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***Minutes***

***Special Council Meeting***

***3 September 2020***

**Attention**

**These Minutes are subject to confirmation.**

Prior to acting on any resolution of the Council contained in these minutes, a check should be made of the Ordinary Meeting of Council following this meeting to ensure that there has not been a correction made to any resolution.

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**City of Nedlands**

**Minutes of a special meeting of Council held in the Ellis Room at the Bendat Basketball Centre, 201 Underwood Avenue, Floreat on Thursday 3 September 2020 at 6.00 pm for the purpose of considering the following items:**

1. **Local Planning Scheme 3 - Draft Local Planning Policy Melvista West Transition Zone**
2. **Local Planning Scheme 3 – Draft Interim Local Planning Policy – Hollywood Central Transition Zone**
3. **Local Planning Scheme 3 – Draft Local Planning Policy Peace Memorial Rose Garden Precinct, Nedlands**
4. **Scheme Amendment No. 7 – Amendment to Density Coding on Broadway, Hillway, Kingsway, Edward and Elizabeth Street**
5. **Local Planning Scheme 3 - Local Planning Policy Residential Aged Care Facilities - Final for Adoption**
6. **Lot 3 (No. 3/29 Asquith Street, Mt Claremont – Change of Use from Lunch Bar to Restaurant Use**
7. **Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands**

# Declaration of Opening

The Presiding Member declared the meeting open at 6.07 pm and drew attention to the disclaimer below.

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

**Councillors** Her Worship the Mayor, C M de Lacy (Presiding Member)

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor B G Hodsdon Hollywood Ward

Councillor P N Poliwka Hollywood Ward

Councillor J D Wetherall Hollywood Ward

Councillor R A Coghlan Melvista Ward

Councillor G A R Hay Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor N B J Horley Coastal Districts Ward

Councillor L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

**Staff** Mr M A Goodlet Chief Executive Officer

Mr P L Mickleson Director Planning & Development

Mrs N M Ceric Executive Assistant to CEO & Mayor

**Public** There were 70 members of the public present.

**Press** The Post Newspaper representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Nil.

**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.

## Mr Peter Robins, 10 Edward Street, Nedlands

In Section 2 of the Residential Design Codes SPP 7.3 Volume 2, the Development Incentives for Community Benefit section provides guidance for local government on relevant considerations to establish development incentives that may be provided in exchange for community benefit in nominated areas via local planning instruments. Development incentives are a method through which additional development potential or flexibility (such as additional plot ratio and/or building height) can be offered in exchange for tangible community benefit, such as public amenities, culture and recreation facilities. SPP 7.3 states it is important that the cost and value of the community benefit can be objectively measured and assessed, as the local government needs to determine whether the value of the community benefit is broadly commensurate with the additional development entitlement. It is also important that development incentives be applied in a responsible and accountable manner to avoid the expectation that they become the ‘default’ development standard in a locality.

Question 1

Given the draft Melvista West and Hollywood Central LPPs are not obliged to, but do provide very generous Development Incentives for larger lots by allowing one additional storey and plot ratio bonuses of between 30 and 60%, essentially for just “good design” (which should be the baseline expected under a performance based assessment system anyway), what in fact are the tangible community benefits to be received back specifically by the Nedlands community in this trade-off for such generous discretionary bonuses, and how are these to be objectively measured as required by SPP 7.3?

Answer 1

When applicants ask for extra plot ratio or extra building height within the Transition Zones, the proposed policy framework is seeking to hold the developer to a higher standard so that some additional favourable elements to the development are provided where there is currently no requirements to do so.

A "to be developed" City wide Community Benefits LPP will provide guidance in terms of what specific community benefit items will be requested to be provided as part of “Community Benefit” contributions to development sites. This could be provision of communal or public open space, community amenities and so on. A "need and nexus" will need to be established for any required works and these will also need to be costed. The City is investigating how development contributions can be part of the process along with work on contributions to Public Open Space, as well as Car Parking Cash in lieu and Public Art.

In the meantime by setting a policy framework which seeks to draw a linkage between performance based decisions and better built form outcomes, the City via Clause 2.4.10 is seeking to apply that discretion where a lot meets certain criteria as set out in the proposed policy.

## Mr Alessandro Stagno, 105 & 123 Broadway, Nedlands

Question 1

With regard to the Broadway Precinct Plan, can the administration please inform this meeting what percentage of the 12 members of the Community Reference Group are either members or supporters of the Ian Love and Simon Edis’ action group People for Responsible Development p4rd.org? Have any of them declared a conflict of interest as required in the selection of stakeholders?

Answer 1

Administration are not aware of any such support or declarations of conflicts of interest.

## Ms Emma Rose, 21 Mountjoy Road, Nedlands

Question 1

I refer to the November 2019 Council recommendation to undertake built form Modelling for the Broadway LPP. When was this modelling completed? If it hasn’t been completed yet, when is it expected to be complete?

Answer 1

The Built Form Modelling for Broadway is substantially complete however, Administration have asked for some additional refinements. These are expected to be completed in the next two weeks.

Question 1A

What is the average street set back in the Hollywood central transition zone?

Answer 1A

Hollywood Central

* existing primary street setbacks: most common setback was 3-6m.
* proposed primary street setback under LPP: 4m setback, or a minimum of 3m with an average of 5m.

Question 1B

What street set back has the administration proposed in the draft LPP?

Answer 1B

The work undertaken does not specify the average street setbacks for the precincts, so we don't have a simple answer to this question. The survey broke down the setbacks into different ranges (3-6m setback, 6-9m setback or greater than 9m) and provided the percentage of dwellings within each setback range.

Question 2A

What is the average street set back in the Melvista west transition zone?

Answer 2A

Melvista West

* existing street setbacks: most common setback was 9m or greater however, more total properties had setbacks of 3-6m or 6-9m.
* proposed street setback under LPP: 4m setback, or a minimum of 3m with an average of 5m.

Question 2B

What street set back has the administration proposed?

Answer 2B

Refer to answer 1B.

Question 3

I refer to the Melvista West and Hollywood Central transition zone draft LPPs and the proposal to allow extra storey on blocks adjacent to a higher density and I ask: How many extra dwellings does the administration estimate this will result in?

Answer 3

This is not possible to predict as it is unknown how many lots will be developed and over what period.

# 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.

Mr Glen Chapman, 3/29 Asquith Street, Mt Claremont Item 11

(spoke in opposition to the recommendation)

Ms Emma Rose, 21 Mountjoy Road, Nedlands Item 6

(spoke in opposition to the recommendation)

Mr Andrew Jackson, 3/114 Stirling Highway, Nedlands Item 8

(spoke in opposition to the recommendation)

Mr Andrew Edwards, 14 Doonan Road, Nedlands Item 8

(spoke in opposition to the recommendation)

Mr Simon Edis, 72 Kingsway, Nedlands Item 9

(spoke in opposition to the recommendation)

Mr Ian Love, 70 Kingsway, Nedlands Item 9

(spoke in support of the recommendation)

Dr Kylie Passage, 80 Doonan Road, Nedlands Item 10

(spoke in support of the recommendation)

Mr Matthew McNeilly, 71 Doonan Road, Nedlands Item 10

(spoke in support of the recommendation)

Mr Peter Weston, 20 Strickland Street, Mt Claremont Item 11

(spoke in opposition to the recommendation)

Councillor Coghlan left the meeting at 6.46 pm and returned at 6.48 pm.

Councillor Wetherall left the meeting at 6.50 pm.

Mr Julius Matthys, 22 Cooper Street, Nedlands Item 12

(spoke in opposition to the recommendation)

Councillor Wetherall returned the meeting at 6.52 pm.

Mr Alessandro Stagno, 105 & 123 Broadway, Nedlands Item 9

(spoke in support of the recommendation)

# Disclosures of Financial / Proximity Interest

The Presiding Member reminded 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.

## Councillor Bennett – Item 9 – Scheme Amendment No. 7 – Amendment to Density Coding on Broadway, Hillway, Kingsway, Edward and Elizabeth Streets

Councillor Bennett disclosed a financial interest in Item 9 – Scheme Amendment No. 7 – Amendment to Density Coding on Broadway, Hillway, Kingsway, Edward and Elizabeth Streets, his interest being that his family home at 133 Broadway is located within the scheme amendment area. Councillor Bennett advised he holds a 1/3 interest in this property as an owner occupier and it has been owned by our family for over 75 years. Councillor Bennett declared that he had permission from the Minister for Local Government to fully participate in the discussion and decision making relating to this item subject to the following conditions:

1. The approval is only valid for the Special Council Meeting on 3 September 2020 when agenda item 9 is considered;

2. The abovementioned Councillor must declare the nature and extent of their interest at the abovementioned meeting when the matter is considered, together with the approval provided;

3. The CEO is to provide a copy of the Department’s letter of approval to the abovementioned Councillor;

4. The CEO is to ensure that the declarations, including the approval given and any conditions imposed, are recorded in the minutes of the abovementioned meeting, when the item is considered;

5. The CEO is to provide a copy of the confirmed minutes of the abovementioned meeting to the Department, to allow the Department to verify compliance with the conditions of this approval; and

6. The approval granted is based solely on the interests disclosed by the abovementioned Councillor, made in accordance with the application. Should other interests be identified, these interests will not be included in this approval and the financial interest provisions of the Act will apply.

## Councillor Hodsdon – Item 6 - Local Planning Scheme 3 – Draft Local Planning Policy – Melvista West Transition Zone

Councillor Hodsdon disclosed a financial & proximity interest in Item 6 - Local Planning Scheme 3 – Draft Local Planning Policy – Melvista West Transition Zone – Hodsdon, his interest being that he owns property in the area. Councillor Hodsdon declared that he would leave the room during discussion on this item.

## Councillor Hodsdon – Item 8 - Local Planning Scheme 3 – Draft Local Planning Policy Peace Memorial Rose Garden Precinct, Nedlands

Councillor Hodsdon disclosed a financial & proximity interest in Item 8 - Local Planning Scheme 3 – Draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands – Hodsdon, his interest being that he owns property in the area. Councillor Hodsdon declared that he would leave the room during discussion on this item.

# Disclosures of Interests Affecting Impartiality

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

## Mayor de Lacy – Item 12 - Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands

Mayor de Lacy disclosed an impartiality interest in Item 12 - Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands. Mayor de Lacy disclosed that she is a paid member of the MINJDAP that will be considering this item at a meeting scheduled for 7th September. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeod’s released to the local government sector in relation to a recent Supreme Court ruling, Mayor de Lacy declared she leave the room and not participate in the debate, or vote on the matter. Mayor de Lacy advised she would leave the room and request that the Deputy Mayor preside over the meeting for that item.

## Councillor Smyth – Item 12 - Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands

Councillor Smyth disclosed an impartiality interest in Item 12 - Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands. Councillor Smyth disclosed that she is a paid member of the MINJDAP that will be considering this item at a meeting scheduled for 7th September. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeod’s released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth declared she would leave the room and not participate in the debate, or vote on the matter.

## Councillor Youngman – Item 7 - Local Planning Scheme 3 – Draft Interim Local Planning Policy – Hollywood Central Transition Zone

Councillor Youngman disclosed an impartiality interest in Item 7 – Local Planning Scheme 3 – Draft Interim Local Planning Policy – Hollywood Central Transition Zone, his interest being that his mother owns property in the area. Councillor Youngman declared that he would leave the room during discussion on this item.

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

Nil.

Moved – Councillor Senathirajah

Seconded – Councillor Hay

**That item 8 be brought forward.**

**CARRIED 12/1**

**(Against: Cr. Wetherall)**

**Please note: This item was brought forward from page 37.**

# Local Planning Scheme 3 – Draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands

|  |  |
| --- | --- |
| **Council Date** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Revised Draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands dated 11 August 2020 2. Original draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands dated March 2020. 3. Revised policy with tracked changes dated 11 August 2020 4. Summary of Submissions 5. Heritage Council of WA advice |
| **Confidential Attachments** | 1. Confidential Attachment – Submissions |

**Councillor Hodsdon – Financial / Proximity Interest**

Councillor Hodsdon disclosed a financial & proximity interest, his interest being that he owns property in the area. Councillor Hodsdon declared that he would leave the room during discussion on this item.

Councillor Hodsdon Left the meeting at 7.07 pm.

**Regulation 11(da) - Council determined that it wished to adopted the community LPP in preference to the recommendation by Administration in order to support the apparent majority wishes of the community.**

Moved – Councillor Senathirajah

Seconded – Councillor Hay

**Council Resolution**

**That Council:**

1. **proceeds to adopt without further delay the Peace Memorial Rose Garden Local Planning Policy (PMRG LPP), incorporating the changes made to the advertised version in response to the submissions received; and**
2. **instructs the CEO to continue with Built Form Modelling and Local Character and Context Analysis (including issues raised by the Heritage Council in its submission to the draft LPP) for the area which includes the PMRG precinct, to further refine and test built- form options.**

**CARRIED UNANIMOUSLY 12/-**

Recommendation to Council

That Council:

1. does not proceed to adopt the Peace Memorial Rose Garden Local Planning Policy (PMRG LPP);
2. instructs the CEO to include the work of the PMRG LPP into the formulation of a sub-precinct, within the Local Government prepared Draft Melvista West Transition Zone Draft LPP, including significant changes submitted by the PMRG CWG on the 11th August 2020 for the purposes of advertising;
3. instructs the CEO to form a Community Reference Group (CRG) for the Melvista West Precinct Area (including the precinct boundary of the PMRG LPP); and
4. instructs the CEO to continue with Built Form Modelling and Local Character and Context Analysis for Stirling Highway (West) including the precinct boundary of Melvista West Transition Zone, including the sub-precinct boundary of PMRG LPP to further refine and test built form options, to be presented with any LPP which is ready to be adopted.

**Executive Summary**

The purpose of this report is for Council to consider the formal adoption of the resident authored Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands (PMRG - LPP) contained as **Attachment 1**. This policy is limited to the land directly east, west, and south of the Peace Memorial Rose Garden (PMRG).

The aim of PMRG - LPP is to establish localised planning provisions to guide development within the Peace Memorial Rose Garden (PMRG) policy area. The draft policy was prepared by residents of the City and submitted to Council to adopt for advertising in March 2020.

At its April meeting, Council resolved to adopt the original LPP – PMRG for advertising (see **Attachment 2**). Council also resolved to establish a Community Working Group (CWG) for the purpose of refining and developing the draft policy. Public consultation of the draft policy was undertaken in accordance with Local Planning Policy – Public Consultation of Planning Proposals and Part 2 clause 4 (deemed provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015. The majority of submitters, who resided both inside and outside of the policy area, supported the policy. However, half of the respondents who lived within the PMRG policy area objected to the draft policy. In accordance with Council’s resolution, two CWG meetings were held at the City, with feedback provided where requested.

In response to the outcomes of the advertising and feedback from the City, the residents have made, what could be considered, significant changes to the policy.

If Council were inclined to support this policy in its current form, the PMRG - LPP should be re-advertised as the provisions that have been amended are not deemed by Administration to be minor and have altered the intent of the advertised provisions. It could also be argued that because the revised LPP has moved back “closer” to the existing “rules” that the changes could be considered minor. However, there is no way of determining if submitters would now agree with these changes or that those who originally agreed with the draft LPP would now not support the changes.

The City has been criticised recently (Aged Care LPP) for adopting policies with significant changes to development standards without further consultation.

Administration do not support the final adoption of an untested local planning policy which augments-built form provisions. The draft policy requires built form modelling which is planned to form part of the current work for the Stirling Highway Activity Corridor and associated transition zones.

Administration also recommend that the PMRG - LPP be merged into the work of the Melvista West Transition Zone policy as a sub-precinct. This will allow for compliance with the deemed provisions as well as providing a consistent policy format and approach across all transitions zones within the City, satisfying the requirements of orderly and proper planning.

Final adoption of the policy is considered premature, given that the policy overlaps two other precincts, one of which is the subject of costly built form modelling and may be the subject to legal challenge.

**Background**

The gazettal of Local Planning Scheme No. 3 (the Scheme) made significant changes in density coding and zoning along Stirling Highway, Broadway, Hampden Road, Monash and Waratah Avenues and the areas adjacent. Administration identified key precincts and transition zones that require a localised planning response to adjust the development standards that currently apply. LPP – PMRG lies within an identified transition zone known as Melvista West. Work commenced on the precinct policies in November 2019 and the Melvista West transition zone in February/March 2020. A second report within this agenda is draft Interim LPP – Melvista West, presented to Council for adoption to advertising. The interim policy augments the planning provisions for single, grouped and multiple dwellings.

