

***Agenda***

***Special Council Meeting***

***2 May 2019***

Dear Council member

A Special Meeting of the City of Nedlands is to be held on Thursday, 2 May 2019 in the Council chambers at 71 Stirling Highway Nedlands commencing at 6pm for the purpose of considering Local Planning Policies.



Mark Goodlet

Chief Executive Officer

30 April 2019

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**City of Nedlands**

Notice of a special meeting of Council to be held in the Council chambers, Nedlands on Thursday 2 May 2019 at 6.00 pm for the purpose of considering Local Planning Policies.

###### Special Council Agenda

# Declaration of Opening

The Presiding Member will declare the meeting open at 6.00 pm and will draw attention to the disclaimer below.

(NOTE: Council at its meeting on 24 August 2004 resolved that should the meeting time reach 11.00 p.m. the meeting is to consider an adjournment motion to reconvene the next day).

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

**Leave of Absence** Councillor B G Hodsdon Hollywood Ward

**(Previously Approved)**

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

**Disclaimer**

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

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# Public Question Time

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

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

# Addresses by Members of the Public

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

# Disclosures of Financial Interest

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

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

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

# Disclosures of Interests Affecting Impartiality

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

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

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

“With regard to …… the matter in item x….. I disclose that I have an association with the applicant (or person seeking a decision). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly.”

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

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

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

# Local Planning Scheme 3 – Local Planning Policies

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| --- | --- |
| **Council** | 2 May 2019 |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Director** | Peter Mickleson – Director Planning & Development |
| **CEO** | Mark Goodlet |
| **Previous Item** | Nil. |
| **Attachments** | * 1. Draft Residential Development LPP   2. Draft Parking LPP   3. Draft Heritage LPP   4. Draft Child Care Premises LPP   5. Draft State Administrative Tribunal – Process and Procedures LPP   6. Draft Refunding / Waving Fees LPP   7. Draft Planning Compliance LPP   8. Draft Signs LPP   9. Draft Consultation of Planning Proposals LPP;   10. Draft Exempt Development LPP   11. Draft Swanbourne Design Guidelines A LPP   12. Draft Swanbourne Design Guidelines B LPP   13. Draft Hollywood Design Guidelines LPP |

**Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising), adopt and revoke a series of Local Planning Policies and Council policies required under Local Planning Scheme 3 (LPS 3).

Under TPS 2 there were 20 Local Planning Policies and 10 planning related Council Policies in effect.

Council is being asked to revoke 16 Local Planning Policies and all 10 planning related Council Policies.

In their place, Council is being asked to establish 13 Local Planning Policies:

* 4 are existing policies (3 unchanged and 1 with amendments);
* 2 were adopted for advertising at Councils February 2019 meeting and advertised through March 2019 and can now be adopted; and
* 7 are new Local Planning Policies for Council to prepare for advertising and adopt at a later date.

The new policies proposed provide for the continuation of many of the City’s previous practices and application of development standards from TPS 2, to apply in a similar fashion under LPS 3.

Further to, an advantage of Council adopting Local Planning Policies is that they must be taken into account by the decision maker. This is particularly important when the decision maker is not the Council, that is, the JDAP or SAT. LPP’s allow Council’s views on a particular issue to have some influence on the decision maker and thus be considered in any decision. The risk is that in the absence of an LPP, relating to a matter that is of concern to Council, the decision maker will have no guidance as to the Council’s views and will come to its own conclusion and decision.

All policies ‘prepared’ under resolution 1, will remain drafts for advertising and may be modified, prior to their final adoption by Council at a subsequent future meeting.

Policies adopted under resolution 2 and 3 will have effect immediately.

Policies revoked under resolution 4 will be revoked immediately.

Policies revoked under resolution 5 will be revoked immediately.

