowledges that “*while local knowledge is useful, a balance between local and subject expertise from outside the local government area should be sought in order to optimise the range and calibre of expertise available*”.

All disciplines listed below are represented on the recommended DRP, except for Transport Planning and Civil and/or Structural Engineering:

* Architecture
* Landscape Architecture
* Urban Design
* Heritage
* Sustainability and Environmental Design
* Service Engineering
* Accessibility
* Transport Planning
* Planning
* Public Art
* Civil and/or Structural Engineering

Of the 25 applications received, one demonstrated experience in Transport Planning, and another demonstrated experience in Civil and/or Structural Engineering. These scored towards the bottom of the overall list of applicants however, and therefore, were not considered appropriate for consideration on the DRP.

**Alternate Recommendation**

Based on the selection process undertaken by Administration, the eight members listed above are a recommendation only. As per the Design Review Panel Terms of Reference, members are to be appointed by Council. This means that Council can make a different selection of eight DRP members from the applications received.

Council have been provided with an alternate recommendation within this report, which provides an alternative list of DRP members based on a greater score being awarded for resident/ratepayers (six points awarded instead of two). Whilst this modified scoring system results in a greater number of resident/ratepayers on the DRP (five instead of three), it results in a reduction in landscape architecture expertise on the DRP (one member with landscape architecture expertise instead of two). Council have been provided with a candidate scoring sheet based on increased weight being given to resident/ratepayers.

**Managing Potential Conflicts of Interest**

Council have previously raised concern with the potential for conflicts of interest amongst a DRP. The Office of Government Architect’s Design Review Guide contemplates such risks to the integrity of a DRP, and notes the following methods to manage the risk:

* All DRP members are to disclose any actual or perceived conflicts of interest in writing for the record. Where an interest exists, the member must:
	+ Disclose the interest to the Chair as soon as possible, and before the meeting to ensure there is a quorum for all items;
	+ If the interest is a pecuniary interest, the member must not take part in the consideration or discussion of the matter.
* DRP member induction should be used as an opportunity to confirm member responsibility to declare any conflicts of interests and other governance requirements including media protocols; and
* Meeting minutes are to record any conflicts of interest.

Reflective of this guidance, the DRP Terms of Reference clearly set out the responsibility of DRP members to declare any financial, proximity and/or impartiality interests in accordance with the City’s Code of Conduct at the start of the DRP meeting. Where an interest exists, the member must disclose the interest to the DRP Chairperson as soon as possible, and before the meeting to ensure there is a quorum for all items. The DRP Terms of Reference also require the meeting minute taker to record any declarations of interest.

As noted in the Selection Criteria section of this report, handling of conflicts of interest also formed part of the interview questions for DRP membership candidates. During the induction of the DRP members appointed by Council, members will be required to formally agree to the DRP Terms of Reference.

Administration is of the view that these measures will sufficiently manage the risk of conflicts of interest amongst a DRP.

1. **Consultation**

**Design Review Panel Local Planning Policy**

The DRP Local Planning Policy was previously advertised for a period of 21 days, ending 7 March 2020. During this time, a total of 62 submissions were received. As Council resolved to cease establishment of a DRP following the advertising period, these submissions were not reported to Council.

The draft DRP Local Planning Policy was subsequently modified before being presented back to Council at the 22 September 2020 meeting. In accordance with the resolution from this meeting, the draft DRP Local Planning Policy was advertised for a period of 21 days. During this second advertising period, no submissions were received. No modifications have been made to the DRP Local Planning Policy post advertising.

1. **Statutory Implications**

The DRP Local Planning Policy has been prepared in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Division 2.

When appointed, the advice of the DRP is to be given due regard in the consideration of applications for development approval, in accordance with Clause 67 (zc) of the *Planning and Development (Local Planning Schemes) Regulations 2015 which forms part of Schedule 1 – Supplemental provisions of LPS3, Matters to be considered by local government; (zc) any advice of the Design Review Panel.*

1. **Strategic Implications**

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

The establishment of a DRP is considered to achieve the following Planning Principles outlined in the City’s Local Planning Strategy:

* Protect and enhance local character and amenity;
* Respect the community vision for the development of the district;
* Achieve quality residential built form outcomes for the growing population; and
* Respond to the local physical and climatic conditions.

**Who benefits?**

As outlined below, the establishment of a DRP will benefit the community, decision makers, and Council/Administration.

Community

* Gaining assurance that new developments will make a positive contribution to the public realm, adjacent development, and the surrounding community.

Decision maker benefits

* Gaining expert, independent advice on the design quality of a proposal.
* Enabling the recognition of good design outcomes and, when exercising discretion, the appropriate weight that might be applied to outstanding or innovative solutions that benefit the area.
* Having confidence in resisting poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Council/Administration

* Signals importance of good design to developers.
* Great learning experience for the Planners, who can attend and gain insight into design review which will help with future complex assessments.
* By encouraging design considerations pre-lodgement, time is saved on revision of plans post-lodgement.
* Applications that are lodged are more resolved and this reduces the number of times an item has to go to JDAP and often assists in resolving design Issues which may then end up in SAT.