Neither policy has been tested by built form modelling approved as part of Council’s 2020/21 budget. Testing will commence shortly for the Melvista West transition zone once a consultant has been appointed.

In response to three development applications being lodged within the PMRG policy area, residents prepared PMRG - LPP. The original draft policy was submitted to Council at its April 2020 meeting to adopt for advertising.

Council resolved to:

1. prepares and advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Scheme) Regulations 2015 Schedule 2, Part 2, Clause 4, the Local Planning Policy - Rose Garden Transition Area (Attachment 1);
2. adopts the Rose Garden Precinct Community Working Group –Terms of Reference (Attachment 3); and
3. instructs the Chief Executive Officer to establish the Rose Garden Precinct Community Working Group in accordance with the Community Working Group Terms of Reference (Attachment 3)

Traditionally the purpose of a Community Working Group (CWG) is to provide community input into an Administration policy. Notwithstanding this, two Community Working Group (CWG) meetings were held in accordance with Council’s resolution. The first CWG meeting was facilitated by the Manager Urban Planning, the second by the Director Planning and Development. Despite being outside the scope of the CWG Terms of Reference, Administration provided a summary of submissions and written feedback outside of the scheduled meetings. Frank and unpopular advice was provided by Administration, some of which was taken on board by the CWG.

An amended draft LPP – PMRG was provided to the City, prepared by members of the CWG on 11 August 2020 that sought to address the feedback received during public consultation and CWG meetings. A comprehensive list of changes is provided in the tracked change version of the revised policy contained as **Attachment 3**. This amended policy is the subject of this report.

**Consultation**

The original draft policy dated March 2020 was advertised for public comment in accordance with Part 2 clause 4 (deemed provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015 and Council’s Local Planning Policy - Consultation of Planning Proposals. The following advertising methods were undertaken:

* Publication of a notice in the Post newspaper
* Publication of information on the City’s Your Voice website
* Social media posting
* Postage of letters to all owners and occupiers of property within 200m of the policy area
* Placement of a notice on the City’s notice board.

Submissions were invited up to and including 5 June 2020, a total of 65 submissions were received. A total of 48 submissions in support of the draft policy were received, and 15 submissions objected to the draft policy. Two submissions neither supported nor objected to the policy. All submissions are provided in full as **Attachment 4**.

The amended draft LPP has not been readvertised. The amended LPP submitted by the CWG seeks to modify building height, the deletion of several augmented elements and the addition of new provisions, for example average street setback. Whilst Administration has not commented on the merit of these changes, It is, in the Administration’s opinion, a significant departure from the advertised policy which are not considered minor in nature. It is noted that of those residents who lived within the policy area and made a submission, just over half objected to the draft policy.

A summary of the key reasons in support and objection to the LPP are tabled below:

Table 1 – Key reasons for support

|  |  |
| --- | --- |
| Reason for support | Officer comment |
| Fully supports the LPP, LPPs are able to address any planning matter and can augment the R-Codes Vol 2. | Noted.  The previous LPP included augmented visual privacy, deep soil and solar and daylight access provisions, all of which required WAPC support.  These provisions have since been removed.  It is noted that the advertised modifications to the Planning and Development Regulations 2020 seek to remove the ability for Local Governments to adopt Local Planning Policies which seek to modify any of the deemed to comply provisions of the R Codes without first receiving WAPC approval. |
| Comments that LPPs are recognised statutory instruments to be had regard of and given weight when decisions are made | Noted, however, all LPP’s require consistency with the Scheme and State Planning Policy framework. |
| Supports the objectives and the provisions of the policy which seeks to refine the current standards to the policy area’s unique context (Heritage, parkland setting), to ensure development is compatible and harmonious | Noted |
| Comments that the provisions are based upon sound town planning principles, consistent with the Scheme and R-Codes Vol 2 | This aspect of the policy is detailed in the Discussion section of this report. |
| Requests that the policy be adopted as soon as possible to fill the gap in localised development controls | Noted. |

Table 2 – Key reasons for objection

|  |  |
| --- | --- |
| Under the policy properties in R60 would only be able to build to two storeys yet be overshadowed by already approved development (up to 5-storeys) that have already been heavily impacted in terms of their own amenity. | Not supported.  The amended version of the policy provides for building height consistent with the R-Codes Vol. 2. |
| Strongly rejects the policy in its current form as it adversely impacts re-zoned blocks that haven’t been redeveloped. | Noted. |
| Requests the policy be referred to the WAPC. | The policy was not formally referred to the WAPC, however, the WAPC owns land within the advertising catchment and provided general advice about the preparation of a policy.  It is noted that changes to the planning framework, noted previously, may require these changes to be sent to the WAPC for approval. |
| Questions how the provisions can overrule the statutory legal provisions of SPP 7.3. | Policies can augment Acceptable Outcomes in Elements 2.2-2.7, 3.6, 3.7, 3.8, 4.10, 4.11 and 4.13 without WAPC approval. Please refer to previous comment regarding proposed amendments to the P&D LPS Regulations 2015 which seeks to modify this.  Policies which seek to amend the R-Codes Vol. 2 need to be consistent with the relevant element objectives, the Scheme and based on sound town planning principles.  A discussion of orderly and proper planning is provided later in this report. |
| The draft is biased and not prepared by the City. | Administration notes this issue and is discussed later in the report. |
| The provisions contradict the Scheme and R-Codes Vol 2. | To determine whether or not this contention is true, the City would need to undertake the built form modelling and test the policy in greater detail. |
| The policy effectively down-codes the policy area. | Noted.  The policy reduces plot ratio in R160 and R-AC1. Although this does not necessarily ‘down-code’ the area, it does reduce the dwelling yield. Built form modelling will test whether this is appropriate.  The City also notes that the draft policy has been amended to increase building height consistent with the current framework. |
| This draft policy does not transition height, rather it seeks to severely limit development potential of all properties. | Partially supported.  The draft policy has been amended to increase building height consistent with the current framework. It is noted, however, that plot ratio remains reduced for land coded R160 and R-AC1. |
| Questions the robustness of the policy to legal challenge and whether it will be taken into account at JDAP. | The City agrees that further testing is required to provide the justification needed for changes to elements such as plot ratio. |
| Requests that Council not adopt the policy and wait until a final version has been prepared | Noted.  The recommendations of this report are to not adopt the policy, for built form modelling to be undertaken, and for the PMRG - LPP to be merged with the Draft Melvista West – LPP. |
| Requests that the CWG include members that are directly affected by the new upcoding. | Not supported.  The CWG included residents that resided within the policy area.  The recommendation of this report is to establish a new CRG for the Melvista West Transition Zone with a new Terms of Reference. As part of that review, a larger number of residents could be included in the CRG. |
| It should be noted that any provisions under the LPP that propose to amend or replace sections under Clause 1.2.3 of State Planning Policy 7.3 – Residential Design Codes Volume 2 – Apartments require approval of the WAPC, where it will need to be demonstrated that the provision:   * is warranted due to a specific need related to that particular locality or region; * is consistent with the objectives and design principles of the R-Codes Volume 1; and * can be properly implemented and audited by the decision-maker as part of the ongoing building approval process. | Noted.  This comment is from the WAPC responding to the City as a landowner. The City notes the comments and agrees that the policy needs further testing to determine whether the settings currently proposed are appropriate. |

Some of the issues noted above have been partially resolved by the revised provisions, however, many remain pertinent to the recommendation of this report.

**External Referral**

Feedback was received from the Heritage Council of Western Australia (Heritage Council WA).

The Heritage Council WA provided the following advice, contained as **Attachment 5**:

The intent of the proposed Local Planning Policy is commendable as it seeks to provide development controls that is consistent and appropriate to the context and character of the subject area.

However, the proposed Local Planning Policy cannot be supported as drafted and the following advice is given:

1. The proposed Local Planning Policy should be revised to include a thorough examination and analysis of the cultural heritage values of the heritage places and the character within the subject area. This will provide the necessary framework to support the proposed development controls. This should include but not be limited to providing the following:
2. The Statement of Significance of the Peace Memorial Rose Garden
3. Information on the heritage significance of Greenough Flats and Renkema Building, both of which are in the Local Heritage Survey.
4. A character study of the built form and streetscape within the subject area.
5. The information above should then inform the proposed development controls that are needed to ensure that the identified cultural heritage significance of the subject area are not negatively impacted or can be appropriately mitigated.
6. The subject area should also be revised to include the lots north of Stirling Highway from Dalkeith Rd to the east and Robinson St to the west as the building heights on these lots have the potential to greatly impact on the Peace Memorial Rose Garden with overshadowing.
7. The City should consult with a rose specialist to understand sunlight requirements to help inform the building heights in the subject area to ensure overshadowing is not detrimental to the garden.

**Discussion**

The recommendation of this report is for Council to incorporate the work that has been undertaken on the draft policy, create a sub-precinct of the Melvista West Transition Zone for the PMRG LPP area and to undertake built form modelling to test built form provisions. Given that the policy has not been independently tested, Administration does not have any comment in relation to the merits of the provisions. Changes to drivers of dwelling yield such as plot ratio will require significant justification, which needs to be calculated. The 2020/21 budget has already made provision for this to be undertaken for Administration’s Draft Melvista West draft policy as part of the broader work being undertaken on the Stirling Highway (West) Precinct Plan. The matters outlined below are provided to Council in order to make its decision on whether or not to adopt the draft policy.

**Public consultation**

Although the majority of respondents supported to the policy, half of the submitters who live within the policy area and are directly affected by the draft policy provisions objected to it. The amended policy re-submitted by the CWG addresses some of the issues raised in public consultation however, not all of the issues.

Conversely, the residents who supported the policy did so on the basis of the advertised policy provisions. The amended policy re-submitted by the CWG has increased the Acceptable Outcome for building height for development on land coded R160 from 3-storeys to 5-storeys. Given this significant change, the City cannot be certain that the residents who supported the reduced building height would continue to support the revised policy.

The fact that the PMRG - LPP was prepared by residents is a key issue raised during public consultation. While the policy has been amended and has taken on board some of the feedback provided by the City, the authors of the policy are residents, which may affect the weight afforded to it by decision makers.

The draft policy was referred to the Heritage Council of WA as it is a planning instrument that potentially impacts the State heritage listed PMRG. The Heritage Council of WA does not support the policy and recommends that the City further examine and analyse the cultural heritage values of the area and for a statement of a significance of the PMRG to be included. To ensure that development protects the PMRG, it is recommended that the policy area take into account the northern side of Stirling Highway (to consider overshadowing from the northern side of Stirling Highway) and for horticultural expertise to be sought. The advice from the Heritage Council suggests that the adoption of the policy in its current does not provide enough qualified heritage based justification for the policy to be afforded weight by decision-makers and it is premature to adopt it in its current form.

**Orderly and Proper Planning**

The making of a local planning policy is governed by clause 3 of the Deemed provisions for local planning schemes contained in Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015. The deemed provisions are read into Local Planning Scheme No.3. Clause 3(3) of the deemed provisions states:

‘A local planning policy must be based on sound town planning principles and may address either strategic or operational considerations in relation to the matters to which the policy applies’.

Critical to the weight afforded to any policy by a decision maker is whether the policy is based on sound town planning principles. In that regard, it is relevant that the draft policy is being prepared prior to built form modelling and testing for this area.

The City will not provide a critique of the merits of the policy, as further testing is needed. It is noted that the adoption of draft LPP – PMRG prior to built form modelling, may result in inconsistent policy provisions applying to properties on Doonan Road, Mountjoy Road and Stirling Highway. These streets form the border of the PMRG policy area which lies within several planned transition zones and precincts. Further, existing approvals within the policy area itself (17-19 Louise and 13 Vincent Streets) could be inconsistent with the proposed policy provisions. **Figure 1** below outlines the properties that may have different planning provisions to neighbouring properties within the PMRG policy area.



**Figure 1** – Properties that border the PMRG policy area

The formal adoption of draft LPP – PMRG will remove a key area of the Town Centre Precinct Policy, which was adopted for readvertising by Council at the June 2020 meeting. No consideration was given to the modified boundary. Should Council adopt draft LPP – PMRG, another round of advertising of the Town Centre Precinct policy will be required. Further, adoption of the PMRG – LPP will void the work already completed for the draft LPP – Town Centre for that area.

Given the planning being undertaken for this area and adjacent precincts, the City is of the view that it is premature to formally adopt an untested policy that conflicts with several other precincts.

**Strategic Implications**

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

The City’s Local Planning Strategy identifies urban growth areas and transition zones within the City, which have been reflected in rezoning and up-coding through LPS3. This Local Planning Policy provides design guidance for the transition zones.

**Who benefits?**

The intent of the policy is to adjust the built form settings to moderate development. Who benefits from the policy is dependent on whether policy provisions are tested and found to be consistent with the Scheme and relevant element objectives?

**Does it involve a tolerable risk?**

The City does not recommend formally adopting the policy. There are significant changes to the Draft LPP which are not minor in nature and would require further community consultation. The City has been criticised recently (Aged Care LPP) for adopting policies with significant changes to development standards without further consultation.

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

Further information is required and can be obtained through built form modelling of the proposed provisions for the Transition Zones.

**Budget/Financial Implications**

**Can we afford it?**

The costs associated with built form modelling are included in the Council’s current year budget.

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

Nil.

**Statutory Provisions**

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

Under Schedule 2, Part 2, Clause 3(1) of the Regulations the local government 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 formally adopt an LPP it must publish a notice of the proposed policy in a newspaper circulating the area for a period not less than 21 days.

**Conclusion**

Administration does not support the policy in its current form given changes have been made to the policy, which have not been either advertised or tested.

Final adoption of the policy is considered premature, given that the policy overlaps two other precincts, one of which is the subject of costly built form modelling.

The City is currently finalising the Draft Policy for Melvista West Transition Zone which will be rigorously tested with built form modelling by an independent planning consultancy. Adoption of the revised draft LPP – PMRG may result in different built form outcomes within the same street, contrary to the requirement of orderly and proper planning.

Should Council wish to proceed with the policy as it now stands, then an alternative recommendation should be put forward proposing to re-advertise the policy, rather than simply adopting it, on the basis of the significant changes made since it was previously advertised.

# Local Planning Scheme 3 – Draft Local Planning Policy – Melvista West Transition Zone

|  |  |
| --- | --- |
| **Council Date** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Draft LPP – Melvista West Transition Zone |
| **Confidential Attachments** | Nil. |

**Councillor Hodsdon – Financial / Proximity Interest**

Councillor Hodsdon disclosed a financial & proximity interest, his interest being that he owns property in the area. Councillor Hodsdon declared that he would leave the room during discussion on this item.

**Regulation 11(da) - Not applicable – Council’s resolution was broadly in accordance with the Administration’s recommendation.**

Moved – Councillor Wetherall

Seconded – Councillor Poliwka

**That the Recommendation to Council be adopted subject to:**

1. **after the word ‘Zone’ add the words “(as amended in Attachment 1).*”***
2. **amends Attachment 1, Figure 13 to remove the star (\*) from lots 10 Doonan Road, and 13, 15, 17 and 19 Mountjoy Road.**

**CARRIED ON THE CASTING VOTE 6/6**

**(Against: Crs. Horley Bennett Mangano Youngman**

**Coghlan & Senathirajah)**

**Council Resolution**

**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 Draft Local Planning Policy – Melvista West Transition Zone (as amended in Attachment 1); and**
2. **amends Attachment 1, Figure 13 to remove the star (\*) from lots 10 Doonan Road, and 13, 15, 17 and 19 Mountjoy Road.**

Recommendation to Council

Council prepares and advertises for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4, the Draft Local Planning Policy – Melvista West Transition Zone; and

**Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) the draft Local Planning Policy – Melvista West Transition Zone, contained as Attachment 1.

This policy seeks to establish a localised planning response for the Melvista West Transition Zone (the transition zone). The policy provides the City’s starting point for development with respect to the built form, façade design, tree canopy, landscaping, car parking and vehicle access. The policy will be informed by built form modelling, legal and architectural review, external referral, horticultural and heritage advice. The City is required to establish what the future desired context and character is for these areas and to provide design guidance for decision makers, the community, and developers in this area. These built form guidelines will balance the preservation of valued elements of built form character with the requirements of the existing local planning framework and associated zoning. The policy’s intent is to achieve the delivery of housing diversity with reasonable built form and design provisions.