**Recommendation to Council**

**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 following Local Planning Policies**:
   1. **Residential Development**
   2. **Parking**
   3. **Heritage**
   4. **Child Care Premises**
   5. **State Administrative Tribunal – Process and Procedures**
   6. **Refunding / Waving Fees**
   7. **Planning Compliance**
   8. **Signs**
2. **adopts, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 4, the following Local Planning Policies**:
   1. **Consultation of Planning Proposals**
   2. **Exempt Development**
3. **adopts without consultation, in accordance with the *Planning and Development (Local Planning Schemes) Regulations 2015* Schedule 2, Part 2, Clause 5, the following Local Planning Policies**:
   1. **Swanbourne Design Guidelines A**
   2. **Swanbourne Design Guidelines B**
   3. **Hollywood Design Guidelines**
4. **revokes the following Local Planning Policies in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 6:**
   1. **Cash in Lieu of Car Parking**
   2. **Subdivision Policy**
   3. **Two Grouped Dwellings in Dual Coded Areas**
   4. **Allen Park Residential Estate Design Standard For Lots 11 To 17 Clement Street And Lots 18 To 25 North Streets, Swanbourne**
   5. **Road Widening (Stirling Highway)**
   6. **Cash in lieu of Car Parking – Government Road**
   7. **Listed Heritage Places – Demolition Policy**
   8. **Intensification of Residential Density**
   9. **Reduction of Front Setbacks**
   10. **St Peters Square Design Guidelines**
   11. **Carports and Minor Structures Forward of the Primary Street Setback**
   12. **Old Swanbourne Hospital Precinct**
   13. **Local Planning Policy: Sea Containers**
   14. **Ancillary Accommodation Local Planning Policy**
   15. **Fill and Fencing Local Planning Policy**
   16. **Landscaping – Local Planning Policy**
5. **revokes the following Planning Council Policies:**
   1. **Development Approvals: Minimum Requirements**
   2. **Domestic Receiving Dishes**
   3. **Encroachments on to Rights of Way**
   4. **Heritage Advice for Owners of Places of Significance**
   5. **Home Business**
   6. **Neighbour Consultation – Development Applications**
   7. **Refund of Planning Fees for Places of Heritage Significance**
   8. **Retention of Existing Dwelling During Construction of New Dwelling**
   9. **State Administrative Tribunal - Response to Appeals**
   10. **Tennis Court Fencing & Lighting**

**Background**

Officers have undertaken a comprehensive review of all Council Planning Policies and Local Planning Policies (LPPs) adopted under Town Planning Scheme No.2 (TPS 2).

All of the Council Planning Policies and Local Planning Policies require significant amendment to align with state legislation and LPS 3, and many new policies are also needed.

Under the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Planning Regulations), for a policy to be given due regard in the determination of a development application, it should be adopted as a Local Planning Policy. A Council Policy has no standing under the Planning legislation and cannot be applied to a planning decision. Therefore, all planning related Council Policies will need to be revoked and where provisions from previous Council Policies need to be retained under LPS 3, they are proposed to be adopted as Local Planning Policies accordingly.

LPS 3 has a particular provision that provides for all existing local planning policies (LPP) adopted under TPS 2 to have effect under LPS 3. This means all previous policies under TPS 2 continue to have effect, despite being fundamentally inoperable under LPS 3. Subsequently, there is the need to revoke all existing Local Planning Policies which are now redundant.

LPS 3 also provides for any steps taken in the preparation of a planning instrument under TPS 2 (including Local Planning Policies) to be taken as steps under LPS 3. It means any policies which have been advertised under TPS 2 but not adopted (such as the Exempt Development and Consultation of Planning Proposals Policies) can continue to progress under LPS 3, as if they had been advertised under LPS 3. This allows for some policies already advertised under TPS 2 to be adopted immediately under LPS 3.

**Policies for advertising**

There are 7 new policies and 1 amended policy proposed for Council to ‘adopt for advertising’ (under the Planning Regulations this is called ‘prepare’):

1. Residential Development

This policy provides guidance and supplementary requirements to LPS 3 and State Planning Policy 7.3 Residential Design Codes Volume 1 (R-Codes Vol.1) in relation to single and grouped dwelling development.

It includes the provisions for setbacks (9m front setbacks, garages and carports, pergolas and gatehouses), retains the 8.5m wall height and 10m building height from TPS 2, maintains the street wall and fence provisions and boundary fencing from TPS 2.

1. Parking

The purpose of this policy is to define standards for parking areas. It includes the parking ratios based on land use, vehicle access and ancillary facilities requirements.

The policy also seeks to encourage the provision of services that enable and promote alternative modes of transport (including cycling, walking, public transport and motorcycles) and adaptability to changes in technology.

This policy will ensure developments are constructed to a high standard, reducing potential detrimental impacts to the surrounding area and assist in managing future traffic and parking issues.

1. Heritage

The existing Council Policies for Heritage Advice for Owners of Places of Significance and Refund of Planning Fees for Places of Heritage Significance have been combined into one Local Planning Policy.

No changes are proposed to the provisions. Due to the conversion into a LPP, advertising is required.

1. Child Care Premises

This policy provides development standards relating to the location, design, size and operational matters (hours of operation, noise, parking & traffic) that the City will have regard to in considering an application for development approval.