**Does it involve a tolerable risk?**

The risks associated with not having a DRP include the following:

* Complex applications will not be reviewed by a panel of built form design experts relating to new assessment criteria as prescribed by State Planning Policy 7.0;
* There is no ability for Council or JDAP to refuse an application based on peer review comments. The only mechanism for a decision-maker to refuse an application based on design advice is through an appointed DRP in accordance with 67 (zc) of the City’s Planning Scheme.
* Previous complex development applications were able to lodge without being subject to prior design review. This results in additional work as applicants make multiple changes during the application process to address design or planning issues. Each iteration of the plans must be reviewed by multiple internal departments and represents a significant cost to the City; and
* Without a DRP, expert advice in the areas of architecture, sustainability / energy efficiency, landscape architecture and arborists amongst others need to be engaged separately to adequately address the complex assessment items required to be vetted by the City as part of Design WA.

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

Administration’s approach to establishing a DRP has been informed by the Office of the Government Architect’s Design Review Guide.

1. **Budget/Financial Implications**

The Council resolved at the 28 July 2020 Ordinary Meeting of Council to pursue a proponent-funded model. The proponent is required to pay for the full costs associated with holding a DRP meeting, excluding the City’s Administrative costs. This means that for a typical meeting, the total cost borne by the City would be approximately $530 (Administrative costs), and the total cost borne by the proponents would be approximately $4,200 (DRP member costs). Noting the comments received from the Office of the Government Architect regarding this funding model, discussed further in **Attachment 2**, Administration recommends that this approach be reviewed after six months of DRP operation.

A detailed breakdown of these costs is provided under the Budget/Financial Implications section of the 22 September 2020 report to Council (PD45.20).

There may be instances where Council wishes to refer projects of a strategic nature to the DRP. For example, DRP review of a local planning policy or precinct plan would assist in providing best practice knowledge and understanding of context, history and future desired character of the locality. As detailed in the Budget/Financial Implications section of the 22 September 2020 report to Council (PD45.20), the estimated financial implications of the assessment of strategic proposals by the DRP is $41,000 excluding GST per annum. The Council resolved at the 22 September 2020 Ordinary Meeting of Council to allocate a half-yearly budget of $20,500 for the purpose of funding the operation of the Design Review Panel for strategic matters.

1. **Alternative Recommendation to Council**

As discussed above, Council is provided with the following alternative recommendation, which is based on greater preference being given to resident/ratepayer members on the DRP:

**Council:**

1. **proceeds to adopt the Design Review Panel - Local Planning Policy, as set out in Attachment 1, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4(3)(b)(i);**
2. **in accordance with Clause 2 of the Design Review Panel - Terms of Reference, appoints, for a period of two years, the following Design Review Panel members:**
3. **General members:**
	* **Dominic Snellgrove**
	* **Samuel Thomas Klopper**
	* **Craig Melville Smith**
	* **Tony Blackwell**
	* **Munira Mackay**
	* **Andrew Hagemann**
4. **Specialist members:**
	* **John Taylor**
	* **Graham Agar**
5. **instructs the CEO to review the Design Review Panel Local Planning Policy and funding model after six months of the operation of the Panel.**
6. **Conclusion**

Up-coded areas within the City are likely to experience high levels of redevelopment as a result of LPS 3. This is already being experienced with a large volume of applications lodged and a large ‘pipeline’ of proposals that are expected to be lodged in the coming months and years.

Establishing a DRP to provide independent expert architectural and design advice on large-scale and complex development that can impact the community is considered a vital step in the assessment of such proposals. As the City moves into an increasingly sophisticated planning assessment process including an increase in more intensive density and varied development typologies, the DRP becomes increasingly important. Therefore, it is imperative that the City and Administration are adequately equipped with professional expertise.

An alternative recommendation has been provided to Council, which is based on greater preference being given to resident/ratepayer members on the DRP. Whilst this modified scoring system results in a greater number of resident/ratepayers on the DRP, it results in a reduction in landscape architecture expertise.

|  |
| --- |
| PD03.21 Local Planning Policy, Primary Controls and Community Benefits for Apartment Developments |

|  |  |
| --- | --- |
| **Committee** | 9 February 2021 |
| **Council** | 23 February 2021 |
| **Applicant** | City of Nedlands  |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia. |
| **Director** | Tony Free – Director Planning & Development |
| **CEO** | Mark Goodlet |
| **Attachments** | 1. Draft Local Planning Policy, Primary Controls and Community Benefit for Apartment Developments
 |
| **Confidential Attachments** | 1. Legal Advice dated 11 January 2021
 |

1. **Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) Local Planning Policy – Primary Controls and Community Benefits for Apartment Developments (the Policy) provided as **Attachment 1**.

Administration prepared Draft Local Planning Policy in response to a resolution of Council. A copy of this Draft LPP was provided to the City’s Legal representatives along with the Council resolution of 15 December 2020. A copy of the legal advice dated 11 January 2021 received is marked as **Confidential attachment 1**.