This policy is being presented to Council for consent to advertise to the community in draft format. Built form modelling is required to be undertaken to test the existing planning framework, the Peace Memorial Rose Garden Precinct, Nedlands – LPP and the transition zone policy provisions. This will be undertaken prior to finalising the policy and will be brought back to Council with the associated testing and modelling in its final version for adoption. The built form modelling will provide the necessary information to ascertain the most effective built form controls for this area. However, Administration also wishes to seek feedback on this draft concept from Council and the City’s residents which may involve several rounds of consultation.

**Background**

With the gazettal of Local Planning Scheme No. 3 (the Scheme) 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.

The City’s Local Planning Strategy identifies the areas directly adjacent to these Precincts as Transition Zones, and states the intention of them as:

“Transition Zones will exist immediately adjacent to Urban Growth Areas for the purposes of creating a buffer between high intensity and low intensity development. This buffer will visually smooth the differences in built form (e.g., height, bulk etc.) and help mitigate any conflict between non-compatible land uses. It is expected the Transition Zones will contain mostly residential developments of multiple dwellings (apartments) and grouped dwellings (townhouses and similar). Some small-scale non-residential uses may still be appropriate.”

Administration have identified several locations bordering the Precincts that have medium to high density coding that function as Transition Zones for low density areas. A suite of Local Planning Policies is being prepared to provide guidance on the preferred built form for these Zones. This will ensure that the desired character of these areas is identified and considered by future development.

Transition Zones Local Planning Policy Preparation Process

To ascertain the existing character of the area, Administration conducted built form character surveys in the Transition Zones. City staff and volunteers from the Urban Planning and Architecture departments at Curtin University and the University of Western Australia undertook the survey. Each street within the Transition Zones was walked, with each dwelling photographed and its features documented.

The data from this survey was collated into spreadsheets, and now offers meaningful information regarding the existing built form of the various Transition Zones. This data provides insight into the aspects of the street that contribute to its character. Key elements that the Policies should seek to retain were identified, such as significant front and rear setbacks, mature vegetation and discreet car parking structures. The Policies have been developed by utilising the information produced from this data.

The Transition Zones Policies will capture the following Transition Zones:

* Hollywood Central;
* Hollywood West;
* Melvista East;
* Melvista West; and
* Hollywood East – it is noted that this will be included in the Hampden Road Activity Centre, due to their proximity and shared unique architectural form.

During discussion around these policies between Administration and the Department of Planning, Lands and Heritage (DPLH), Administration has been advised that these policies will be required to be supported by rigorous built form modelling to support the proposed requirements. Built form modelling will provide a sound strategic planning framework to support the policy and provide it with statutory weight, which is vital in the event that the policy is tested in a legislative environment such as the State Administrative Tribunal. Further advice has been provided to the effect that built form controls, once developed, should be incorporated into the Scheme. The appropriate time to undertake scheme amendments will be once built form modelling and consultation have been finalised. Once provisions via scheme amendment have then been adopted and gazetted, those provisions can be removed from the local planning policies.

Community Engagement

A key element in formulating the Transition Zone Policies will be feedback received from the Nedlands community. The initial step in the community engagement program for these Policies has been the Transition Zones – Planning for the Future Your Voice page going live. This page includes a survey that community members can complete to share their thoughts on what they believe the valued elements of their local area are. This page also contains information on what Transition Zones and Precincts are, statements about the character of the Transition Zones, and FAQ’s in relation to the local and state planning framework.

The feedback collected from this survey will be considered in conjunction with the feedback received during the draft Policy’s advertising period. Once built form modelling and peer reviews have been completed, a community engagement program will be created by Administration. This program will bring the communities feedback, along with the built form modelling results, together to be presented to Council and the community in an interactive format. The end result of the community engagement program will be that the Policy has been through several rounds of engagement with both the Council and the community, maximising the transparency of the process.

**Detail**

This policy applies to all residential developments within the Melvista West Transition Zone. Melvista West is located within the Melvista Ward, to the west of the designated Melvista East precinct. The precinct is bounded by Stirling highway in the north, Jenkins Avenue in the south, Mountjoy in the east and the western side of Rockton Road.

Abutting the precinct to the south are R10 and R12.5 coded properties south of Jenkins Avenue, and to the north lies the Nedlands Town Centre and Stirling Highway West Precincts, with a density code of R-AC1. The lots within Melvista West are coded R160 abutting the Precincts, and then R60 as the Zone moves towards the low-density residential area to the south. A map of Melvista West is shown in **Figure 1**.

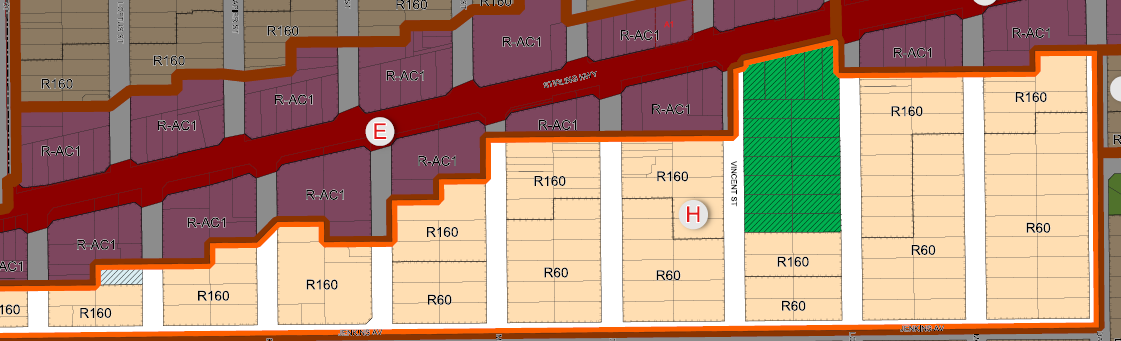


Figure 1 – Melvista West Transition Zone (Precinct H)

The purpose of the Transition Zone Policies is to provide design guidance and built form provisions for residential developments within the Transition Zone. These built form requirements will aid in the preservation of valued elements of built form character within the Transition Zones. The policy is also intended to provide guidance to assist officers in assessing applications for residential developments within Melvista West.

The City has engaged consultant Hames Sharley to present the Policies in a professional typeset format, including mapping of the precinct areas. This mapping includes representations of the potential pattern of development within the Transition Zone in accordance with the built form provisions proposed. Presenting the Policy and mapping in this manner is intended to provide Council and the community with a tangible representation of the proposed built form controls and how they will translate into real world development outcomes. These provisions will be supported by the built form modelling that will form the testing part of the process of creating these Policies.

Residents have prepared draft Peace Memorial Rose Garden Precinct, Nedlands – LPP and is included within this agenda for Council to formally adopt. The recommendation is for Council to not adopt the policy and to allow Administration to test the provisions alongside the Melvista West provisions. Depending on the outcome of built form modelling, there is scope for a sub-precinct to be established that would provide site specific provisions to the properties adjacent to the Peace Memorial Rose Garden.

**Consultation**

If Council resolves to prepare the draft Melvista West Transition Zone Policies, they 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; or
2. Proceed with the policy with modification; or
3. Not to proceed with the policy.

**Strategic Implications**

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

The City’s Local Planning Strategy identifies urban growth areas and transition zones within the City, which have been reflected in rezoning and up-coding through the Scheme. This Policy provides design guidance for the transition zones, and facilitates urban growth identified in the Strategy in a manner that will impose minimal negative impacts on surrounding residential properties.

**Who benefits?**

The City and its residents will benefit from this Local Planning Policy. The Policy is intended to reduce the impact of grouped and multiple dwellings developments on single residential dwellings and will establish the position of desired future character for the area in the context of its transitioning nature from low density to more intense infill.

**Does it involve a tolerable risk?**

The Transition Zones Policies are considered to decrease the risks to the City and its residents that are associated with infill development.

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

Further information is required and can be obtained through built form modelling of the proposed provisions for the Transition Zones.

**Budget/Financial Implications**

**Can we afford it?**

The costs associated with this Local Planning Policy are in relation to advertising and built form modelling, both of which are included in the planning projects budget.

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

Nil.

**Statutory Provisions**

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

Under Schedule 2, Part 2, Clause 3(1) of the 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 policy it must publish a notice of the proposed policy in a newspaper circulating the area for a period not less than 21 days.

**Conclusion**

The transition zone policy provides design guidance and built form provisions to assist in retaining the valued character elements of the area.

In accordance with advice received from the WAPC, built form modelling is required to provide a sound strategic planning framework to support the policy and provide it with statutory weight, prior to final endorsement.

With the inclusion of thorough built form modelling and community consultation, the Policy will provide a robust strategic and statutory planning framework to guide development within the Transition Zone.

As such, it is recommended that Council endorses administration’s recommendation to prepare (consent to advertise) draft LPP - Melvista West Transition.

# Local Planning Scheme 3 – Draft Interim Local Planning Policy – Hollywood Central Transition Zone

|  |  |
| --- | --- |
| **Council Date** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Draft LPP – Hollywood Central Transition Zone |
| **Confidential Attachments** | Nil. |

Councillor Hodsdon returned to the meeting at 7.30 pm.

**Councillor Youngman – Impartiality Interest**

Councillor Youngman disclosed an impartialityl interest, his interest being that his mother owns property in the area. Councillor Youngman declared that he would leave the room during discussion on this item.

Councillor Youngman left the meeting at 7.42 pm.

**Regulation 11(da) - Council’s alternative recommendation was lost and no alternative motion was foreshadowed.**

Moved – Councillor Wetherall

Seconded – Councillor Poliwka

**That the Recommendation to Council be adopted subject to amending clause 2 as per below:**

1. **instructs the Chief Executive Officer to engage a consultant to prepare built form modelling which includes investigating appropriate transitioning associated with lots immediately adjacent to the Hollywood Central Zone, that face south onto Bedford Street and Carrington Street, and east onto Dalkeith Road. This is to be part of the modelling for Stirling Highway Precincts (East and West) as well as Hampden Road, Hollywood West and Hollywood East for the Transition Zone Local Planning Policies**

**Lost 5/7**

**(Against: Crs. Horley McManus Bennett Mangano**

**Coghlan Hay & Senathirajah)**

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 Transition Zone (Hollywood Central) Local Planning Policy; and
2. instructs the Chief Executive Officer to engage a consultant to complete built form modelling, as part of the modelling for Stirling Highway Precincts (East and West) as well as Hampden Road and Hollywood East for the Transition Zone Local Planning Policies.

**Executive Summary**

The purpose of this report is for Council to prepare (adopt for advertising) the Hollywood Central Transition Zone Local Planning Policy.

This policy seeks to establish the local planning framework for the Hollywood Central Transition Zone. To do this the City is required to establish what the future desired context and character is for these areas and to provide design guidance and certainty for decision makers, the community, and developers in this area. In establishing the desired future character of the precinct, the policy will provide design guidance and built form requirements for development within the Transition Zones. These built form guidelines will balance the preservation of valued elements of built form character with the requirements of the existing local planning framework and associated zoning. These policies will provide a planning instrument to facilitate best practice design in delivering housing diversity in the context of areas which have been significantly up coded in density.

This policy is being presented to Council for consent to advertise to the community in draft format. Further built form modelling is required to be undertaken to test the existing planning framework as well as test the draft policy provisions being presented. This will be undertaken prior to finalising the policy and will be brought back to Council with the associated testing and modelling in its final version for adoption. The built form modelling will provide the necessary information to ascertain the most effective built form controls for this area. However, Administration also wishes to seek feedback on this draft concept from Council and the City’s residents which may involve several rounds of consultation.

**Background**

With the gazettal of the Scheme 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.

The City’s Local Planning Strategy identifies the areas directly adjacent to these Precincts as Transition Zones, and states the intention of them as:

“Transition Zones will exist immediately adjacent to Urban Growth Areas for the purposes of creating a buffer between high intensity and low intensity development. This buffer will visually smooth the differences in built form (e.g., height, bulk etc.) and help mitigate any conflict between non-compatible land uses. It is expected the Transition Zones will contain mostly residential developments of multiple dwellings (apartments) and grouped dwellings (townhouses and similar). Some small-scale non-residential uses may still be appropriate.”

Administration have identified several locations bordering the Precincts that have medium to high density coding that function as Transition Zones for low density areas. A suite of Local Planning Policies is being prepared to provide guidance on the preferred built form for these Zones. This will ensure that the desired character of these areas is identified and considered by future development.

**Transition Zones Local Planning Policy Preparation Process**

To ascertain the existing character of the area, Administration conducted built form character surveys in the Transition Zones. City staff and volunteers from the Urban Planning and Architecture departments at Curtin University and the University of Western Australia undertook the survey. Each street within the Transition Zones was walked, with each dwelling photographed and its features documented.

The data from this survey was collated into spreadsheets, and now offers meaningful information regarding the existing built form of the various Transition Zones. This data provides insight into the aspects of the street that contribute to its character. Key elements that the Policies should seek to retain were identified, such as significant front and rear setbacks, mature vegetation and discreet car parking structures. The Policies have been developed by utilising the information produced from this data.

The Transition Zones Policies will capture the following Transition Zones:

* Hollywood Central;
* Hollywood West;
* Melvista East;
* Melvista West; and
* Hollywood East – it is noted that this will be included in the Hampden Road Activity Centre, due to their proximity and shared unique architectural form.

During discussion around these policies between Administration and the Department of Planning, Lands and Heritage (DPLH), Administration has been advised that these policies will be required to be supported by rigorous built form modelling to support the proposed requirements. Built form modelling will provide a sound strategic planning framework to support the policy and provide it with statutory weight, which is vital in the event that the policy is tested in a legislative environment such as the State Administrative Tribunal. Further advice has been provided to the effect that built form controls, once developed, should be incorporated into the Scheme. The appropriate time to undertake scheme amendments will be once built form modelling and consultation have been finalised. Once provisions via scheme amendment have then been adopted and gazetted, those provisions can be removed from the local planning policies.

**Community Engagement**

A key element in formulating the Transition Zone Policies will be feedback received from the Nedlands community. The initial step in the community engagement program for these Policies has been the Transition Zones – Planning for the Future Your Voice page going live. This page includes a survey that community members can complete to share their thoughts on what they believe the valued elements of their local area are. This page also contains information on what Transition Zones and Precincts are, statements about the character of the Transition Zones, and FAQ’s in relation to the local and state planning framework.

The feedback collected from this survey will be considered in conjunction with the feedback received during the draft Policy’s advertising period. Once built form modelling and peer reviews have been completed, a community engagement program will be created by Administration. This program will bring the communities feedback, along with the built form modelling results, together to be presented to Council and the community in an interactive format. The end result of the community engagement program will be that the Policy has been through several rounds of engagement with both the Council and the community, maximising the transparency of the process.

**Detail**

This policy applies to all residential developments within the Hollywood Central Transition Zone. Hollywood Central is located within the Hollywood Ward, between the Hollywood West and Hollywood East Transition Zones and stretches between Martin Avenue and Williams Road.

Abutting the precinct to the north are R10 and R12.5 coded properties along Bedford Street, Carrington Street and Gordon Street, and to the south lies the Nedlands Town Centre and Stirling Highway East Precincts, with a density code of R-AC1. The lots within Hollywood Central are coded R160 abutting the Precincts, and then R60 as the Zone moves towards the low-density residential area to the north. A map of Hollywood Central is shown in Figure 1.