1. State Administrative Tribunal – Process and Procedures

This policy prescribes the process to be followed when an appeal is lodged with the SAT regarding a development application, depending on whether it was made under delegation, the application was ‘deemed refused’ by the applicant, or the decision was made by Council.

The draft LPP includes provisions relating to the following:

* Decisions made under delegation
* Decisions made by Council aligned to the Administration recommendation
* Decisions made by Council contrary to the Administration recommendation
* Notification of community members

1. Refunding / Waving Fees

This policy outlines the circumstances where the City of Nedlands (the City), may refund or waive development application fees.

It gives a not-for-profit organisation a 50% reduction to a planning fee.

It sets out that the City may refund a development application fee, the refund amount varying, depending on how much officer time has been spent on the application.

1. Planning Compliance

This policy is to provide guidance for the planning compliance process to be undertaken including:

* establishing a consistent and transparent approach;
* process for complaint handling and how to determine when further action is required;
* outlining options for dealing with unlawful activity; and
* establishing where further enforcement action is warranted.

1. Signs

This policy amends the current Advertisement Signs on Zoned and Reserved Land (Except Road Reserves) Policy adopted under TPS 2. It largely retains the existing provisions with the inclusion of:

* Photos rather than drawings for illustration
* Sponsorship signage requirements
* Variable (electronic) messaging boards
* Portable (A-frame sandwich board) signs

Due to the inclusions, it is considered the policy should be advertised for public comment.

**Local Planning Policies for adoption**

Discussion under the Statutory Provisions section of this report explains how these policies are capable of adoption at this time.

1. Consultation of Planning Proposals

This policy provides guidance in terms of when public consultation is undertaken for all types of planning proposals, and the means and duration of public consultation periods where these are not prescribed by the Planning Regulations or LPS 3. Planning proposals include:

* Strategic proposals (such as Public Open Space Strategy);
* Structure Plans;
* Scheme Amendments;
* Local Planning Policies;
* Activity Centre Plans;
* Local Development Plans; and
* Development Applications.

1. Exempt Development

This policy outlines types of development exempt from requiring development approval in addition to those specified by the Planning Regulations. This policy was prepared for advertising by Council in February 2019 and advertised through March 2019. Minor modifications have been made following advertising to remove clauses specific to TPS 2 or where dealt with by the R-Codes or another Local Planning Policy.

**Local Planning Policies to be revoked**

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| Revoke - Planning Policies | Rationale |
| Cash in Lieu of Car Parking | Provisions are provided within LPS 3 for Cash in lieu of car parking.  New Parking Policy to be adopted in its place.  Future work: A car parking strategy will be prepared to identify locations for additional parking and guide how cash-in-lieu funds to be used. |
| Subdivision Policy | Not required under LPS 3 as it is outdated and covered by other legislation such as the WAPC model subdivision conditions and clause 67 the deemed provisions of the Planning Regulations. |
| Two Grouped Dwellings in Dual Coded Areas | Not required under LPS 3 as it was specific to the dual density code in Mt Claremont under TPS 2. Under LPS 3 there is no longer a dual density code. |
| Allen Park Residential Estate Design Standard for Lots 11 to 17 Clement Street and Lots 18 to 25 North Streets, Swanbourne | This estate has now been developed and therefore this policy is not required under LPS 3. The development standards of the R-Codes will apply (which is generally what this policy was based on). |
| Road widening (Stirling Highway) | Not required under LPS 3. The Regional Road Reservation for Stirling Highway has been rationalised. Setbacks to the reservation will be governed by the R-Codes until the City prepares specific local planning instruments for land adjacent to Stirling Highway. |
| Cash in Lieu of Car Parking - Government Road | As per the Cash in Lieu of Car Parking Policy, provisions are provided within LPS 3 and the new Parking Policy is to be adopted in its place.  This Policy is therefore not required. |
| Listed Heritage Places - Demolition Policy | Not required under LPS 3 and Planning Regulations. Planning Approval required prior to being able to demolish a Heritage Listed place. Further, a Statements of Significance are available for all places listed on the City’s Municipal Inventory and the Heritage List. Additional documentation at demolition is not required. |
| Intensification of Residential Density | Relates to a Local Housing Strategy adopted prior to 1997. It is not required following gazettal of LPS 3. |
| Reduction of Front Setbacks | Replaced by the Residential Development LPP which addresses front setbacks in R10, R12.5 and R15 densities. |
| St. Peters Square Design Guidelines | These lots have been developed and therefore this policy is not required under LPS 3. The development standards of the R-Codes will apply (and is generally what the policy was based on). |
| Carports and Minor Structures Forward of the Primary Street Setback | Replaced by the Residential Development LPP which addresses carports and minor structures within front setback areas in R10, R12.5 and R15 densities. |
| Old Swanbourne Hospital Precinct | Not required under LPS 3 as the development has been completed. The residential lots have been zoned under LPS 3 and are subject to the R-Codes. |
| Local Planning Policy: Sea Containers | No longer required. Provisions moved to the Exempt Development LPP. |
| Ancillary Accommodation Local Planning Policy | Not required under LPS 3. No provisions relating to ancillary dwellings in LPS 3. Requirements as per the R-Codes. |
| Fill and Fencing Policy | Replaced by the Residential Development LPP which addresses boundary fencing. |
| Landscaping Plans – Local Planning Policy | Landscaping provisions to be specific to development type or location. Therefore, replaced by other policies and legislation, such as the proposed Parking policy and Volume 2 of the R-Codes, which also applies to all Neighbourhood Centre, Mixed Use and Local Centre zones. |