The Council resolution, according to the legal advice seems to indicate that the foreshadowed Local Planning Policy should provide for there to be no capacity to exceed the development standards set out in the Primary Controls Table within Part 2 of the R-Codes Volume 2. The City is advised that a Local Planning Policy cannot achieve that outcome. Even if the policy is not in its terms expressed to amend or replace any Element Objective, if it purports to set an absolute development standard incapable of variation, or a method of assessment different to the Element Objectives, it will be inconsistent with the Element Objectives and therefore inoperative.

The proposed local planning policy seeks to address the intent of the Council resolution, which is to seek more certainty where the decision maker is exercising discretion, including but not limited to Element 2.8, Part 2, R Codes Volume 2, Development incentives for community benefit.

1. **Recommendation to Committee**

**Council:**

1. **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, Local Planning Policy – Primary Controls and Community Benefits for Apartment Developments; and**
2. **makes the legal advice attached to this report non-confidential.**
3. **Discussion/Overview**

With the gazettal of Local Planning LPS3 No. 3 (LPS 3) in April 2019, density code increases were implemented across sections of the City of Nedlands. The density increases are concentrated around the areas of the City now known as Precincts, being Town Centre, Stirling Highway East and West, Broadway, Hampden Road and Waratah Avenue.

Following the gazettal of LPS3 the State Government has introduced Design WA – a suite of State Planning Policies including two volumes of Residential Design Codes and State Planning Policy 7.0 – Design of the Built Environment. Of particular relevance to this report is the operation and function of SPP 7.3 Residential Design Codes, Volume 2 Apartments.

It was stated in the justification provided by Cr Bennett in support of his Notice of Motion that this LPP will provide a planning framework for all Nedlands where there are currently policy gaps under LPS3 that create uncertainty for residents, developers, and decision-makers, which in many areas is creating community dissatisfaction.

The City acknowledges that there are Gaps in the City’s Local Planning Framework and has established a collaborative pathway with the Department of Planning Lands and Heritage (DPLH) following meeting held in September 2020 with Chairman, David Caddy, of the Western Australian Planning Commission (WAPC). The aim of the GAPS analysis is to identify the policy gaps that exist within the local framework and to determine a clear pathway to resolving those issues with the ultimate decision makers being the WAPC and in many cases the Minister for Planning, Lands and Heritage. To do so the DPLH have requested that the City of Nedlands Council adopt a proposed GAPS analysis which will then be presented to the WAPC for further consideration. This analysis will identify the priorities and where there currently is insufficient framework at the local context level.

This proposed local planning policy seeks to resolve some of the uncertainty, however, cannot fully operate as per the resolution of Council.

**Legal Advice**

The City sought legal advice on the 4th January 2021 and received a final letter from McLeod’s Lawyers on the 11th January 2021. (See Confidential Attachment 1)

In reference to the justification section of the notice of motion tabled to Council in December 2020, ‘Section 1.2.2 of SPP7.3 Volume 2 specifies that all of Part 2 may be amended or replaced by local government, and where consistent with the Element Objectives, local governments may prepare and adopt local planning polices and local development plans that amend or replace the Acceptable Outcomes.’

Section 1.2.2 of the R-Codes Volume 2 states:

*1.2.2 Sections that may be amended or replaced by local government*

*Where consistent with the Element Objectives, local governments may prepare and adopt local planning policies and local development plans that amend or replace the Acceptable Outcomes of the following sections of the R-Codes Volume 2:*

*- All of Part 2*

*- 3.6 Public domain interface*

*- 3.7 Pedestrian access and entries*

*- 3.8 Vehicle access*

*- 4.10 Façade design*

*- 4.11 Roof design*

*- 4.13 Adaptive reuse’*

Section 1.2.2 provides that the City can amend or replace the *Acceptable Outcomes* within all of Part 2. The other provisions in part 2 – that is, the Element Objectives – cannot be amended or replaced.

The Council resolution makes a distinction between Part 2 of the R-Codes Volume 2 on the one hand, and Parts 3 and 4 on the other, seemingly as a justification for the policy to mandate compliance with the default values in the Primary Controls Table. While it is correct that there are differences between Part 2 and Parts 3 and 4, it remains the case that when development is assessed against the Design Elements of Part 2, it must ultimately be assessed against the performance based provisions of the Element Objectives, and not against the Primary Controls Table.

What is also relevant is that the structure and legal effect of the R-Codes Volume 2 allows the City to influence built form outcomes by setting what might be called the desired or planned character of an area via local planning instruments which amend or replace certain specified Acceptable Outcomes. As addressing the Acceptable Outcomes is likely to achieve the associated Element Objective, developers will tend to attempt to ‘comply’ with the Acceptable Outcomes. But, as the City is unable to amend or replace the Element Objectives, it cannot hold a developer to compliance with the standards set by the Acceptable Outcomes. The ultimate assessment must always be carried out against the performance-based Element Objectives.

1. **Detail**

This policy applies to all residential and mixed use development whereby the R Codes Volume 2 applies. That includes all apartment development in areas coded R40 and above within mixed use and residential areas.