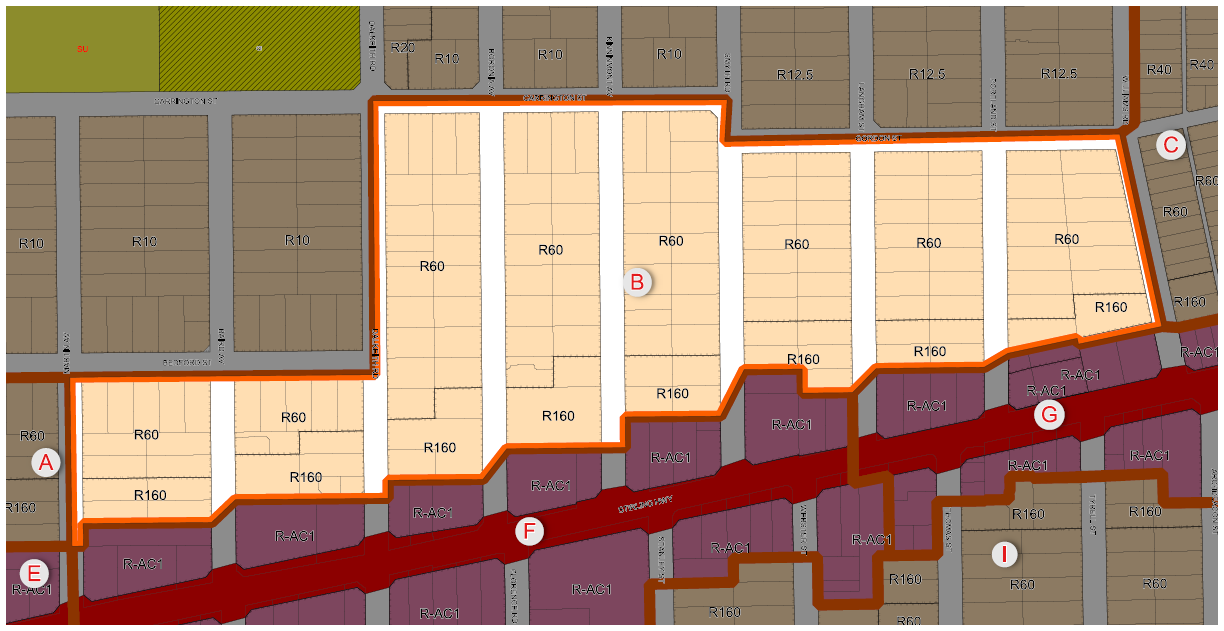


Figure 1 – Hollywood Central Transition Zone

The purpose of the Transition Zone Policies is to provide design guidance and built form provisions for residential developments within the Transition Zone. These built form requirements will aid in the preservation of valued elements of built form character within the Transition Zones. The policy is also intended to provide guidance to assist officers in assessing applications for residential developments within Hollywood Central.

The City has engaged consultant Hames Sharley to present the Policies in a professional typeset format, including mapping of the precinct areas. This mapping includes representations of the potential pattern of development within the Transition Zone in accordance with the built form provisions proposed. Presenting the Policy and mapping in this manner is intended to provide Council and the community with a tangible representation of the proposed built form controls and how they will translate into real world development outcomes. These provisions will be supported by the built form modelling that will form the testing part of the process of creating these Policies

**Consultation**

If Council resolves to prepare the draft Hollywood Central Transition Zone Policies, they 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; or
2. Proceed with the policy with modification; or
3. Not to proceed with the policy.

**Strategic Implications**

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

The City’s Local Planning Strategy identifies urban growth areas and transition zones within the City, which have been reflected in rezoning and up-coding through the Scheme. This Policy provides design guidance for the transition zones, and facilitates urban growth identified in the Strategy in a manner that will impose minimal negative impacts on surrounding residential properties.

**Who benefits?**

The City and its residents will benefit from this Local Planning Policy. The Policy is intended to reduce the impact of grouped and multiple dwellings developments on single residential dwellings and will establish the position of desired future character for the area in the context of its transitioning nature from low density to more intense infill.

**Does it involve a tolerable risk?**

The Transition Zones Policies are considered to decrease the risks to the City and its residents that are associated with infill development.

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

Further information is required and can be obtained through built form modelling of the proposed provisions for the Transition Zones.

**Budget/Financial Implications**

**Can we afford it?**

The costs associated with this Local Planning Policy are in relation to advertising and built form modelling, both of which are included in the current year budget.

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

Nil.

**Statutory Provisions**

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

Under Schedule 2, Part 2, Clause 3(1) of the 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 policy it must publish a notice of the proposed policy in a newspaper circulating the area for a period not less than 21 days.

**Conclusion**

The Hollywood Central Transition Zones Policy provide design guidance and built form provisions to assist in retaining the valued character elements of the area.

In accordance with advice received from the WAPC, built form modelling is required to provide a sound strategic planning framework to support the policy and provide it with statutory weight, prior to final endorsement.

With the inclusion of thorough built form modelling and community consultation, the Policy will provide a robust strategic and statutory planning framework to guide development within the Transition Zone.

As such, it is recommended that Council endorses administration’s recommendation to prepare (consent to advertise) the Transition Zones (Hollywood Central).

**Please note: this item was brought forward see page 11.**

# Local Planning Scheme 3 – Draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands

|  |  |
| --- | --- |
| **Council Date** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | Nil |
| **Attachments** | 1. Revised Draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands dated 11 August 2020 2. Original draft Local Planning Policy - Peace Memorial Rose Garden Precinct, Nedlands dated March 2020. 3. Revised policy with tracked changes dated 11 August 2020 4. Summary of Submissions 5. Heritage Council of WA advice |
| **Confidential Attachments** | 1. Confidential Attachment – Submissions |

# Scheme Amendment No. 7 – Amendment to Density Coding on Broadway, Hillway, Kingsway, Edward and Elizabeth Street

|  |  |
| --- | --- |
| **Council** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil |
| **Reference** | Nil |
| **Previous Item** | PD15.20 – OCM April 2020 |
| **Attachments** | 1. Scheme Amendment No. 7 Justification Report 2. Scheme Amendment No. 7 Schedule of Submissions |
| **Confidential Attachments** | 1. Scheme Amendment No. 7 Full Submissions 2. Petition Scheme Amendment No. 7 |

Councillor Youngman returned to the room at 7.46 pm

**Regulation 11(da) - Council determined that it wished to support the Scheme Amendment in support of the community.**

Moved – Councillor Wetherall

Seconded – Mayor de Lacy

**Council:**

1. **pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with section 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports without modification Scheme Amendment No. 7 to amend Local Planning Scheme No. 3 as follows:**
2. **As detailed in Attachment 1 – Scheme Amendment No. 7 Justification Report**
3. **in accordance with *Planning and Development (Local Planning Schemes) Regulations 2015* section 53(1) submit 2 copies of the proposed Scheme Amendment No. 7 to the West Australian Planning Commission.**

Amendment

Moved - Councillor Bennett

Seconded - Councillor Mangano

1. **in clause 2 add the words “before the close of business Friday 4th September 2020”; and**

**The AMENDMENT was PUT and was**

**CARRIED 12/1**

**(Against: Cr. Wetherall)**

1. **add a clause 3 as follows:**
2. **instructs the CEO to hire an external planning consultant, to the satisfaction of the Mayor, to be the WAPC / DPLH liaison and presenter for all planning matters relating to SA7, so that the City may redirect resources to other priority planning matters.**

**The AMENDMENT was PUT and was**

**CARRIED 11/2**

**(Against: Crs. McManus & Poliwka)**

**The Substantive was PUT and was**

**CARRIED UNANIMOUSLY 13/-**

**Council Resolution**

**Council:**

1. **pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with section 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports without modification Scheme Amendment No. 7 to amend Local Planning Scheme No. 3 as follows:**
2. **As detailed in Attachment 1 – Scheme Amendment No. 7 Justification Report**
3. **in accordance with *Planning and Development (Local Planning Schemes) Regulations 2015* section 53(1) submit 2 copies of the proposed Scheme Amendment No. 7 to the West Australian Planning Commission before the close of business Friday 4th September 2020; and**
4. **instructs the CEO to hire an external planning consultant, to the satisfaction of the Mayor, to be the WAPC / DPLH liaison and presenter for all planning matters relating to SA7, so that the City may redirect resources to other priority planning matters.**

Recommendation to Council

Council:

1. in accordance with section 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* does NOT support Scheme Amendment No. 7 to Local Planning Scheme No. 3 as detailed in Attachment 1 for the following reason:
   1. The amendment is not based on sound town planning principles in accordance with Schedule 2, Part 2 Clause 3 of the Planning and Development (Local Planning Schemes) Regulations 2015 (Deemed Provisions as the City has not yet completed built form modelling or testing to establish suitability for the density codes that are proposed; and
   2. The proposed scheme amendment is premature. Local Planning Scheme No. 3 was adopted in April 2019, changes in density should occur at the 5-year review cycle and therefore should not be supported at this time.

OR

Council:

1. Pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with section 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports without modification Scheme Amendment No. 7 to amend Local Planning Scheme No. 3 as follows:
2. As detailed in Attachment 1 – Scheme Amendment No. 7 Justification Report
3. In accordance with *Planning and Development (Local Planning Schemes) Regulations 2015* section 53(1) submit 2 copies of the proposed Scheme Amendment No. 7 to the West Australian Planning Commission.

**Executive Summary**

The purpose of this report is for Council to provide consent to adopt or refuse post advertising the proposed Scheme Amendment No. 7 to Local Planning Scheme No. 3 (LPS3).

At the Council Meeting held on the 25 February 2020, Council resolved to propose an amendment to lower the density code of properties within the Broadway Precinct along both Broadway and Kingsway. The amendment was then presented to Council on the 28 April 2020, where Council resolved:

Council Resolution

Council:

* 1. pursuant to Section 75 of the Planning and Development Act 2005, adopts an Amendment to Local Planning Scheme 3 by:
     1. Changing the residential density coding of subject properties as

follows:

* + Numbers 2 to 36 Kingsway and 42 to 96 Kingsway, Nedlands from R60 to R40;
  + Numbers 7 to 23 Hillway, Nedlands from R60 to R40 (northwest side of street);
  + Numbers 1 to 4 Hillway, Nedlands from R-AC3 to R-AC4 (northwest side of street);
  + Number 5 Hillway, Nedlands from R-AC3 to R40
  + Numbers 69 to 139 Broadway, Nedlands from R-AC3 to RAC4;
  + Number 2 Edward Street from R-AC3 to R-AC4; and
  + Numbers 1, 1A and 1B Elizabeth Street from R-AC3 to RAC4.
  1. in accordance with Planning and Development (Local Planning Schemes) Regulations 2015 section 35(2), the City believes that the amendment is a Standard Amendment for the following reasons:
     1. The amendment proposes a modified density code that remains consistent with the objectives identified in the scheme for that zone;
     2. The amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;
     3. The amendment is consistent with the Metropolitan Region Scheme that applies to the scheme area.
  2. instructs the CEO to review and incorporate relevant content and justifications within the Rise Urban report “LPS 3 – Scheme Amendment No.7” into the Attachment 1 Scheme Amendment Justification Report to the satisfaction of the Mayor, noting that the Rise Urban report is based on the Feb 25 Council resolution and provides additional justification based on the Nedlands Local Planning Strategy endorsed by the WAPC in 2017;

Administration does not support the proposed Scheme Amendment because it is premature of built form modelling and testing which is currently being undertaken by the City.

Cognisant of the desire of the community to nevertheless press ahead with a scheme amendment, due to concerns with inappropriate development, an alternative recommendation is provided should Council wish to proceed with Scheme Amendment 7 at this time.

**Details/Overview**

At the April 2020 Council Meeting, Council was advised that Scheme Amendment No. 7 is complex in nature in line with the *Planning and Development (Local Planning Schemes) Regulations 2015* (the Regulations). Council adopted the amendment as a standard amendment and advertise accordingly. Administration is concerned that the amendment is complex and therefore approval to advertise from the West Australian Planning Commission (the Commission) should have been sought and advertising should have been undertaken for 60 days. However, Administration has treated the amendment as standard in line with the April 2020 resolution.

Once Council has resolved to support or not support the amendment, copies of the amendment will be sent to the Commission in line with the Regulations. The Commission may then determine whether the amendment is standard or complex, in accordance with Clause 54 of the Regulations, and may direct the amendment to be treated as complex. If that is the case the following will take place:

If, on receipt of documents provided to it under regulation 53(1), the Commission considers that the amendment to local planning scheme is a complex amendment, the Commission may direct the local government –

* 1. To readvertise the amendment as a complex amendment; or
  2. To take any other steps the Commission considers appropriate to advertise the amendment.

Readvertising the amendment would be for 60 days in line with the Regulations Part 5 Division 3 Section 54.

If the Commission are accepting of the amendment as a standard amendment, The Commission will then make a recommendation to the Minister. The Minister will then decide whether to support or not support the amendment.

The City’s Local Planning Scheme No. 3 (LPS 3) came into effect April 2019. The City has been advised by the Department of Planning, Lands and Heritage (the Department) that density code changes should occur at the 5-year review cycle and not earlier and that any transitioning issues should take the form of revised built form controls, based on modelling and testing.

Requests to amend density coding prior to the 5-year review cycle should be accompanied by built form modelling, testing and thorough planning research. The City has currently engaged consultants to undertake built form modelling and traffic modelling for the City in the Broadway precinct. Adopting a change in density prematurely of the results of this built form modelling would undermine the work currently being undertaken and would therefore not provide a strong argument to substantiate changes in density coding. Through the built form modelling the City will have evidence-based research which will test three scenarios. This will test the building bulk and massing, as well as the transitioning impacts of current density coding to lower codes adjacent.

Once the built form modelling is complete, the City will be able to evaluate the three scenarios and correlate building envelope and primary controls into dwelling yield calculations. It will then be tested as to whether each tested scenario maintains the objective of providing the opportunity for maintaining the dwelling yield targets of Perth to Peel @ 3.5 million, and that the preferred scenario does not seek to wholesale lower density and dwelling yield target achievement.

The likely scenario is that the City, through refinement of the local planning framework, will achieve and strike a balance between providing development potential, diversity in housing, whilst achieving state planning objectives of increased infill targets. The balance will also include nuancing planning controls to ensure that transitioning impacts are minimised, that amenity impacts are ameliorated and where possible, interfacing between higher and lower R Codings is adequately separated, screened and adjoining lower coded properties are satisfactorily protected.

As this work is currently not finalised, it would be premature for the City to adopt a scheme amendment at this time. For an amendment to be taken seriously, and to have the strongest case for approval, the built form modelling and testing is needed, and this information form part of any justification report for density code changes. This information is also likely to provide the necessary information to substantiate built form controls that may not require density code changes, and that impacts currently being experienced or likely to be experienced from proposed developments can be mitigated through adequate nuanced local planning and built form controls.

**Strategic Documents**

**Built Form Modelling / Distinctiveness Character Study**

The City has engaged consultants at Hassell to complete a local distinctiveness study, context analysis and built form modelling to inform built form controls within the Broadway Precinct Local Plan. The intent of the distinctiveness study is to review the characteristics of the existing built form that inform the character of the place.  The focus has been to uncover elements that make a positive contribution to local distinctiveness and the opportunities for enhancement. The local distinctiveness study and context analysis will be used to inform built form modelling, which will test different development scenarios for the precinct. Once these development scenarios are reviewed and explored through community engagement, a local precinct-based planning policy will be drafted for the precinct, which will define appropriate built form controls which are likely to form an amendment to the Scheme.

It is expected that built form controls will seek to ameliorate the impacts of harsh transitions in density coding, such as the RAC3 abutting R60 which provides for a default interface of 6 storey down to 3 storeys. The local distinctiveness study and context analysis were presented to Council at the 25 August 2020 Ordinary Council Meeting and a draft precinct planning policy and built form controls due to be presented to Council in October 2020. Any amendments to density before the completion of these studies would be premature and unlikely to be successful with the Department.

**Specialised Activity Centre Plan**

Land within the Crawley-Nedlands neighbourhood, which includes the University of Western Australia (UWA) and associated colleges, Broadway, Queen Elizabeth II Medical Centre (QEIIMC) and Hollywood Hospital is identified as a Specialised Activity Centre under the State Government’s Central Sub-Regional Planning Framework~~.~~ In consultation with the City of Nedlands, the City of Perth and Department of Planning, Lands and Heritage have been working to prepare a Specialised Activity Centre Plan (SACP). The SACP aims at supporting the centre through the development of complementary activities that support the primary function of health, education, and research in addition to balancing future growth, built form outcomes and transport. Once prepared, the future SACP will affect the future planning and development of the locality which will be further guided by State Planning Policy 4.2 Activity Centres for Perth and Peel or equivalent replaced State Planning Framework and 7.2 Precinct Design. There is currently no set timeframe for the completion of the SACP as it is at a very preliminary stage. Any changes to density along Broadway should be made collaboratively with the City of Perth and the Department so that they are in line with this plan.

UWA and the City of Perth have made submissions to Scheme Amendment No. 7 stating that they do not support the amendment and that amendments should not jeopardise the future intent of this centre to become a globally competitive centre for health, medical, education, research and innovation.

**Local Planning Strategy**

The City’s Local Planning Strategy (the Strategy) endorsed in 2017 suggested that the Hampden/Broadway Precinct should have medium intensity and be a low to medium rise urban growth area within the City. Although the density proposed in Scheme Amendment No. 7 could be argued as still achieving +- the objectives of the Strategy, this cannot be proven without built form modelling discussed above.

