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***Agenda***

***Special Council Meeting***

***12 March 2019***

Dear Council member

A Special Meeting of the City of Nedlands is to be held on Tuesday 12 March 2019 in the Council chambers at 71 Stirling Highway Nedlands commencing at 5.30 pm for the purpose of discussing the process for signing Local Planning Scheme No. 3 and approving the LPS3 communications plan.



Mark Goodlet

Chief Executive Officer

8 March 2019

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**City of Nedlands**

**Notice of a special meeting of Council to be held in the Council chambers, Nedlands on Tuesday 12 March 2019 at 5.30 pm for the purpose of discussing the process for signing Local Planning Scheme No. 3 and approving the LPS3 communications plan.**

###### Special Council Agenda

# Declaration of Opening

The Presiding Member will declare the meeting open at 5.30 pm and will draw attention to the disclaimer below.

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

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

**Leave of Absence** Councillor C M de Lacy Hollywood Ward

**(Previously Approved)** Councillor N B J Horley Coastal Districts Ward

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

**Disclaimer**

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

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# Public Question Time

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

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

# Addresses by Members of the Public

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

# Disclosures of Financial Interest

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

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

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

# Disclosures of Interests Affecting Impartiality

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

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

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

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

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

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

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

# Local Planning Scheme 3 – Process for approval

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| **Council** | 12 March 2019 |
| **Applicant** | City of Nedlands |
| **Officer** | Aron Holbrook – Coordinator Strategic Planning |
| **Director** | Peter Mickleson – Director Planning and Development Services |
| **Attachments** | 1. Simplified flow-chart for the preparation of a new local planning scheme 2. Detailed flow-chart for the preparation of a new local planning scheme 3. Extract from *Planning and Development Act 2005* & *Planning and Development (Local Planning Schemes) Regulation 2015* 4. DPLH advice 5. Email, Memo & Legal Advice (CONFIDENTIAL) |

1. **Executive Summary**

This report discusses the process for the approval of a local planning scheme and outlines the steps to be taken by a local government in that process.

The report explains the City’s current position in making modifications to the scheme as directed by the Minister and the purpose behind executing (signing and sealing) the modified scheme.

Advice from the Department of Planning, Lands & Heritage and legal advice is being obtained and its implications also discussed.

The conclusion is that the City is required to consent to the modifications and modify the scheme as directed, execute the modified documents to confirm the modifications have been carried out and return those executed documents to the Minister.

Failure to do so is a breach of the *Planning and Development Act 2005 & Planning* and *Development (Local Planning Schemes) Regulations 2015.*

The Minister has the power to order the City or to take the necessary actions to cause the Scheme to be modified and approved, published in the *Gazette* and to therefore come into force and effect under the *Planning and Development Act 2005* should the local government fail to perform its functions.

1. **Recommendation to Council**

**Council directs the Mayor and Chief Executive Officer to execute the modified local planning scheme documents and apply the City seal, as required by regulation 31(2)(b) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.**

1. **Discussion/Overview**
2. **Key Relevant Previous Council Decisions**

Item 7 – Draft Local Planning Scheme No. 3 - Special Council Minutes 13 December 2016

‘Council adopts draft Local Planning Scheme No. 3 in accordance with r. 21(1) of the Planning and Development (Local Planning Schemes) Regulations 2015 and proceeds to advertise with modifications.’

Item 5 – Draft Local Planning Scheme No. 3 - Special Council Minutes 31 July 2018

‘Council resolves to not support draft Local Planning Scheme 3.’

1. **Regulatory process**

The process for the preparation, advertising, modification and approval of a local planning scheme is set out in the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.

See Attachment 1 for a simplified flowchart for the preparation of a new local planning scheme and Attachment 2 for a detailed flow-chart for the preparation of a new local planning scheme (both flow-charts are produced by the Department of Planning, Lands & Heritage).

Attachment 3 is an extract from the *Planning and Development Act 2005* and *Planning and Development (Local Planning Schemes) Regulations 2015*.

Applicable clauses have been listed and the actions specific to the development of Local Planning Scheme 3 provided, along with the date these actions where undertaken.