**Response to Council’s Resolution**

Item 1

*‘that the CEO will draft a Nedlands Local Planning Policy – Primary Controls that shall adopt the default limits for the Primary Controls listed in Part 2 of State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments for all relevant development applications, unless varied by another specific planning instrument of the City of Nedlands.’*

The City’s administration has prepared a Draft LPP which seeks to establish a position with respect to primary controls, however, these primary controls are already read as part of LPS 3, therefore adding them into an LPP provides no further statutory weight in development assessments.

Item 2 a)

*‘the draft policy will include all of the State Planning Policy guidance in the following points a) through to j), as well as any further supplementary information provided to the City by Council, so that a draft policy will be prepared for a Councillor briefing in late January ready for consideration in the first Council Committee Meeting and Ordinary Council Meeting scheduled in 2021.*

*This Policy applies to all Development Applications submitted to the City of Nedlands to be assessed under State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments (SPP 7.3 Vol 2), being for development of multiple dwellings (apartments) in areas coded R40 and above. This Policy will apply unless there is already a properly implemented Nedlands local planning instrument that varies the Primary Controls from the default values specified in SPP 7.3 Vol 2. (NB. This Local Planning Policy is to be read in conjunction with SPP 7.3 Vol 2)’*

Item 2 has been actioned and is presented as part of Attachment 1 to this report. No further supplementary information has been provided to the City by Council at the date of writing this report. The briefing of Council has been scheduled for the 27 January 2021.

Item 2 b)

*‘The SPP 7.3 Vol 2 provides for Primary Controls in Part 2 and defines default values for Acceptable Outcomes (in Tables 2.1 and 2.2) to apply in the absence of local calibration or variance by local planning instruments. Primary controls manage the form and scale of new development appropriate to the context, and the existing or planned character of an area, while moderating impacts on neighbouring properties.’*

No actions are set in item 2b) of the resolution.

Item 2c)

*‘Element Objectives for each Primary Control are provided in sections 2.2 – 2.7 of Part 2 of SPP 7.3 Vol 2. The Primary Controls Table (reference Table 2.1) sets out the default Acceptable Outcomes for building height, street and boundary setbacks and plot ratio under this policy. The Primary Controls as defined and specified in Part 2 of SPP 7.3 Vol 2 and the default values for Acceptable Outcomes will apply in all cases throughout the City of Nedlands and are not to be exceeded, unless calibrated or varied by another local planning instrument of the City of Nedlands.’*

In accordance with the legal advice received, the statement of ‘not to be exceeded’, cannot be fulfilled by the operation of a local planning policy. Advice received has stated that a policy which attempts to set a standard which is incapable of variation would also be legally ineffective for that purpose, as while a local planning policy can guide the exercise of a discretionary power, it cannot fetter the power. It is an error of law to treat a policy as if it is binding. Where the standards in the Primary Controls Table are not met by a development, the standards cease to become directly relevant, as the assessment is focussed on the performance-based provisions of the applicable Element Objective.

Item 2d)

*‘The default values prescribed in the Acceptable Outcomes for Primary Controls however are not a “deemed to comply” pathway, and other aspects of the development proposal will be assessed against the Element Objectives, to ensure delivery of an overall good design in terms of context and character.’*

Administration agrees with this statement and note that there are no actions required of this clause of the resolution.

Item 2e)

*‘SPP 7.3 Vol 2 is a performance-based policy and applications for development approval need to demonstrate that the design achieves the objectives of each design element. The policy document is arranged in Part 2 (Primary Controls), Part 3 (Siting the Development) and Part 4 (Designing the Building), each dealing with different aspects of building size, mass, siting, and design.’*

Administration agrees with this statement and notes that there are no actions required of this clause of the resolution. Whether or not a particular aspect of a proposed development ‘complies’ with the Acceptable Outcomes for that Design Element, does not determine whether that aspect of the development is acceptable. Rather, in each case a determination must be made as to whether the Element Objective is achieved. This is true of all the various Design Elements, whether they are located in Parts 2, 3 or 4 of the R-Codes Volume 2.

Item 2f)

*‘Part 2 outlines the Element Objectives and the Primary Controls to achieve these, but the Guidance section only provides guidance to local government in preparing their local planning framework. There is no attempt to provide additional guidance (apart from the default values for the Acceptable Outcomes), to assist designers or decision-makers in making or assessing proposals.’*

Administration acknowledges the structure of the R Codes Volume 2 policy instrument. Clause 2.1.1 Setting the local planning framework sets out the emphasis on developing a local planning framework which may amend or replace the Primary Controls. It goes on to emphasise the importance of Context and Character, which is also one of the 10 Design Principles in SPP 7.0.

A desired character should be determined in the precinct planning process for new or major redevelopment areas. In the context of Nedlands, LPS3 has been delivered and pre-determines the desired character in line with the assigned density coding and associated streetscape typologies of Appendix A2 of R Codes Volume 2. It is the utmost priority for the City to establish desired future character statements for each of its areas of upcoding.