**Residential Design Codes Volume 2**

The Residential Design Codes discuss that an R-AC3 code is for mid-rise urban centres which the Broadway Precinct has been determined as under the Local Planning Strategy. The R-AC4 code suggested in the amendment is better used for smaller neighbourhood centres. In the Local Planning Strategy Broadway is described as an ‘urban growth area’ and ‘low to medium rise’. In line with the *Residential Design Codes Volume 2* Appendix 2 this is in line with a mid-rise urban centre. This is described as having a context of approximately up to 6 storeys which has a direct street frontage and is often built to the boundary. These centres are usually highly walkable with proximity to high frequency transit services, public open space and commercial and/or retail uses. Broadway fits within these parameters therefore an appropriate code for Broadway would be R-AC3 which it already is at present.

***Perth and Peel @ 3.5 Million***

Perth and Peel at 3.5 Million provides the City of Nedlands with a density target of 4320 additional dwellings by 2050. Local Planning Scheme No. 3 was described by the Minister as meeting the density targets prescribed to the City. Any reductions in density would need yield calculations to accompany the proposed changes to show that the density targets prescribed are still being met. The City has not undertaken any thorough studies to prove that the proposed density will still achieve density targets and thus may not be supported by the Commission and the Minister.

**Consultation**

Administration advertised the scheme amendment in line with the Regulations for a standard scheme amendment as resolved at the April 2020 Council Meeting. The amendment was advertised for a period of 42 days.

During the consultation period the City received 252 submissions of these 92% supported the amendment, with 6% objecting and 2% commenting. All submissions are provided in Attachment 2 of this report. All submissions were also provided to Council at the August 2020 Council Meeting in line with Council’s July 2020 Notice of Motion. Since the August report the City has received three late submissions which have also been included in Attachment 2.

The City has also received a petition which objects to the scheme amendment and has 125 signatures. Many of the signatures are from owners, residents, and employees of properties along both Broadway and Hillway. The report which accompanies the petition echoes the same concerns raised in Submission number 247 a summary of which can be viewed in Attachment 2.

The City is aware of significant impetus from the community to move ahead with Scheme Amendment 7. An alternative recommendation has been written should Council wish to support these concerns, in the hope that the amendment is supported by the Minister, giving due regard to the City of Nedlands community.

**Strategic Implications**

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

In order to meet the City’s strategic priority of meeting dwelling targets in a considerate and appropriate manner, Council should defer any decision to seek density code changes until built form modelling has been completed and a thoroughly tested scenario can be substantiated based on sound town planning principles.

**Who benefits?**

The proposed scheme amendment seeks to benefit those who wish to seek lower density within an area which has recently been upcoded as part of LPS3. Those who do not benefit are landowners who have bought properties with the intention to develop at the currently adopted density codes.

**Does it involve a tolerable risk?**

There are risks associated with undertaking scheme amendments to change density premature of the built form modelling work being finalised. The results of the built form modelling may suggest more appropriate alternatives than what is proposed in this current scheme amendment. This could result in a conflicting scheme amendment not aligning with a comprehensively researched and tested precinct structure plan or equvalent and associated scheme amendment to insert revised built form controls into LPS3 as an alternative to wholesale down coding with limited justification and evidence.

On the other hand, there are community concerns that the longer it takes for a scheme amendment to be put in place, then the greater the risk of inappropriate development, hence driving the need to put the scheme amendment in place at the earliest opportunity.

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

Without the built form modelling and thorough planning rationale the Council does not have substantive evidence to make an informed decision on the appropriateness of the proposed down-coding scheme amendment. It is therefore advised that the scheme amendment is premature in nature and should not be supported.

**Budget / Financial Implications**

**Can we afford it?**

There are no immediate costs associated with this scheme amendment. If the WAPC and the Minister approve the scheme amendment there will be a small fee associated with the publishing of the amendment.

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

There is no current impact upon rates. A reduced density coding will result in a decrease in the potential dwelling yield compared to redevelopment at current density coding.

**Alternate Recommendation**

In the event that Council wishes to support the amendment it will need to resolve as follows:

“Council:

1. Pursuant to section 75 of the *Planning and Development Act 2005* and in accordance with section 50(3) of the *Planning and Development (Local Planning Schemes) Regulations 2015* supports without modification Scheme Amendment No. 7 to amend Local Planning Scheme No. 3 as follows:
2. As detailed in Attachment 1 – Scheme Amendment No. 7 Justification Report
3. In accordance with *Planning and Development (Local Planning Schemes) Regulations 2015* section 53(1) submit 2 copies of the proposed Scheme Amendment No. 7 to the West Australian Planning Commission.”

**Conclusion**

Administration advise Council that Scheme Amendment No. 7 is premature in nature. Pursuing an amendment to change density before receiving the results of the built form modelling could undermine the detailed work being undertaken in this precinct. Without the results of the built form modelling and testing, the City lacks the planning rationale to justify these changes at this time. Administration would recommend that no changes to density codes be undertaken prior to the competition of built form modelling and thorough planning rationale.

# Local Planning Scheme 3 – Local Planning Policy - Residential Aged Care Facilities – Final Adoption

|  |  |
| --- | --- |
| **Council Date** | 3 September 2020 |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Reference** | Nil |
| **Previous Item** | Special Council Meeting 4 August 2020 |
| **Attachments** | 1. Draft Residential Aged Care Facilities LPP 2. Summary of Submissions |
| **Confidential Attachments** | 1. Full Submissions |

**Regulation 11(da) - Council determined that the amendments provided further clarification to the Local Planning Policy.**

Moved – Councillor Coghlan

Seconded – Councillor Mangano

**That the Recommendation to Council be adopted subject to:**

* + - 1. **Delete 4.3.3 2) b)(i) and replace with the following:**

**“(i) 9 m minimum street set back for land coded R 10- R 15; 6 m minimum street setback for land coded R20 ;4m minimum street setback for land coded R30 to R35; 6m side and rear boundary setbacks; and “**

* + - 1. **Add “4.3.3 3) Any boundary wall shall be minimised by the building design and shall not exceed the acceptable outcome standard under the R-Codes”**
      2. **Add the following sentence to the end of 4.3.4 1) “The LDP must be consistent with the requirements of the following provisions of this Policy.”**
      3. **Clarification Note:**

**Paragraph “4.3.4 2) (v) A minimum 50% of site area provided as open space is required” was omitted from the Agenda Papers but was correctly included in Attachment 1.**

* + - 1. **Add the following words to the beginning of 4.6.1 paragraph 2 “Windows to habitable rooms and unenclosed”**
      2. **Modify clause 4.8.1 to read “Delivery loading and building service areas are to be located so that they are not visible from the street or adjacent to adjoining residential properties.”**
      3. **Modify clause 6.2 to read “All Residential Aged Care Facilities are to be advertised in accordance with the requirements of the Local Planning Policy-Consultation of Planning Proposals.”**

**CARRIED UNANIMOUSLY 13/-**

**Council Resolution**

**Council resolves to adopt the Residential Aged Care Facilities 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) with the following changes:**

1. **Delete 4.3.3 2) b)(i) and replace with the following:**

**“(i) 9 m minimum street set back for land coded R 10- R 15; 6 m minimum street setback for land coded R20 ;4m minimum street setback for land coded R30 to R35; 6m side and rear boundary setbacks; and “**

1. **Add “4.3.3 3) Any boundary wall shall be minimised by the building design and shall not exceed the acceptable outcome standard under the R-Codes”**
2. **Add the following sentence to the end of 4.3.4 1) “The LDP must be consistent with the requirements of the following provisions of this Policy.”**
3. **Clarification Note:**

**Paragraph “4.3.4 2) (v) A minimum 50% of site area provided as open space is required” was omitted from the Agenda Papers but was correctly included in Attachment 1.**

1. **Add the following words to the beginning of 4.6.1 paragraph 2 “Windows to habitable rooms and unenclosed”**
2. **Modify clause 4.8.1 to read “Delivery loading and building service areas are to be located so that they are not visible from the street or adjacent to adjoining residential properties.”**
3. **Modify clause 6.2 to read “All Residential Aged Care Facilities are to be advertised in accordance with the requirements of the Local Planning Policy-Consultation of Planning Proposals.”**

Recommendation to Council

Council resolves to adopt the Residential Aged Care Facilities 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).

**Executive Summary**

The purpose of this report is for Council to consider submissions on the Residential Aged Care Facilities Local Planning Policy (the Policy). It is proposed that the policy be adopted without modification. A copy of the draft Policy is included as Attachment 1.

The purpose of this policy is to provide development provisions for Residential Aged Care Facilities within the City of Nedlands.

If Council chooses to adopt this Policy, it must be taken into consideration by the decision maker in determining a Development Application. The Policy recommended for adoption in this report will have effect once the notification of adoption is published in a local newspaper.

**Background**

At the Council Meeting 17 December 2019 Council resolved to prepare and advertise the Local Planning Policy - Residential Aged Care Facilities 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 Regulations).

It was noted in a memorandum to Council on the 15 April 2020 that during the advertising period errors had been identified in the advertised LPP by Administration. These errors included that where a site was greater than 2000m2, the primary controls were advertised as being 3 storeys and plot ratio of 0.8, in lieu of 4 storeys with a plot ratio of 1.0.

At the Council Meeting on 28 April 2020 Council resolved to adopt the Local Planning Policy – Residential Aged Care Facilities and include the provisions that had not been advertised, being the 4 storey height limit and plot ratio of 1.0 in the adopted version.

The Policy was first tested in the assessment of a JDAP development application for a Residential Aged Care Facility proposal at 16-18 Betty Street and 73-75 Doonan Road Nedlands. During the application process, several key built form elements that the LPP did not adequately address were identified.

Administration then received legal advice which identified that certain provisions of the former Local Planning Policy – Residential Aged Care were not appropriate to be applied to commercial development. Due to this, Administration proposed amendments to the Policy that applied built form provisions consistent with the proposed Scheme Amendments No. 10 and 11 as presented to Council on 28 July 2020.

A Council Workshop was held by Administration on 27 July 2020 to explain in detail the proposed amendments to the Policy and the proposed Scheme Amendments 10 and 11. The City’s legal representative was also in attendance at this workshop to provide the Council with legal advice on the difference between rescinding and revoking a Local Planning Policy.

At the Ordinary Council Meeting on 28 July 2020, an alternative recommendation was moved, and Council resolved to revoke the existing Local Planning Policy - Residential Aged Care Facilities in accordance with Schedule 2, Clause 6(b) of the Regulations. A notice of the revocation of the Policy was published in The Post newspaper on Saturday 1 August 2020.

A new Residential Aged Care Facilities Policy was then prepared and reviewed by Council’s legal representatives. The final version of this new Policy, inclusive of modifications suggested by Council’s legal representatives, was endorsed for advertising by Council at the Special Council Meeting on 4 August 2020. Advertising has now been completed and the Policy is now presented for Council’s final endorsement.

**Detail**

The advertised draft Policy retains many design elements of the former Residential Aged Care Facilities Local Planning Policy. New provisions relate to the following clauses:

* 3.0 – Objectives
* 4.2 – Policy Measures
* 4.3 - Design Requirements
* 4.6 - Visual Privacy
* 4.7 - Landscaping
* No longer includes Boundary Fencing
* 4.11 – Location of Vehicular Access and Car Parking
* 5.0 – Primary Controls Table
* 7.0- Additional Development Requirements
* 11.0 - Legislation
* 12.0 – Definitions

Clause 3.0 - Objectives

A new objective 3.2 has been included relating to streetscape character as follows:

3.2 To ensure the building design and appearance of Residential Aged Care Facilities responds to and enhances the distinctive elements of the existing streetscape character using sympathetic building materials and building style.

Clause 4.2 – Policy Measures

A new policy measure has been included as 4.2.1, relating to the preferred location for the establishment of Residential Aged Care Facilities:

* + 1. RAC Facilities are preferred to be located:
* on a lot which has no more than two boundaries to an adjacent residential lot;
* within proximity to an area of public open space; and
* within proximity to relevant amenities including hospitals, medical centres, shopping precincts and high frequency bus routes.

4.3 – Design Requirements

All Design Requirements contained within clause 4.2 of the former LPP are proposed to be deleted and replaced with the following provisions:

4.3.1 In accordance with clause 32.4(5) of LPS 3, where applied for in the Mixed-Use zone, Residential Aged Care Facilities shall comply with relevant development standards of the R-AC density coding applicable to the subject site.

4.3.2 In relation to an application for a RAC Facility on land coded R10, R12.5, R15, R20, R30 and R35, subject to Western Australian Planning Commission (**WAPC**) approval, a Local Development Plan (**LDP**) may be required (as provided for in Part 6 of Schedule 2 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (**LPS Regulations**). The purpose of an LDP is to provide specific guidance for RAC Facilities to ensure the achievement of orderly and proper planning outcomes. The LDP must be consistent with the requirements of the following provisions of this Policy.

4.3.3 1) Where there is no approved Structure Plan, LDP, Precinct Plan and/or Activity Centre Plan, or specific local planning policy to the site, RAC Facility applications are to comply with the R-Codes where relevant except where varied by the following provisions of this clause:

2) In relation to land coded R10 to R35:

1. A maximum building height of two storeys with a maximum external wall height of 8.5m and maximum overall height of 10m as measured from Natural Ground Level (**NGL**) apply. (A ‘storey’ is as defined in the R-Codes); and
2. The following setbacks shall apply:
3. 6m minimum street setback; and
4. 6m side and rear boundary setbacks.
5. Maximum plot ratio of 1.0 applies.
6. A minimum 50 percent of site area provided as open space is required.

4.3.4 In relation to land zoned Residential, with no R Coding shown on the Scheme Map, RAC Facilities are to comply with the following provisions of this clause:

1. Where the requirement of an LDP is indicated in LPS 3, subject to the approval of the City and the WAPC pursuant to deemed clause 47(d), a LDP is to be prepared. The purpose of the LDP is to provide specific guidance for future development on the land affected by A9 and to ensure the achievement of orderly and proper planning outcomes.
2. Where there is no approved LDP, structure plan, and/or activity centre plan, the following development standards apply:
3. An R-Code of R12.5 applies in respect of residential land use and development (i.e. non RAC Facility applications).
4. The following provisions apply in respect of RAC Facility land use and development:
5. A minimum 6m street setback applies; and
6. Minimum 6m side and rear boundary setbacks apply; and
7. A maximum building height of two storeys with an external wall height of 8.5m and maximum overall height of 10m applies, as measured from NGL. (A ‘storey’ is as defined in accordance with the R Codes); and
8. A maximum plot ratio of 1.0 applies.

Clause 4.6 – Visual Privacy

All Visual Privacy requirements contained within clause 4.5 of the former LPP are proposed to be deleted and replaced with the following provisions under clause 4.6:

4.6.1 Where located adjacent to residential properties, RAC Facilities are to be designed so that windows to habitable rooms are as defined by the National Construction Code - Building Code of Australia.

Outdoor active habitable space (balconies, decks, verandas and the like) which have a finished floor level more than 0.5 metres above NGL and overlook any part of any other residential property behind its street setback line, are to:

* + - * be setback in accordance with the cone of vision, from the lot boundary, of the residential density code; or
      * be set back in direct line of sight within the cone of vision from the lot boundary at a minimum distance of 6m for habitable room windows and 7.5m for unenclosed outdoor active habitable space (where the site is not subject to a residential density code); or
      * where the visual privacy setback cannot be achieved, permanent screening or obscured glazing to a minimum height of 1.6m above finished floor level should be provided to restrict views within the cone of vision from any habitable room window or unenclosed outdoor active habitable space.

Clause 4.7 – Landscaping

Modification to the wording contained within former clause 4.6.5 (Landscaping) of the former LPP and the insertion of an additional clause 4.7.6:

4.7.5 Where an open-air car parking facility or area is provided at ground level a landscaping plan shall be provided demonstrating appropriate planting of 1 mature tree per every 6 car parking bays; and

4.7.6 Mature trees and landscaping are encouraged on site to provide buffering between the facility and any adjacent residential properties.

Boundary Fencing – all provisions from former LPP removed

Deletion of all provisions contained under clause 4.7 (Boundary Fencing) in the former LPP and to renumber the remaining provisions accordingly.

Clause 4.11 – Location of Vehicular Access and Car Parking

Modification and addition of car parking provisions to include the following:

4.11.2 Vehicle parking areas and structures shall be provided at basement level and/or integrated into the design of the building and screened from view of the neighbouring residential properties. The design and location of vehicle parking should minimise negative visual and environmental impacts on amenity and the streetscape.

4.11.4 Visitor car parking areas located within the front setback area shall be setback from the front property boundary behind a soft landscaping strip a minimum of 1.0 metre in width.

4.11.5 Where applications for RAC Facilities uses are listed as ‘A’ in the Zoning Table of LPS3 or where a variation is proposed to this Policy, applications are to be advertised in accordance with the requirements of the Local Planning Policy- Consultation of Planning Proposals.