**Council Policies to be revoked**

|  |  |
| --- | --- |
| Revoke - Council Policies | Rationale |
| Development Approvals: Minimum Requirements | Not required under LPS 3. A checklist is attached to the Development Application form 1 which sets out the minimum requirements for lodgement of an application. |
| Domestic Receiving Dishes | No longer required.  Provisions moved to the Exempt Development LPP. |
| Encroachments on to Rights of Way | Not required under LPS 3 and the Planning Regulations. |
| Heritage Advice for Owners of Places of Significance | Consolidated with Refund of Planning Fees for Places of Heritage Significance Policy into the Heritage Local Planning Policy. Provisions have not been modified. |
| Home Business | Not required under LPS 3. There is sufficient guidance provided by the Scheme and clause 67 of the Deemed Provisions. |
| Neighbour Consultation – Development Applications | Replaced by Consultation of Planning Proposals LPP. |
| Refund of Planning Fees for Places of Heritage Significance | Consolidated with the Heritage Advice for Owners of Places of Significance Policy into the Heritage Local Planning Policy. Provisions have not been modified. |
| Retention of existing Dwelling during construction of new Dwelling | Not considered appropriate or required under LPS 3.  This policy’s provisions attempted to vary a mandatory requirement from TPS 2. |
| State Administrative Tribunal - Response to Appeals | Replaced by State Administrative Tribunal – Process and Procedures LPP. |
| Tennis Court Fencing & Lighting | Not required under LPS 3.  Development approval is required for fencing and light poles not exempt under the City’s Policies. |

**Consultation**

If Council resolves to prepare the draft LPP’s, they 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 policies 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.

**Statutory Provisions**

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

Resolution 1

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 the area for a period not less than 21 days.

Policies listed under part 1 of the resolution will be prepared and advertised in this manner.

Resolution 2

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

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

Policies listed under part 2 of the resolution will be adopted with modification, having been advertised in March 2019. Despite being prepared and advertised under TPS 2, clause 85B of LPS 3 permits the steps taken in the development of those policies under TPS 2 to be taken as steps taken under LPS 3. These policies are therefore permitted to be adopted as final polices.

Resolution 3

Schedule 2, Part 2, Clause 5 of the Regulations allows for the amendment of any local planning policy and where in the opinion of the local government the amendment is a minor amendment, can make the amendment without advertising.

Policies listed under part 3 of the resolution will be adopted in this manner.

Resolution 4

Schedule 2, Part 2, Clause 6 of the Regulations sets out that a local government may revoke a local planning policy by a notice of revocation:

1. prepared by the local government; and
2. published in a newspaper circulating in the Scheme
3. area.

Policies listed under part 4 of the resolution will be revoked in this manner.

Resolution 5

*Local Government Act 1995*

Council Policies are determined in accordance with section 2.7(2)(b) of the *Local Government Act 1995* and may be amended or deleted by Council according to circumstances.

Council’s ‘Review of Policies’ Council policy provides guidance for the review of Council Policies. The policy states that Council may review an individual policy at any time whenever Council finds it necessary.

Policies listed under part 5 of the resolution will be revoked in this manner.

**Conclusion**

The draft LPP’s work towards the City having an operative local planning framework in place under LPS 3. It requires the preparation and advertising of some LPP’s, the immediate adoption of others and the revocation of all redundant LPP’s and Council Planning Policies.

As such, it is recommended that Council follows the administration recommendation as set out in the resolution.

# Declaration of Closure

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