Item 2g)

*‘Parts 3 and 4 on the other hand contain information on design elements and the Guidance section is for a different stakeholder group, being the proponents, design reviewers and decision-makers, to assist them in the design process and subsequent assessment, based either on Acceptable Outcomes or an alternative performance-based solution to achieve the design Element Objectives.’*

Administration agrees with this statement and notes that there are no actions required of this clause of the resolution.

Item 2h)

*‘In the absence of any guidance for performance assessment of the Primary Controls from SPP 7.3 Vol 2, the City of Nedlands policy is entirely consistent with the Primary Control Element Objectives in Part 2 of SPP 7.3 Vol 2, and provides clarity and certainty to both residents, developers and decision-makers by mandating compliance with the default values, unless varied by another local planning instrument of the City of Nedlands.’*

The City cannot mandate compliance with default values as per the legal advice provided as Confidential Attachment 1. The City through local planning policy cannot augment the Element Objectives of the R Codes Volume 2, which still apply regardless of whether or not the Acceptable Outcomes are complied with. This item cannot be fulfilled by administration.

Item 2i)

*‘The development proposal will still be assessed against the 10 Design Principles as defined in SPP 7.0 Design of the Built Environment, and Element Objectives from SPP 7.3 Vol 2, Part 3 and 4 will need to be achieved by either meeting the Acceptable Outcomes or via an alternative performance solution as framed in the Design Guidelines of SPP 7.3 Vol 2, Parts 3 and 4.’*

Administration agrees with this statement and notes that there are no actions required of this clause of the resolution.

Item 2j)

*‘Development incentives for community benefit as specified in SPP 7.3 Vol 2, Part 2 will only be considered where the City of Nedlands has developed a specific local planning policy for these, to provide a framework to guide assessment of community value, and whether the development entitlement is commensurate with any specific and tangible benefit to the Nedlands community in terms of public amenity, open space, culture or recreational facilities, which can be transparently achieved and measured. There should not be the expectation that incentives are a ‘default’ development standard.’*

As Element 2.8 Development Incentives for Community Benefit forms an element of Part 2 of the R Codes which forms part of the currently operational Part 2 of Volume 2 R Codes. The City can create local planning policy for this primary control without the approval of the WAPC in accordance with Clause 1.2.2 of R Codes Volume 2. It was therefore prudent to include this policy provision within this policy as it forms part of the primary controls in which this resolution is seeking to provide further guidance and certainty and is considered to be requested through this resolution item.

**Development Incentives for Community Benefit**

As part of the justification for item 14.4 it was stated that ‘Development incentives for community benefit are not a ‘default’ development standard and will only be considered where the City of Nedlands has developed a specific local planning policy to guide assessment of any tangible and measurable community benefit’.

Element 2.8 of the R Codes Volume 2 currently forms part of the LPS3. There is currently no further local planning framework in place in which to guide development incentives, therefore developers currently do not have any further guidance from the local government. This policy seeks to provide that guidance, and to set the limits on what the City believes are acceptable trade-offs within a performance based planning framework. Council has made its position known that it does not accept a recent Mosman Park JDAP example, where a tree was retained, and additional height was achieved. The policy seeks to define what Council would deem to be acceptable and uses the planning guidance provided in Element 2.8 of the R Codes Volume 2 to set the baseline for community benefits.

The Policy also seeks to define what community benefit, to determine whether a development is genuinely giving back to the local community in terms of tangible benefit. The policy also seeks to increase the level of detail required for applicants to substantiate and justify their position relating to community benefit up front, so that the community, through engagement can provide their feedback on this specific component of the assessment.

Proposed clause 4.9.3 of the policy provides a list of guided incentives which would see a higher level of community benefit to the City of Nedlands. This list of course can be further refined with feedback from the community and elected members. It seeks to cover areas such as tree retention, public open space, public electric vehicle charging, protection of heritage, universally design dwellings, energy efficiency and green star ratings, dwelling diversity, affordable housing, and water conservation.

It must be noted that community benefits in the sense of providing public realm such as the proposed Florence Plaza are not related to this clause or this policy. As such, Precinct Structure Plans and Development Contribution Plans which the City is currently working on will define Community Needs and Infrastructure for specific areas within the City. This policy provision specifically looks at what a development is giving back in terms of trade off for seeking additional development potential which is achievable currently with or without this local planning policy.

**Defining the Acceptable Building Envelope**

Figure 2.2a and Figure 2.2b of R Codes Volume 2 identify the building envelope in which proposals should follow with respect to maximum building height. Where there are no adopted local planning policies or precinct structure plans this policy will see to introduce the following measure:

Clause 4.3.1

#### ‘In the absence of any local planning policy or precinct structure plan being adopted for a specific area, the building heights (number of storeys) of Table 2.1 in accordance with R Codes Vol.2 shall apply as a default. Any variance to the height limit may only be supported by the City if predominant compliance is met with SPP7.0 Design Review (80% or greater) and those matters are considered by a Design Review Panel. This will then be considered in accordance with the Supplemental Provisions of LPS3, Clause 67 Matters to be considered by local government (zc) any advice of the Design Review Panel.’