4.11.6 Staff parking bays shall be located on site.

Clause 5.0 – Primary Controls Table

Inclusion of Clause 5.0 and 5.1 Primary Controls Table outlining the development requirements for Residential Aged Care Facilities established on residential sites coded R40 to R160.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | | R40 | R50 | R60 | R80 | R100 | R160 |
| Building height (storeys) | | 2 | 3 | 3 | 4 | 4 | 5 |
| Boundary wall height (storeys) 1, 2 | | 13 | 13 | 13 | 23 | 23 | 23 |
| Minimum primary and secondary street setback | | 4m4 | 2m | 2m | 2m | 2m | 2m |
| Minimum side setback | | 2m | 3m | 3m | 3m | 3m | 3m |
| Minimum rear setback | | 3m | 3m | 3m | 3m | 6m | 6m |
| Minimum average side/rear setback where building length exceeds 16m | | 2.4m | 3.5m | 3.5m | 3.5m | 3.5m | 4.0m |
| Plot Ratio5 | | 1.0 | 1.0 | 1.0 | 1.0 | 1.3 | 2.0 |
| Open Space6 | | 50% | 40% | 40% | 30% | 25% | 25% |
| Notes | 1 Wall may be built up to a lot boundary, where it abuts an existing or simultaneously constructed wall of equal or greater proportions.  2 Where the subject site and an affected adjoining site are subject to different density codes, the length and height of any boundary wall on the boundary between them is determined by reference to the lower density code.  3 Boundary wall only permitted on one boundary, and shall not exceed 2/3 length  4 Minimum secondary street setback 1.5m.  5 Refer to definitions for calculation of plot ratio.  6 Open space percentage is the percentage of site area to be retained as open space. | | | | | | |

Clause 7.0 – Additional Development Application Requirements

Modification to former clause 6.2 of the former LPP which includes changes to the existing wording or a new provision added under new Clause 7.2:

* Hours of operation of the Residential Aged Care Facility;
* Hours of visitation and number of visitors permitted at any time;
* Staff numbers;
* Any supplementary or incidental uses, and supporting evidence that those uses are appurtenant to the predominant use of “Residential Aged Care”

11.0 – Legislation

Correct references to Local Planning Policies relating to Parking, Consultation of Planning Proposals and Signs have been included.

It is noted that different levels of government each have a role to play in legislating the development of Residential Aged Care Facilities. Local Government deals with the building and planning standards under the Building Code of Australia (BCA) and the Planning and Development Act 2005 (P&D Act). Higher levels of control including subsidising of services, developing Federal policy and assessing services to ensure quality standards are governed by the Federal Government. The State Government’s Department of Health are responsible for licensing nursing homes and assessing the facilities prior to granting approval to operate. This LPP is developed at a Local Government level, and therefore focusses on those elements dealt with under the BCA and P&D Act.

12.0 – Definitions

Additional definitions included and contained within Clause 12.1 as follows:

* Incidental Use (inclusive of footnote 1)
* Plot Ratio

Removal of existing definitions that were contained within former Clause 11.1 of the former LPP as follows:

* Multiple Dwellings
* Resident
* Visitor
* Staff

Additional clause 12.2 added –

A word or expression that is not defined in this policy –

* Has the same meaning it has in Local Planning Scheme No. 3; or
* If it not defined in the Local Planning Scheme No. 3 it has the same meaning it has in the R-Codes.

Justification:

The proposed modifications to Clause 4.3 Design Requirements of the former LPP are intended to achieve the following outcomes:

* The City has an existing provision within LPS 3 that applies residential design requirements to non-residential development within the Mixed Use, Local Centre and Neighbourhood Centre Zones (Clause No 32.4(5)). The City is progressing a scheme amendment (Scheme Amendment No 11) to apply the R- Codes to non-residential development where it is proposed in the Residential Zone. This LPP has been written in accordance with the requirements of this Scheme Amendment.
* As a non RAC and where development standards are not otherwise provided for in an approved Structure Plan, Local Development Plan, Local Planning Policy and or activity centre plan, Residential Aged Care Facility developments in the Mixed Use Zone are to be consistent with clause 32.4(5) of LPS3, being subject to the relevant standards of the R-Codes.
* On land coded between R10 and R35, Residential Aged Care Facility development may be subject to the preparation of a Local Development Plan to account for the different operational, access, parking and servicing needs of this commercial use and the sensitive interfacing considerations in surrounding traditional residential areas.
* Where a Local Development Plan is not provided or adopted, Residential Aged Care development is to comply with the relevant R-Code provisions with the exception of Building Height, Setbacks, Plot Ratio and Open Space. The justification for these provisions includes:
* The proposed maximum building height is consistent with the City’s Local Planning Policy Residential Development: Single and Grouped Dwellings, being the typical form and style of development in the City’s traditional residential neighbourhoods.
* A minimum 6m street setback is proposed. The setback applies to all street frontages and although less than the traditional 9m front setback which applies to the surrounding land pursuant to clause 26(1)(a)(i) of LPS3, it strikes a balance between the primary and secondary street setbacks permitted under the LPS3 and R-Codes Vol. 1, noting the affected land has three road abuttals. At 6m, the street setback will likely provide for sufficient landscaping opportunity and streetscape activation generally consistent with the existing character of the area and future expectations for the R12.5 coding.
* Together with proposed setbacks and plot ratio (not currently provided for under R-Codes Vol. 1), it is unlikely that a height above 2 storeys (10m) could be achieved. The proposed maximum height is generally consistent with the City’s Local Planning Policy: Residential Development: single and grouped dwellings and the R-Codes Vol.1 as applicable in the surrounding neighbourhood (coded R10-R12.5) and on the adjoining land to the north (coded 12.5).
* The proposed setbacks are less than the minimum 9m primary street achievable under LPS3 for land coded R10 to R15, but are with primary street setbacks under the R-Codes for land coded R15, R20 and R25, and marginally more generous than land coded R30 to R40 where a 4m setback applies.
* The proposed setbacks are sufficiently dimensioned to achieve a vegetated ‘garden’ interface to the street, allowing for deep soil planting areas that support canopy tree planting. The physical separation to the side and rear will also allow for vegetated side and rear gardens that are consistent with a residential setting and may assist with the buffering and sleeving of a Residential Aged Care Facility’s operational, accessing and servicing needs.
* A maximum plot ratio of 1.0 is proposed for sites with a density code of R80 and below. Notwithstanding the affected land area, this plot ratio is considered appropriate to the maximum height, setback standards and a commercial use. The plot ratio applicable to a commercial use under LPS3 is the ratio of the entire floor area of a building to the area of land within lot boundaries i.e. the calculation includes communal or common areas used by aged care residents, service and machinery, air-conditioning and equipment rooms, space below natural ground level, parking below ground, storage areas and lobbies, balconies and courtyards or roof top terraces.

* The proposed open space requirement represents the effective average anticipated for residential development on land coded R10 to R35. It is considered appropriate to achieving a future building envelope within a residential context.
* Land coded R40 – R160 RAC Facility development will otherwise comply with the relevant provisions of the R-Codes Vol.2.

With respect to the remaining modifications to the former LPP, the proposed changes are intended to address the following issues:

* Clause 4.6 Visual Privacy: These changes have been included to minimise potential adverse impacts on the privacy of adjoining dwellings and private open spaces.
* Clause 4.7 Landscaping: Additional landscaping requirements have been included to ensure an appropriate landscaping buffer interface is achieved for existing and adjoining Residential zoned land.
* Boundary fencing: Clauses 4.7.1 to 4.7.3 of the former LPP have been removed in this new version as boundary fencing is governed by separate legislation under the *Dividing Fences Act 1961* and the City’s Fill & Fencing Local Planning Policy has been revoked.
* Clause 4.11 Location of Vehicular Access and Car Parking: Additional items have been added to preference basement car parking, require parking to be screened from public view, and require staff parking to be provided on site.
* Clause 5.0 – Primary Controls Table: An additional controls table has been included to provide development provisions for Residential Aged Care Facilities on lots with a density code of R40 – R160.
* Clause 7 Additional Development Application Requirements: Additional operational items have been included to ensure these are reflected within any prospective application.
* Clause 11 Legislation: Correct references to relevant local planning policies have been included.
* Clause 12 Definitions: Additional definitions have been included which reflect incidental uses and plot ratio, which were not previously defined. In addition, Clause 11.2 clarifies where terms are undefined in the Policy, the LPS3 definitions prevail over any definition which may be contained within the R-Codes. Definitions relating to Multiple Dwelling, Resident, Visitor and Staff have been removed.

**Administration’s Comments following Advertising**

At the time of writing this report a common request in the community submissions received was for the Policy’s front setback requirement to be adjusted from 6m to 9m. The consensus behind this request was to keep setbacks consistent with residential development setbacks.

This request is in relation to Clause 26(1) of the Scheme, which requires a minimum front setback of 9m on lots coded R10, R12.5 and R15, other than those lots identified in Schedules 2 and 3 of the Scheme (St John’s Wood and Hollywood respectively).

This Policy relates to all Residential Aged Care Facilities proposed within Nedlands on land zoned Residential or Mixed-Use. This Policy is intended to consider a range of scenarios and their setback needs. In a Residential area coded R20, R30 or R35, the front setback requirements of the R-Codes require a 6m (R20) or 4m (R30-R35) setback. The Policy is therefore imposing a greater front setback in these areas than the State Planning legislation.

It is considered that a 9m front setback would only be in keeping with some residential areas of Nedlands. In locales that are not coded R10, R12.5 or R15, an increased front setback of 9m is likely to be viewed as overly onerous in a judicial setting. The likelihood of this requirement being supported in a development application scenario in JDAP or the State Administrative Tribunal is considered to be low.

Administration recommends that Council do not change the front setback requirements of the Policy. 6m is considered a compromise that is adequate to provide a generous front setback area, while also being reasonable in terms of State Planning legislation.

**Consultation**

This policy was advertised from the 8 August 2020 until the 29 August 2020 in accordance with the City’s Consultation Local Planning Policy and Schedule 2, Part 2, Clause 4 of the Regulations. A notice was published in the newspaper, and details were included on the City’s Your Voice engagement portal and the City’s social media accounts. Emails were also sent to the members of the Nedlands Mailing List and all submitters to the application for a Residential Aged Care Facility at 16-18 Betty Street and 73-75 Doonan Road Dalkeith.

Due to the timeframe in which this LPP is being returned to Council for consideration post advertising, the advertising period has not closed at the time of writing this report.

A late attachment will be provided with a summary of all submissions received as of the closing time, being 5pm, 29 August 2020.

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

**Statutory Provisions**

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

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

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

Administration recommends that the Council proceed with the Policy without modification.

**Strategic Implications**

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

The objectives for the Residential zone within the City’s Local Planning Scheme requires non-residential uses and their built form to be compatible with the residential landscape where they are proposed in a residential area. The objectives for the Mixed-Use zone includes the requirement that development should be of an appropriate scale to the desired character of the area. The proposed amendments to the LPP provide built form controls that will guide Residential Aged Care Facilities to sit comfortably within the City’s strategic direction for these zones.

**Who benefits?**

The community benefits from the amendments to this LPP, as it imposes built form controls for Residential Aged Care Facilities where they are proposed within the Residential and Mixed-Use zones.

**Does it involve a tolerable risk?**

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

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

Yes.

**Budget/Financial Implications**

**Can we afford it?**

The costs associated with this Local Planning Policy are in relation to advertising and legal advice.

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

As above.

**Conclusion**

The draft Residential Aged Care Facilities Local Planning Policy provides development provisions for operators seeking to establish Residential Aged Care Facilities within the City of Nedlands.

Administration recommends that Council resolves to adopt the Policy without modification, as per the Resolution:

1. Proceed to adopt the Residential Aged Care Facilities 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).

The Policy will provide a thorough strategic framework to guide development of Residential Aged Care Facilities within Nedlands. As such, it is recommended that Council endorses Administration’s recommendation to adopt the Policy without modifications.

# Lot 3 (no. 3/29) Asquith Street, Mt Claremont – Change of Use from Lunch Bar to Restaurant Use

|  |  |
| --- | --- |
| **Council** | 3 September 2020 |
| **Applicant** | Glenn Chapman |
| **Landowner** | Van Sau Le and Thi Ngoc Bich Ho |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| **Reference** | DA20-51047 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Plans 2. Proposal Report 3. Car Management Plan 4. Noise Management Plan 5. Liquor Management Plan 6. Summary of Submissions |
| **Confidential Attachments** | 1. Submissions (CONFIDENTIAL) |

**Regulation 11(da) - Council determined that the parking shortfall was manageable in terms of the proposed land use and therefore the proposal should be approved.**

Moved – Councillor McManus

Seconded – Councillor Smyth

**Council Resolution**

**Council approves the development application for Lot 3 (no. 3/29) Asquith Street, Mt Claremont – Change of Use from Lunch Bar to Restaurant Use received on 16 July 2020 in accordance with the plans date stamped 16 July 2020 and amended plans dated 6 August 2020 attached hereto and subject to the following conditions:**

**1. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**

**2. This development approval only pertains to a Change of Use to Restaurant as defined in the City of Nedlands Local Planning Scheme No 3.**

**3. A maximum of 70 seats shall be available for customers of the Restaurant premises at any given time.**

**4. Prior to the commencement of the use, a Universal Access Toilet being provided within the existing toilet facilities on the property. (Refer to Advice Note a.)**

**5. The approved Restaurant is to operate:**

* **Sunday – Thursday between 2:30pm to 9:30pm (alfresco area until 8:30pm); and**
* **Friday – Saturday between 12pm to 10:30pm (alfresco area until 9:00pm).**

**6. Pedestrian access is to be maintained at all times adjacent to the alfresco dining area (Refer to Advice Note b.)**

**7. Prior to the commencement of the approved Restaurant use, a Waste Management Plan must be prepared to the satisfaction of the City of Nedlands. It must include the following detail:**

**a. the location of bin storage areas and bin collection areas;**

**b. the number, volume and type of bins, and the type of waste to be placed in the bins;**

**c. management of the bins and the bin storage areas, including cleaning, rotation and moving bins to and from the bin collection areas; and**

**d. frequency of bin collections.**

**The approved use must operate in accordance with the Waste Management Plan at all times, for the duration of the use. (Refer to Advice Note c.)**

**8. Bin stores must be located behind the street alignment so as not to be visible from a street or public place and constructed in accordance with the City’s Health Local Law 1997. (Refer to Advice Note (d).)**

**9. All entertainment must only be provided inside the premises and be restricted to low level background music only, sufficient to allow normal conversation to occur. (Refer to Advice Note e.)**

**10. Service and/or delivery vehicles must not service the premises before 7.00 am or after 7.00 pm Monday to Saturday, and/or before 9.00 am or after 7.00 pm on Sundays and Public Holidays unless prior approval from the City of Nedlands is granted.**

**Advice Note:**

**a. In relation to Condition 4, accessible sanitary facilities for people with disabilities is required under the Australian Standards AS1428 due to the numbers of patrons (70 Patrons and 8 Staff) for the Restaurant premises. A Universal Access Toilet will be required to be constructed in accordance with Part F2.3, Part F2.4 and Part F2.5 of the National Construction Code – Building Codes of Australia Vol. 1 2019 (NCC BCA, Vol.1 2019). A building permit is required to be obtained for the construction/works prior to being undertaken with the City’s Building Services.**

**b. In relation to Condition 6, pedestrian accessibility adjacent to the alfresco dining area is to be in accordance with NCC BCA, Vol.1 2019.**

**c. In relation to Condition 7, the applicant is advised that the waste management plan is required to include but is not limited to the following details:**

**• Details of collection times and methods;**

**• A noise management plan detailing measures that will be undertaken to ensure noise levels are kept within levels prescribed in the Environmental Protection (Noise) Regulations 1997 for any waste proposed to be collected between the hours of 7pm to 7am;**

**• Appropriate traffic management measures to mitigate conflicts between private vehicles and waste collection vehicles; and**

**• Methods to ensure all waste is to be placed in a tidy and orderly manner in and around the bin storage areas and vicinity of the site.**

**d. In relation to Condition 8, the restaurant premises is to be provided with a bin store which meets the following requirements:**

**• Constructed of brick, concrete, corrugated compressed fibre cement sheet or other material of suitable thickness approved by the City;**

**• Walls not less than 1.8m in height and access of not less than 1.0 metre in width fitted with a self-closing gate;**

**• Smooth and impervious floor not less than 75mm thick and evenly graded to an approved liquid refuse disposal system;**