The draft policy provides clear linkages back to the 10 design Principles of State Planning Policy SPP 7.0 which is guided by a Design Review Panel Process.

Administration have sought to introduce a design threshold or benchmark which requires an 80% compliance with the 10 design principles in order for the City to support any additional height outside of the default primary control. This offers the developer and the community with a baseline level of assurance; however, it will be the decision makers ultimate decision in terms of its exercise of discretion as this Local Planning Policy will only be a due regard consideration.

**Key Relevant Previous Council Decisions:**

At the 15th December 2020 Council Meeting, Item 1.4 Council resolved the following:

“Council resolves:

1. that the CEO will draft a Nedlands Local Planning Policy – Primary Controls that shall adopt the default limits for the Primary Controls listed in Part 2 of State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments for all relevant development applications, unless varied by another specific planning instrument of the City of Nedlands.
2. the draft policy will include all of the State Planning Policy guidance in the following points a) through to j), as well as any further supplementary information provided to the City by Council, so that a draft policy will be prepared for a Councillor briefing in late January ready for consideration in the first Council Committee Meeting and Ordinary Council Meeting scheduled in 2021.

This Policy applies to all Development Applications submitted to the City of Nedlands to be assessed under State Planning Policy 7.3 Residential Design Codes Volume 2 – Apartments (SPP 7.3 Vol 2), being for development of multiple dwellings (apartments) in areas coded R40 and above. This Policy will apply unless there is already a properly implemented Nedlands local planning instrument that varies the Primary Controls from the default values specified in SPP 7.3 Vol 2. (NB. This Local Planning Policy is to be read in conjunction with SPP 7.3 Vol 2)

1. The SPP 7.3 Vol 2 provides for Primary Controls in Part 2 and defines default values for Acceptable Outcomes (in Tables 2.1 and 2.2) to apply in the absence of local calibration or variance by local planning instruments. Primary controls manage the form and scale of new development appropriate to the context, and the existing or planned character of an area, while moderating impacts on neighbouring properties.
2. Element Objectives for each Primary Control are provided in sections 2.2 – 2.7 of Part 2 of SPP 7.3 Vol 2. The Primary Controls Table (reference Table 2.1) sets out the default Acceptable Outcomes for building height, street and boundary setbacks and plot ratio under this policy. The Primary Controls as defined and specified in Part 2 of SPP 7.3 Vol 2 and the default values for Acceptable Outcomes will apply in all cases throughout the City of Nedlands and are not to be exceeded, unless calibrated or varied by another local planning instrument of the City of Nedlands.
3. The default values prescribed in the Acceptable Outcomes for Primary Controls however are not a “deemed to comply” pathway, and other aspects of the development proposal will be assessed against the Element Objectives, to ensure delivery of an overall good design in terms of context and character.
4. SPP 7.3 Vol 2 is a performance-based policy and applications for development approval need to demonstrate that the design achieves the objectives of each design element. The policy document is arranged in Part 2 (Primary Controls), Part 3 (Siting the Development) and Part 4 (Designing the Building), each dealing with different aspects of building size, mass, siting, and design.
5. Part 2 outlines the Element Objectives and the Primary Controls to achieve these, but the Guidance section only provides guidance to local government in preparing their local planning framework. There is no attempt to provide additional guidance (apart from the default values for the Acceptable Outcomes), to assist designers or decision-makers in making or assessing proposals.
6. Parts 3 and 4 on the other hand contain information on design elements and the Guidance section is for a different stakeholder group, being the proponents, design reviewers and decision-makers, to assist them in the design process and subsequent assessment, based either on Acceptable Outcomes or an alternative performance-based solution to achieve the design Element Objectives.
7. In the absence of any guidance for performance assessment of the Primary Controls from SPP 7.3 Vol 2, the City of Nedlands policy is entirely consistent with the Primary Control Element Objectives in Part 2 of SPP 7.3 Vol 2, and provides clarity and certainty to both residents, developers and decision-makers by mandating compliance with the default values, unless varied by another local planning instrument of the City of Nedlands.
8. The development proposal will still be assessed against the 10 Design Principles as defined in SPP 7.0 Design of the Built Environment, and Element Objectives from SPP 7.3 Vol 2, Part 3 and 4 will need to be achieved by either meeting the Acceptable Outcomes or via an alternative performance solution as framed in the Design Guidelines of SPP 7.3 Vol 2, Parts 3 and 4.
9. Development incentives for community benefit as specified in SPP 7.3 Vol 2, Part 2 will only be considered where the City of Nedlands has developed a specific local planning policy for these, to provide a framework to guide assessment of community value, and whether the development entitlement is commensurate with any specific and tangible benefit to the Nedlands community in terms of public amenity, open space, culture or recreational facilities, which can be transparently achieved and measured. There should not be the expectation that incentives are a ‘default’ development standard.”
10. **Consultation**

If Council resolves to prepare the draft *Local Planning Policy – Primary Controls and Community Benefit for Apartment Developments*, it will be advertised for 21 days in accordance with Schedule 2, Part 2, Division 2, Clause 4 of the Regulations, and the City’s Local Planning Policy – Consultation of Planning Proposals. This will include a notice being published in the newspaper and details being included on the City’s website (Your Voice engagement portal), a letter posted to all residents and property owners in the Policy area and a social media post.