**• Easily accessible to allow for the removal of the receptacles; and**

**• Provided with a tap connected to an adequate supply of water.**

**e. In relation to Condition 9, all noise levels must comply with the Environmental Protection (Noise) Regulations 1997 (Noise Regulations) which includes the Restaurant premise and alfresco dining area.**

**f. A separate development application is required to be submitted to and approved by the City prior to increasing seating numbers.**

**g. An application for Occupancy Permit with an associated Certificate of Building Compliance (BA18) shall be lodged with the City’s Building Services for approval to formalise the works and operations for the Restaurant use.**

**h. The Restaurant premises require facilities to be provided in accordance with Part F2.3 and Table F2.3 of the NCC BCA, Vol.1 2019 as follows:**

**• Male facilities (including staff), 1 pan, 1 urinal and a washbasin.**

**• Female facilities (including staff), 2 pans, 1 washbasin; and**

**• Staff and public may share facilities under Part F2.3.d.**

**i. Commercial clean and pest treatment of kitchen to occur (before opening) with certificates provided to the City’s Health Services.**

**j. Prior to commencing the Restaurant, the premises shall receive an inspection from an Environmental Health Officer at the City which cites that the Food Business may commence.**

**k. This decision does not obviate rights and responsibilities of strata owners under the Strata Titles Act 1985, which may require additional consultation and/or permissions from the stratum, prior to the commencement of works.**

**l. The applicant is advised that a Liquor License is required from the Department of Local Government, Sport and Cultural Industries in accordance with the Liquor Control Act 1988.**

**m. Advertising signage does not form part of this application and may be require separate development approval.**

**n. Any relevant COVID-19 safety measures shall be adhered to in accordance with Western Australian Government’s issued guidelines and advice including the preparation of a COVID Safety Plan in line with the current COVID Safety Guidelines: Food and Licensed Venues.**

**o. This decision constitutes planning approval only and is valid for a period of four years from the date of approval. If the subject development is not substantially commenced within the four-year period, the approval shall lapse and be of no further effect.**

**p. The applicant is advised that all development must comply with this planning approval and approved plans at all times. Any development that is not in accordance with the planning approval, including any condition of approval, may be subject to further planning approval by the City.**

**CARRIED UNANIMOUSLY 13/-**

Recommendation to Council

Council refuses the development application dated 16 July 2020 for a Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use at Lot 3 (No. 3/29) Asquith Street, Mt Claremont for the following reasons:

1. The proposal does not satisfy Schedule 2 Clause 67 (x) of the Planning and Development (Local Planning Schemes) Regulations 2015 as the development will have a detrimental impact upon the amenity of locality including adjacent residential R20 zoned lots.
2. The proposal does not satisfy Clause 9(a) – Aims of Scheme under the Local Planning Scheme No. 3 as the development will not protect and enhance the local character and amenity of the area, as a result of the 29 car parking bay shortfall proposed, exacerbating the already limited car parking provided in the Local Centre area.
3. The proposal does not satisfy the community vision for the Local Centre which is to protect the established character and streetscape of the residential areas in accordance with Clause 9(b) – Aims of Scheme under the Local Planning Scheme No. 3.
4. The development will increase the car parking shortfall for the site which will adversely impact the amenity of the adjoining residential area surrounding the Local Centre in accordance with Clause 16 – Zone Objectives of the Local Planning Scheme No. 3.
5. The proposal does not satisfy the objectives of the City’s Local Planning Policy – Parking as the proposal results in an increased 29 car bay shortfall and is unable to provide adequate parking onsite.
6. **Executive Summary**

The purpose of this report is for Council to determine a Development Application received from the applicant on 16 July 2020 and amended plans received on 6 August 2020 for a Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use at Lot 3 (No. 3/29) Asquith Street, Mt Claremont (the subject site).

The 16 July 2020 and 6 August 2020 plans were advertised to adjoining neighbours in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals. At the close of the advertising period 8 submissions were received (4 in support, 1 partial support and 3 objections).

It is recommended that this application be refused as the proposed increase in parking shortfall of 29 car bays resultant from the Change of Use application, is likely to result in adverse impacts on the local amenity. The City’s Technical Services Unit has also identified that the parking issues around the Asquith Street local centre could be exacerbated by the increased car parking shortfall identified as part of the development application.

1. **Background**

**3.1 Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Local Centre |
| **R-Code** | R60 |
| **Land area** | 2023m2 |
| **Additional Use** | No |
| **Special Use** | No |
| **Local Development Plan** | No |
| **Structure Plan** | No |
| **Land Use** | Existing – Lunch Bar  Proposed – Restaurant |
| **Use Class** | Proposed – ‘P’ permitted |

**3.2 Locality Plan**

The land subject to this application is Unit 3/29 Asquith Street, Mount Claremont (the subject site).

The property No. 29 Asquith Street, Mt Claremont is a local centre and is bound by Annie’s Playschool and a public playground at No. 25 Strickland Street on the northern boundary, Strickland Street on the eastern boundary, Asquith Street on the southern boundary and Olearia Lane on the western boundary.

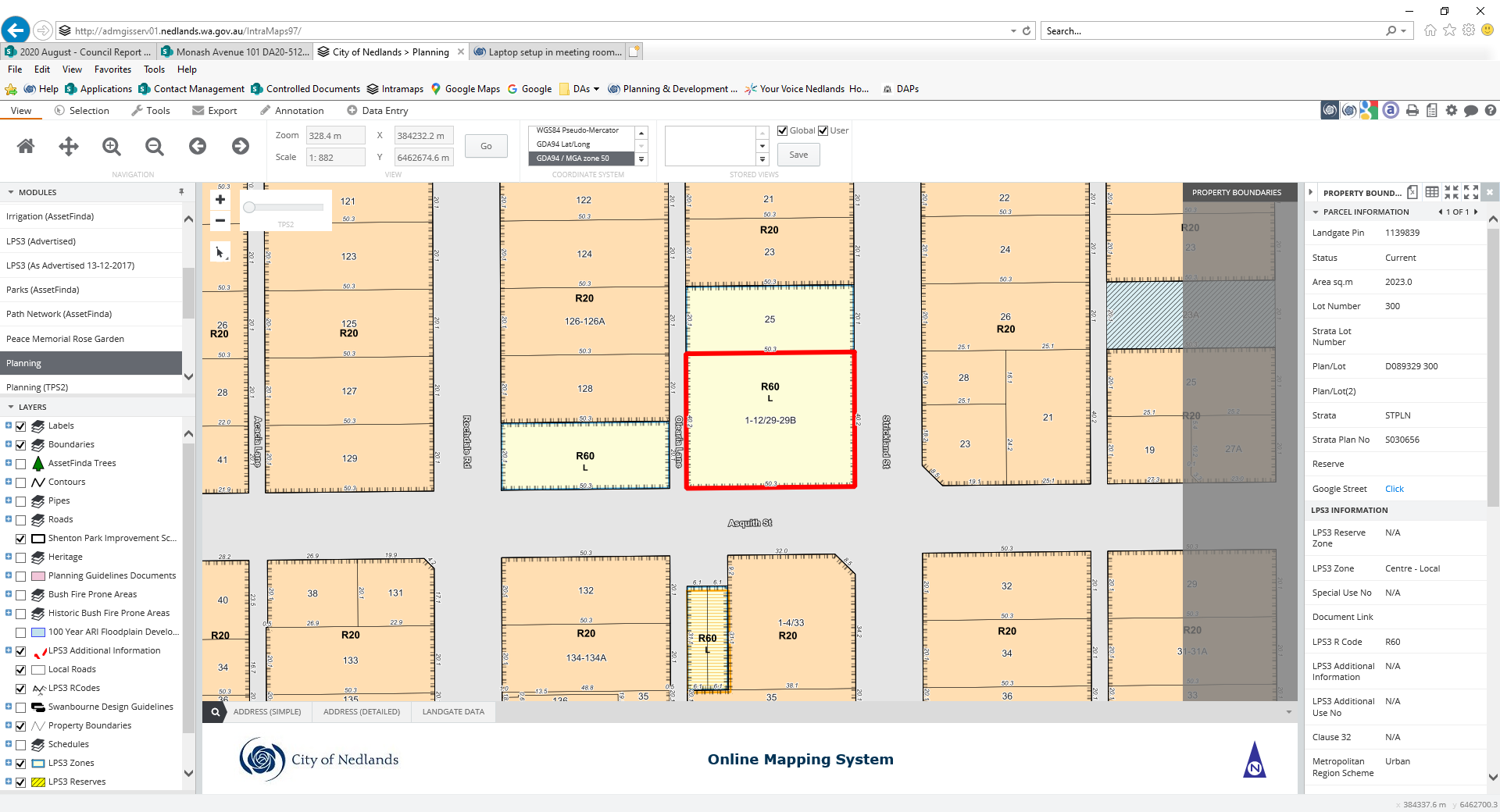


Figure 1 – Zoning Map



Figure 2 – Aerial Map

The property No. 29 Asquith Street, Mt Claremont is an existing Mixed Use Development containing 10 non-residential tenancies on the ground floor facing Asquith Street and Strickland Street and four residential units on the second level facing Strickland Street. The Mount Claremont Village Bakery, Deli Chicchi, Mount Claremont Pharmacy and Mount Claremont Post News and Gift store are a few businesses currently operating on the site.

The property is also identified as being located within the Mt Claremont West Precinct under the City’s Local Planning Strategy.

There are 12 on-street car bays abutting the eastern frontage of the site and another 12 on-street car bays abutting the southern frontage of the site. There is also a dedicated public car parking area containing 18 car bays located to the west of the site at the corner of Rochdale Road and Asquith Street, which is owned by the City.

On 21 July 2020, the City issued a temporary approval for a Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use for the subject site (DA20-51035). The temporary approval is only valid for a period of 4 months and permits a maximum of 20 patrons at the premises. This temporary approval ceases on 18 November 2020.

1. **Application Details**

The applicant seeks development approval for a Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use. Details of the proposal is as follows:

* The restaurant will seat up to 70 people at one time (50 persons inside and 20 persons outside in alfresco area).
* The restaurant will employ a total of 8 staff members including 3 chefs.
* Business trading hours are:
* Sunday – Thursday between 2:30pm to 9:30pm (alfresco area closes at 8:30pm); and
* Friday – Saturday between 12pm to 10:30pm (alfresco area closes at 9:00pm).
* Background music is proposed to be played inside the restaurant only.
* No car parking is proposed as part of this application.

Due to the proposed permanent increase in patron numbers (up to 70 persons), the applicant has agreed to provide a Universal Access Toilet (UAT) for people with disabilities in accordance the National Construction Code – Building Codes of Australia 2019 (BCA). The proposed UAT addition will be located within the existing toilet facilities between Unit 3 and 4 of the property.

The application was referred internally to the City’s Technical Services, Building and Environmental Health Departments for comment. Both the City’s Building Services and Health Services Units are satisfied with the addition of a UAT to facilitate the permanent increase in patron numbers for the proposed development required under the BCA. The application was not supported by the City’s Technical Services Department on account of the lack of onsite car parking.

1. **Consultation**

The proposal seeks a car parking variation under the *Local Planning Policy – Parking*. The development application was therefore advertised in accordance with the *City’s Local Planning Policy – Consultation of Planning Proposals* by way of letter for 14 days within a 100m radius of the subject site. The application was advertised to 91 landowners and occupiers.

During this advertising timeframe a total of 8 submissions were received (4 in support, 1 conditional support and 3 objections). The main issues raised in the submissions relate to:

* Car parking / Traffic;
* Trading hours;
* Noise impact;
* Liquor License;
* Waste Management; and
* Alfresco dining area concerns.

Due to the length of submissions, the summary of submissions is presented as a separate attachment to this report. Refer to **Attachment 6** for the submission table which outlines the comments received and administration’s response to each submission.

All issues raised from the submissions have been considered under the report.

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

1. **Assessment of Statutory Provisions**

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

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application.  The City has assessed the application in accordance with the Local Planning Schemes (LPS) Regulations, the assessment of which is provided in the table below against the relevant provisions:

|  |  |
| --- | --- |
| **Provision** | **Assessment** |
| * + 1. the aims and provisions of this Scheme and any other local planning scheme operating within the Scheme area; | Refer to Section 6.2.1 below for an assessment against clause 9 of the City’s Local Planning Policy No.3 (LPS3) – Aims of Scheme. |
| * + 1. the requirements of orderly and proper planning including any proposed local planning scheme or amendment to this Scheme that has been advertised under the Planning and Development (Local Planning Schemes) Regulations 2015 or any other proposed planning instrument that the local government is seriously considering adopting or approving; | Nil. |
| * + 1. any approved State planning policy; | Nil. |
| (g) any local planning policy for the Scheme Area; | The development proposal has been assessed in accordance with the City’s *Local Planning Policy – Parking and Local Planning Policy – Waste Management*. The proposal will result in a car parking shortfall. |
| (m) the compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development; | The Zoning Table in LPS3 classifies all Restaurant uses as a ‘P’ permitted use in the Local Centre Zone, subject to meeting any relevant standards and requirements of the Scheme. Whilst the suitability of the land use is not in question, the proposal must also be assessed against scheme provisions relating to car parking. Clause 32.1 (1) requires that *except for development to which the R-Codes apply, every development shall provide on-site car parking spaces in accordance with any applicable local planning policy adopted by the local government.*  Council must also consider clause 32.2 where the City *may permit part or all of the shortfall to be provided through an agreement to share car parking space(s) on an adjacent site (shared site).* Currently there is no shared car parking agreement between the City and the property at No. 29 Asquith Street, Mt Claremont.  The proposed Restaurant use will operate in an existing tenancy (Unit 3) with no modifications to the tenancy’s external façade.  The proposed addition of the UAT located in the existing toilet facilities area will unlikely result in changes to the built form of the existing Mixed Use Development. |
| (n) the amenity of the locality including the following —   1. environmental impacts of the development; 2. the character of the locality; 3. social impacts of the development; | 1. The proposal is not considered to have any environmental impacts. 2. The City considers the proposed Restaurant use is consistent with the Local Centre character. 3. The proposal will provide employment and consolidate the Asquith Street Local Centre which is an identified active focal point for the local community. |
| (p) whether adequate provision has been made for the landscaping of the land to which the application relates and whether any trees or other vegetation should be preserved. | The proposal does not impact upon any vegetation nor street trees within the immediate vicinity. |
| (x) the impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals; | The proposed Restaurant use supports Asquith Street local centre, consistent with the objectives of the Mt Claremont West Precinct under the City’s Local Planning Strategy by offering a local dining experience to the community.  However, whilst the proposed Restaurant use is not considered to adversely affect the community vision for the development of the precinct. The associated car parking shortfall of 29 car bays will impact upon the residential amenity surrounding the Asquith Street local centre, resulting in the likelihood of vehicles spilling over into nearby residential streets and further exacerbating the limited car parking available on the property No. 29 Asquith Street, Mt Claremont (only 8 car parking bays available) and pressure on the City’s on-street car parking bays around the local centre. |

**6.2 Local Planning Scheme No. 3**

**6.2.1 – Clause 9: Aims of the Scheme**

|  |  |  |
| --- | --- | --- |
| **Requirement** | **Proposal** | **Satisfies** |
| 1. Protect and enhance local character and amenity | The Asquith Street local centre itself is characterised with a mixture of shops, liquor store, Restaurant/Cafes and residential units. To the west of the subject site is a small pocket park and public car park containing 18 bays on zoned land owned by the City.  The area surrounding the Local Centre zone is characterised by predominately residential houses zoned R20.  The proposed Restaurant use is considered to be compatible with the mix of businesses within the Local Centre zone in the Mt Claremont West Precinct. However, the proposed 29 car parking bay shortfall derived from the Change of Use from ‘Lunch Bar’ to ‘Restaurant’ will exacerbate the limited car parking provided on site already and will impact negatively upon local residential amenity surrounding the subject site. | No |
| 1. Respect the community vision for the development of the district; | The increased car parking shortfall resulting from the change of use does not respect the community vision of the Mt Claremont West Precinct in respect to the protection of the established character and streetscape of the residential areas because the subject site is located in close proximity to R20 zoned residential lots, the lack of car parking provided on site able to service the restaurant will most likely push cars to park in the surrounding residential streets.  This would likely result in some detrimental impact on the existing residential streetscape and additionally strain existing on-street car parking bays provided for visitors to the centre. | No |
| 1. Achieve quality residential built form outcomes for the growing population; | The development does not negatively impact this objective. | Yes |
| 1. To develop and support a hierarchy of activity centres; | A Restaurant use is a ‘P’ permitted land use in the Local Centre zone under the LPS3. | Yes |
| 1. To integrate land use and transport systems; | The development is located within the local centre on Asquith Street which is categorised as a Local Distributor in the City of Nedlands Functional Road Hierarchy.  Based on Transperth data, there is a bus service (Bus 24) which operates along Asquith Street and is able to service to the local centre. | Yes |
| 1. Facilitate improved multi-modal access into and around the district; | The site can be easily accessed via footpaths existing within the surround area. | Yes |
| 1. Maintain and enhance the network of open space | The proposed development does not impact the City’s network of open space. | Yes |
| 1. Facilitate good public health outcomes; | The development is not considered to adversely affect the desired public health outcomes. | Yes |
| 1. Facilitate a high-quality provision of community services and facilities; | The development is not considered to adversely affect the community services or facilities and will contribute to the viability of the local centre. | Yes |
| 1. Encourage local economic development and employment opportunities; | The development is considered to positively contribute to the support of a local business that is currently operating on site as The Village Pantry and Pizza. The proposal will employ 8 staff members and support economic recovery efforts in Western Australia due to the COVID-19 pandemic. | Yes |
| 1. To maintain and enhance natural resources; | The development does not negatively impact this objective. | Yes |
| 1. Respond to the physical and climatic conditions; | The development does not negatively impact this objective. | Yes |
| 1. Facilitate efficient supply and use of essential infrastructure; | The development does not negatively impact this objective. | Yes |