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.

Council Briefing

As per Council’s resolution of 15 December 2020, a Council briefing session has been scheduled for the 27 January 2021.

Community Working Group Consultation

As part of the advertising period specified, the Draft Local Planning Policy will be tabled to the next available CWG for consultation.

1. **Strategic Implications**

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

This Policy provides design guidance for all R Codes Volume 2 assessments for Apartments whilst facilitating urban growth as identified in the Strategy. This Policy aims to achieve urban growth in a manner that minimises undue impact on the existing streetscape and character and amenity in areas which have been upcoded as part of LPS3.

**Who benefits?**

The City and its residents will benefit from this Policy. The Policy is intended to manage the impact of apartment developments on the existing streetscape and local amenity and will establish a baseline benchmark for design excellence for the area. This Policy work is critical in balancing the transition from low density to medium/high density without undue impact on the existing character in the upcoded areas of LPS3.

**Does it involve a tolerable risk?**

The Policy is proposed to mitigate the risks to the City and its residents associated with uncontrolled infill development.

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

Through the establishment of a Design Review Panel, the City will have greater guidance on development as well as providing a measured and collaborative response to applicants who wish to seek additional development potential or flexibility in their applications.

1. **Budget/Financial Implications**

The Cost of legal advice in this instance is estimated at $2,200.00. The cost of officer time is approximately $3,000.00.

**Can we afford it?**

The costs associated with this Policy relate to advertising and, community engagement, all of which are included in the current year budget.

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

Nil

1. **Conclusion**

The draft *Local Planning Policy – Primary Controls and Community Benefit for Apartment Developments* proposes to implement design guidance that will establish an emphasis on a measured approach to performance based assessment as well as setting the parameters to which the City defines Community Benefit.

*Local Planning Policy – Primary Controls and Community Benefit for Apartment Developments* aims to ameliorate the concerns of the community and provide more certainty for applicants with regard to the Primary Controls.

The City is unable to fulfill the resolution requests of item 2b) and 2h) as per legal advice provided, whereby Primary Controls are assessed in accordance with the performance based policy parameters, rather than a fixed default control. The City has sought to create policy measures which best meet the intent of the resolution which is to provide greater clarity around the exercise of discretion by decision makers, and to properly define the parameters in which development incentives being achieved as measured and qualified.

It is recommended that Council endorses Administration’s recommendation to prepare (consent to advertise) the *Local Planning Policy – Primary Controls and Community Benefit for Apartment Developments*.

|  |
| --- |
| PD04.21 Broadway, Nedlands Town Centre and Waratah Village Context and Character Local Planning Policies |

|  |  |
| --- | --- |
| **Committee** | 9 February 2021 |
| **Council** | 23 February 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality.** | Nil The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia |
| **Director** | Tony Free – Director Planning & Development |
| **CEO** | Mark Goodlet |
| **Attachments** | 1. Draft Broadway Precinct Context and Character Local Planning Policy
2. Draft Nedlands Town Centre Precinct Context and Character Local Planning Policy
3. Draft Waratah Village Precinct Context and Character Local Planning Policy
 |

1. **Executive Summary**

The purpose of this report is to present the following three draft local planning policies to Council for adoption to advertise:

1. Draft Broadway Precinct Context and Character Local Planning Policy
2. Draft Nedlands Town Centre Precinct Context and Character Local Planning Policy
3. Draft Waratah Village Precinct Context and Character Local Planning Policy
4. **Recommendation to Committee**

**Council:**

1. **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:**
	1. **Draft Broadway Precinct Context and Character Local Planning Policy;**
	2. **Draft Nedlands Town Centre Precinct Context and Character Local Planning Policy; and the**
	3. **Draft Waratah Village Precinct Context and Character Local Planning Policy.**
2. **Discussion/Overview**

Built Form Modelling

The City has engaged Hassell to undertake built form modelling for the Broadway, Nedlands Town Centre and Waratah Village precincts. This work is comprised of the following deliverables:

1. Local distinctiveness study
2. Context analysis
3. Modelling and built form controls

The local distinctiveness studies and context analyses for each precinct have been completed and were presented to Council at the 25 August 2020 Ordinary Council Meeting. At this meeting, Council resolved as follows:

“1. Receives the local distinctiveness studies and context analyses for the Broadway, Nedlands Town Centre and Waratah Village precincts;

1. Instructs the CEO to include reference to the local distinctiveness studies and context analysis in assessment of development applications, and where relevant current scheme amendments, within these precincts to inform assessment of existing local character; and
2. Notes that the local distinctiveness studies and context analyses will inform the development of the built form modelling.”

As per this Resolution, assessments of development applications and proposed scheme amendments within these precincts have been drawing on the relevant local distinctiveness studies and context analyses.