**6.2.2 – Clause 16: Local Centre Zone Objectives**

|  |  |  |
| --- | --- | --- |
| **Requirement** | **Proposal** | **Satisfies** |
| To provide a range of small-scale retail and service uses for the immediate neighbourhood, that are easily accessible, but which do not adversely impact on the amenity of adjoining residential areas. | The proposed Restaurant use located within the Local Centre zone, will offer a local dining experience for the community within the Mt Claremont West Precinct. The subject site can also be accessed by public transport.  However, the proposed Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use will exacerbate the lack of car parking available within the local centre area. The proposed car parking shortfall increase of 29 car bays will adversely impact upon the amenity of the surrounding residential area, potentially causing vehicles to be parked in residential areas. | No |
| To focus on the main daily household shopping and community needs. | The proposed Restaurant use is another dining option within the Local Centre zone. | Yes |
| To encourage high quality, pedestrian friendly, street-orientated development. | The development does not negatively impact this objective. | Yes |
| To ensure non-residential uses are located at street level and are compatible with adjoining residential uses. | The proposal is located within an existing tenancy located at street level facing Asquith Street ensuring good street activation. | Yes |

**6.3 Policy/Local Development Plan Consideration**

**6.3.1 Local Planning Policy – Parking**

|  |
| --- |
| **Policy Objective** |
| 3.1 To facilitate the development of sufficient parking facilities for cars and other wheeled vehicles. |
| **Policy Requirement** |
| Table 1: Parking Requirements   |  |  | | --- | --- | | ***Land Use*** | ***Minimum no. of Car Parking Bays Required*** | | Lunch bar  Restaurant/café  Fast food outlet | 1 per 2.6m2 of restaurant seating area or 1 per 2 persons (whichever is greater). | |
| **Proposed** |
| Car Parking Assessment Table   |  |  |  |  | | --- | --- | --- | --- | | **Land Use** | | **Patron numbers or restaurant seating area** | **Car parking Requirement**  **(1 per 2.6m2 of restaurant seating area or 1 per 2 persons (whichever is greater).** | | **Existing Approved** | Lunch Bar | 12 persons | 6 car bays | | **Proposed** | Restaurant | 70 persons or 82.5m2 of seating area | 35 car bays | | **Car Parking Shortfall from Change of Use** | | | **29 car bays** | | Existing car bays allocated for the subject site | | | 0 | |
| **Administration Assessment** |
| The proposal does not include the provision of car parking on site. Therefore, a variation to Table 1: Parking Requirements is required.  Clause 5.2 of the City’s LPP – Parking, enables variations to be determined in accordance with the objective of the policy. The applicant is seeking a variation to the car parking requirement and submitted written justification addressing the objective of the policy as follows:   * The Restaurant offering dinner service will not conflict with businesses in the Asquith Local Centre that mostly close after 6pm and may result in more car parking availability around the surrounding local centre at night for Restaurant patrons to use. * The proposal anticipates patrons will be locals who will walk, cycle and use public transport rather than drive when dining at the premises. * A copy of the applicant’s Proposal Report and Car Parking Management Plan can be reviewed further in Attachment 2 and 3.   Whilst clause 34(2) of the LPS3 enables a local government to approve an application for development approval that does not comply with an additional site and development requirements, such a development may only be approved under clause 34(5) of the LPS3, if the local government is satisfied that:  *(a) approval of the proposed development would be appropriate having regard to the matters that the local government is to have regard to in considering an application for development approval as set out in clause 67 of the deemed provisions; and*  *(b) the non-compliance with the additional site and development requirement will not have a significant adverse effect on the occupiers or users of the development, the inhabitants of the locality or the likely future development of the locality.*  In Administration’s view, the proposal does not meet the policy objective of the City’s LPP- Parking, being an additional requirement of LPS3, for the following reasons:   * The proposed Restaurant use requires provision of 35 car parking bays. Accounting for the 6 bay dispensation associated with the existing Lunch Bar use, an additional 29 car bays are required to support the proposed Restaurant use. No car bays are proposed on site as part of the application. * There are 8 car parking bays which service the mixed use development at No. 29 Asquith Street and these are shared amongst 10 non-residential tenancies and 4 residential units in the local centre. * The increased car parking shortfall attributed to the Restaurant will further exacerbate the insufficient supply of car parking on site, place additional demand on the on-street parking abutting the centre and result in cars parking within the surrounding residential streets.   Furthermore, the City’s Technical Services Unit has also identified that the parking availability around the Asquith Street local centre (owned by the City) could be exacerbated by the increased car parking shortfall identified as part of the development application. |

**6.4 Planning and. Development Amendment Bill 2020**

On 23 June 2020, the Western Australian Government passed the Planning and Development Amendment Bill 2020 (the Amendment) which are reforms to simplify Western Australia’s planning system and boost the State’s economic recovery from COVID-19. One planning reform initiatives is to remove development applications for small business to pay cash-in-lieu for parking shortfalls up to 10 bays.

The development presented to Council is seeking an increased car parking shortfall variation of 29 car bays for the proposed Change of Use from ‘Lunch Bar’ to ‘Restaurant’ and exceeds the car parking amount exempted from requiring a development application under the Amendment.

**6.5 Proposed Planning and Development (Local Planning Schemes) Regulations 2015 Amendment**

The Department of Planning, Lands and Heritage is currently progressing changes to the Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regs) to address further reform measures that will support development activity and job creation.

The first tranche of changes which are currently open for public comment until 18 September 2020, includes a new provision (clause 61(2A)) that exempts the ‘Restaurant’ use from requiring development approval where the Restaurant is within a Commercial, Centre or Mixed Use zone. There are no applicable conditions for this exemption.

It also includes provisions under new Part 9A and clause 77(C) that exempts minimum car parking requirements in certain circumstances, including for non-residential development uses that are exempt from planning approval at clause 61.

In all other cases, the Planning and Development (Local Planning Scheme) Regulations 2015 will include a standard and consistent clause which allows variations to minimum car parking standards where:

* Reasonable efforts have been made to provide required parking on site.
* The car parking to be provided will meet the demands of the development having regard to the likely use of parking, the availability of off-site parking, and the likely use of alternative means of transport.

The implication for the proposed application is that if the proposed amendments to the *Planning and Development (Local Planning Schemes) Regulations 2015* are adopted, the current car parking requirements under clause 32.1 (1) of LPS3 and under *LPP- Parking* will not apply to the proposed Restaurant use in the Local Centre zone.

However, it should be stressed that the proposed modifications to the LPS Regs are draft only and subject to further changes. Based on this, the proposed development and car parking shortfall is to still be assessed under the current planning framework.

1. **Conclusion**

The proposed Change of Use from ‘Lunch Bar’ to ‘Restaurant’ use is a more intense form of development than what currently exists on site and results in an increased car parking bay shortfall of 29 bays.

The proposal does not adequately satisfy:

* Schedule 2 Clause 67 (x) of the Planning and Development (Local Planning Schemes) Regulations 2015;
* The aims of the scheme under Clause 9(a) and (b) of the LPS3;
* The Local Centre Zone objectives under Clause 16 of the LPS3; and
* The objectives of the City’s Local Planning Policy – Parking;

which will result in adverse impact upon the local residential amenity within the Mt Claremont West Precinct.

Accordingly, it is recommended that the application be refused by Council.

# Responsible Authority Report – Lot 394 (20) Cooper Street, Nedlands

|  |  |
| --- | --- |
| **Council** | 3 September 2020 |
| **Applicant** | Mr. Petar Mrdja, Urbanista Town Planning |
| **Landowner** | Yuki Yami Pty Ltd ATF Azabu Trust |
| **Director** | Peter Mickleson – Director Planning & Development |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil |
| **Report Type**  Information Purposes | Item provided to Council for information purposes. |
| **Reference** | DAP/20/01781 |
| **Previous Item** | Nil |
| **Delegation** | Not applicable – Joint Development Assessment Panel application. |
| **Attachments** | Responsible Authority Report and Attachments – available at: <https://www.dplh.wa.gov.au/about/development-assessment-panels/daps-agendas-and-minutes> |

Mayor de Lacy – Impartiality Interest

Mayor de Lacy disclosed that she is a paid member of the MINJDAP that will be considering this item at a meeting scheduled for 7th September. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeod’s released to the local government sector in relation to a recent Supreme Court ruling, Mayor de Lacy declared she leave the room and not participate in the debate, or vote on the matter. Mayor de Lacy advised she would leave the room and request that the Deputy Mayor preside over the meeting for that item.

Councillor Smyth – Impartiality Interest

Councillor Smyth disclosed that she is a paid member of the MINJDAP that will be considering this item at a meeting scheduled for 7th September. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeod’s released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth declared she would leave the room and not participate in the debate, or vote on the matter.

Mayor de Lacy & Councillor Smyth left the meeting at 8.48 pm.

The Deputy Mayor assumed the chair.

**Regulation 11(da) – Not Applicable**

Moved – Councillor Coghlan

Seconded – Councillor Hay

**Council Resolution**

**Council:**

1. **notes the Responsible Authority Report for the proposed 10 multiple dwellings on Lot 394 (20) Cooper Street, Nedlands.**
2. **agrees to appoint Councillor Coghlan and Councillor Bennett to coordinate the Council’s submission and presentation to the Metro Inner-North JDAP.**
3. **informs the Development Application Panel in this submission that:**
   1. **the current status of the City’s Planning Framework as applicable to this particular Development Application;**
   2. **Council does not support the RAR recommendation for approval of the development at 20 Cooper Street; and**
   3. **reasons for the Council’s alternate position on the findings of the RAR for 20 Cooper Street are as follows;**
      1. **Excessive bulk (exceeds the plot ratio), requests a bonus allowance for a plot ratio of 1.06, which significantly exceeds the plot ratio of 0.8 allowed for R-60.**
      2. **Excessive building on the western boundary, inadequate rear setback less than 3 metres is provided and unnecessary tree loss.**
      3. **The Development Application includes a “shared driveway” with an already approved development at 18 Cooper Street. These are two separate developments.**
      4. **Waste management does not comply with the Nedlands Waste Management Policy.**
      5. **An excessive number of bins will be placed on the verge. The “hand compacting” device proposed for rubbish compacting is unlikely to be effectively used by the elderly or people with disabilities or in fact many members of the public.**
      6. **Building materials are out of character with the streetscape.**
      7. **Parking shortfall.**

**CARRIED UNANIMOUSLY 11/-**

Recommendation to Council

That Council:

1. notes the Responsible Authority Report for the proposed 10 Multiple Dwellings at Lot 394 (No.20) Cooper Street, Nedlands.
2. agrees to appoint Councillor …… and Councillor ….. to coordinate the Council’s submission and presentation to the Metro Inner-North JDAP;
3. does / does not (remove one) support approval of the development; and

1. provides the following reasons for the Council’s position on the application;
2. ..

**Executive Summary**

In accordance with the Planning and Development (Development Assessment Panels) Regulations 2011, Administration have prepared a Responsible Authority Report (RAR) in relation to the revised plans received on 24 July 2020 for the Metro-Inner North Joint Development Assessment Panel (JDAP) Form 1 Application at Lot 394 (20) Cooper Street, Nedlands. The application proposes the development of a three-storey multiple dwelling development, comprising of 10 apartments.

The purpose of this report is to inform Council of Administration’s recommendation to the JDAP.

**Background**

The City received the JDAP application for Lot 394 (No.20) Cooper Street, Nedlands on 4 May 2020. The subject lot is zoned ‘Residential’ and has a density code of R60.

During the assessment period, Administration raised issues/requested further information regarding a number of issues. The applicant prepared amended plans and revised technical documents, which were provided on 24 July 2020.

The City submitted the RAR on the 26 August 2020, recommending that the JDAP approve the application. A copy of the revised RAR and revised plans are attached to this report for your reference.

**Application Details**

Development approval is sought for the construction of a three-storey multiple dwelling development, comprising ten dwellings at No. 20 (Lot 394) Cooper Street (the subject site) within the Residential zone (R60). The development comprises:

Ground Floor

* 1 single-bedroom dwelling;
* 1 two-bedroom dwelling;
* 1 three-bedroom dwelling;
* Bin store area;
* 11 resident car parking bays;
* 3 visitor car parking bays;
* 2 visitor bicycle parking spaces;
* 10 storerooms;
* Communal living area; and
* Deep soil planting areas.

First Floor

* 1 one-bedroom dwelling;
* 3 two-bedroom dwellings; and
* On-structure planter boxes.

Second Floor

* 2 two-bedroom dwellings; and
* 1 three-bedroom dwelling.

Vehicle access to the subject site is proposed to be via the approved crossover and driveway on the adjoining site at 18 Cooper Street, Nedlands. A condition is recommended for arrangements to be made to formalise this shared access arrangement.

**Consultation**

The City’s Local Planning Policy – Consultation of Planning Proposals (Consultation LPP) states that the development proposal for ten multiple dwellings is classified as a Complex Application.

In accordance with the Consultation LPP, the application was advertised for a period of 21 days, commencing on 22 May 2020 and concluding 15 June 2020 and included the following forms of notification:

* 213 letters were sent to City of Nedlands landowners and occupiers and 25 letters to City of Perth landowners and occupiers within a 200m radius of the site;
* A sign on site was installed on the frontage of the site;
* An advertisement was uploaded to the City’s website with all documents relevant to the application made available for viewing during the advertising period;
* An advertisement was placed in the Post newspaper;
* Social media post on the City’s Social Media platforms;
* A notice was affixed to the City’s Noticeboard at the City’s Administration Offices; and
* A narrated video presentation on the proposal, uploaded to the City’s website.

At the conclusion of advertising, the City received 77 objections to the proposal, 67 submissions objecting to the proposal, 9 in support and one submission providing neither objection or support. A summary of the submissions is contained within Attachment1.

**Recommendation to JDAP**

The subject site forms an important role in transitioning the built form down from the anticipated mixed-use high-density development along Broadway and Stirling Highway. The proposal achieves the aims of the City’s Local Planning Strategy by mitigating potential conflicts in land use and built form between the Broadway and the remaining single houses to the west. The application has been assessed in accordance with the planning framework and in instances where the proposal does not satisfy a provision or statute, a condition has been recommended to address the requirement.

Administration acknowledges that the R60 density code that currently applies to this locality, will over time result in application of different architectural styles, built form, streetscape and landscape character. However, potential changes in the form of subdivision, grouped dwellings and multiple dwellings can be managed through appropriate siting and design. Administration is of the view that the subject application has appropriately considered façade, street setback, form and streetscape presentation in order to achieve the relevant element objectives of the R-Codes Volume 2 or can be made capable by the application of conditions. On this basis, the RAR recommends that the application be approved, subject to conditions.

**Conclusion**

The proposal for 10 apartments at 20 Cooper Street, Nedlands, is considered to appropriately balance the aims of the City’s Local Planning Strategy with the need to mitigate amenity issues on surrounding development. The application has appropriately considered its presentation to the street, separation from surrounding houses, landscaping and internal amenity. Administration therefore considers that the development will positively contribute to the locality and is capable of approval.

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed at 9.04 pm.