Future Planning Instruments

The third component of Hassell’s scope of works, modelling and built form controls, is still being finalised and is expected to be delivered in the early to mid-2021. Once complete, Administration intends to use this work to inform the following future planning instruments:

1. Built form local planning policies for each precinct, supported by scheme amendments where appropriate.
2. Precinct structure plans for Nedlands Town Centre and Waratah Village, following the framework set out in State Planning Policy 7.2 – Precinct Design. The preparation of precinct structure plans for these precincts will require agreement from the Western Australian Planning Commission (WAPC) through the Gaps Analysis process, a report for which is also being considered at this Council Meeting. If agreement is reached with the WAPC, further investigations will be required to inform the preparation of the precinct structure plans. These further investigations will likely require additional budget approval. Updates on this process will be provided to Council in due course.
3. The QEII/UWA Specialised Activity Centre Plan will likely include most, or all, of the Broadway Precinct. The City of Perth, in partnership with the Department of Planning, Lands and Heritage (DPLH), is leading the project to develop this plan. The City of Perth is in the process of undertaking similar built form modelling work on their side of Broadway, and so these two pieces of work will be able to be brought together to inform the plan. Noting that this higher-level plan will likely include the Broadway precinct, it is unlikely that the WAPC will agree to the preparation of a precinct structure plan for the precinct.

Proposed Context and Character Local Planning Policies

In order to formalise the components of the Hassell scope of works which have already been completed, being the local distinctiveness studies and context analyses, Administration is now presenting Council with three local planning policies ahead of the preparation of the future planning instruments identified above. The Draft Context and Character Local Planning Policies are included as **Attachment 1** (Broadway), **Attachment 2** (Nedlands Town Centre) and **Attachment 3** (Waratah Village).

These policies include the following:

* Existing character of the precinct in the form of the Local Distinctiveness Study and Context Analysis prepared by Hassell; and
* A statement of policy position for the local government regarding the desired future character of the precinct, based on precinct-specific strategies outlined in the City’s Local Planning Strategy. The Local Distinctiveness Study and Context Analysis prepared by Hassell also identifies urban design principles for each precinct which will assist in preserving a unique local sense of place. These urban design principles have also been used to inform the desired future character for each precinct.

It is recommended that Council adopt these three policies for the purpose of advertising. Following advertising, the final adoption of these policies would provide the community and developers with greater clarity on how new developments within the precincts should be designed in the context of the existing character, and also consideration of the desire for how the precinct should be developed into the future within the context of the existing zoning.

These policies will also assist in the assessment and determination of development applications against the Residential Design Codes Volume 2 (R-Codes Volume 2). There are a number of element objectives within the R-Codes Volume 2 which require consideration of the existing and future character of the locality. By clearly defining the existing and future desired character, these policies will provide clarity for assessment and determination of new developments within each precinct.

As outlined in the Future Planning Instruments sections above, built form local planning policies will be prepared for each precinct once built form modelling has been finalised. These policies will incorporate the existing and desired future character for each precinct, as set out in the Context and Character Local Planning Policies. If the built form local planning policies are adopted, the Context and Character Local Planning Policies can therefore be revoked at the same time with provisions being merged into one comprehensive policy instrument. Given the urgency to establishing the local planning framework the administration is seeking to put forward the local character policy first to ensure that there is a due regard local planning instrument available to assessors and decisions makers when assessing and determining development applications in each of these precincts.

1. **Consultation**

Community Reference Groups (CRGs) have been established for each precinct. Engagement with these CRGs will take place to inform the built form local planning policies. At this stage, engagement with the CRGs can test the desired future character statement established for each precinct and refine, as necessary.

At the time of writing this report, the proposed local planning policies are scheduled to be presented to the City’s Community Working Group on 10 February 2021.

If adopted, the policies will be advertised for 21 days in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015*.

1. **Strategic Implications**

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

The draft local planning policies align with the following Intention / Strategy from the City’s Local Planning Strategy:

5.8 – Urban Design, Character and Heritage: “*Retain and enhance the character and streetscape of the City’s existing residential areas whilst promoting best practice urban design principles in targeted infill areas. Maintaining and enhancing high quality streetscapes will be of the utmost importance to decision making, and developments will need to respond to the unique character of each precinct*.”

**Who benefits?**

The City, the community and applicants for development will benefit by having a clear position on the existing and desired future character for each precinct.

**Does it involve a tolerable risk?**

The risk of not having these policies in place is that assessments of new developments within the three precincts will not be informed by a formalised existing and desired future character statement.

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

The proposed local planning policies are informed by the local distinctiveness studies and context analyses for each precinct, which were prepared by Hassell. The policies were also informed by the City’s Local Planning Strategy.

1. **Budget/Financial Implications**

**Can we afford it?**

The proposed local planning policies are informed by the local distinctiveness studies and context analyses for each precinct, which were prepared by Hassell. The budget for this work has already been approved.

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

See above.

1. **Conclusion**

The purpose of this report is to present Council with Character and Context Local Planning Policies for the Broadway, Nedlands Town Centre and Waratah Village precincts. Until such time as the built form modelling body of work has been completed, these proposed policies will be able to guide the assessment and determination of new development, ensuring that such development appropriately considers both the existing and desired future character within these precincts.