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| **Process** | **Legislative Clause** | **Date Occurred** |
| Draft Local Planning Scheme 3 adopted by Council (to proceed to advertise) with modifications. | **r.21 (1)(b)** | **13 December 2016** |
| WAPC advises that the Scheme has been considered and requires modifications prior to advertising. | **r.21 (4)** | **October 2017** |
| Advertising commences on draft Local Planning Scheme 3 | **s.84 & r.22** | **November 2017** |
| Advertising closes on draft Local Planning Scheme 3 | **s.84 & r.22** | **April 2018** |
| Consideration of submissions and resolution not to support the draft scheme. | **r.25 (3)** | **31 July 2018** |
| Provide Commission the advertised Scheme along with submissions, Councils response to submissions and resolution under r.25 (3). | **r.28** | **July 2018** |
| Commission to make recommendation to the Minster on the draft Scheme. | **s.87(1) & r.29** | **11 December 2018** |
| Minister may require the local government to modify the Scheme in such manner as the Minster specifies before the Scheme is resubmitted for the Ministers approval. | **s.87 (2)** | **1 February 2019** |
| **We are currently here:**  The Local Government must:  (a) modify the draft scheme as required  (b) execute the modified local planning scheme documents; and  (c) submit to the Minister a copy of the executed documents | **r.31(2)** | **March 2019** |
| **Next Steps**  Minister may approve, require modifications or refuse to approve the local planning scheme. | **s.87 (2)** | **March 2019** |
| If Scheme approved, the local government must provide to the Commission 2 copies of the local Planning Scheme documents that have been executed by the local government. | **r.31(3)** | **April 2019** |
| Commission to endorse copies of Scheme. | **r.32(1)** | **April / May 2019** |
| Minister must endorse with the Ministers approval and return it to the Commission. | **r.32(2)** | **April / May 2019** |
| The Commission is to cause the scheme to be published in the *Gazette.* | **s87(3)** | **April / May 2019** |
| A local planning scheme or amendment to a local planning  scheme, when approved by the Minister and published in the Gazette, has full force and effect as if it were enacted by  this Act. | **s.87(4)** | **April / May 2019** |

1. **Our current position**

The Minister has acted under s.87(2)(b) of the Act to require the local government to modify the local planning scheme in such manner as the Minister specifies. The local government is to make the modification and resubmit the scheme to the Minister.

The regulations provide further instruction under r. 31(2) that within 42 days of being notified under section s.87(2)(b) the local government must:

(a) modify the draft scheme as required;

(b) execute the modified local planning scheme documents; and

(c) submit to the Minister a copy of the executed documents.

Administration have carried out the modifications as required under part (a).

The Mayor & CEO are to carry out part (b) by executing the modified documents.

Following which, Administration will submit the documents to the Minister as per part (c).

**Executing Documents**

The key operative term in this process is that the local government must ‘execute’ the modified local planning scheme documents.

To execute a document is to apply the City’s seal in the presence of the Mayor and CEO, and, both must sign that they attest that the seal was applied.

This is set out in the Local Government Act which states:

9.49A. Execution of documents

1. A document is duly executed by a local government if —

(a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or

(b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.

(2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.

(3) The common seal of the local government is to be affixed to a document in the presence of —

(a) the mayor or president; and

(b) the chief executive officer or a senior employee authorised by the chief executive officer, each of whom is to sign the document to attest that the common seal was so affixed.

**Purpose to executing the documents**

Advice received from the Department of Planning, Lands and Heritage states that the requirement to execute the documents in regulation 31(2)(b) of the P&D Regs is an administrative action only, whereby the local government executes the modified Local Planning Scheme documents as confirmation that the documents have been modified as directed. See Attachment 4.

Further, DPLH advise that if modifications are not undertaken as directed the *Planning and Development Act 2005* provides for the Minister to take action to have the Local Planning Scheme published in the *Gazette* and become operational.

1. **Should Council resolve not to execute the documents**

In the instance that Council resolves not to execute the documents, legal advice (obtained verbally, written advice to follow prior to meeting) advises that this would be interpreted as the local government refusing to consent to any modifications imposed by the Minister under section 76(1)(c).

The legal advice suggests the following steps under the *Planning and Development Act 2005* would be applicable:

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| **Process** | **Legislative Clause** |
| The Minister may require the local government to modify the local planning scheme in such manner as the Minister specifies, before the local planning scheme is resubmitted for the Minister’s approval. | **s.87(2)(b)** |
| If the Minister is satisfied that a local government has refused to consent to any modifications imposed by the Minister, the Minister may order the local government to consent to the modifications. | **s.76(1)(c)** |
| If the local government fails to comply with the order, the Minister may serve written notice on the local government. | **s.212(1)(a)**  **&**  **s.212(2)** |
| If the local government does not comply with the written notice, the Minister may take all such steps as are necessary for compliance with the requirement as if the Minister were the local government. | **s.212(3)** |
| The Minister may order the local government to provide reports or other information as is necessary. | **s.212(4)** |
| All costs, charges and expenses incurred by the Minister in the exercise of any powers conferred by subsection (3) may be recovered from the local government | **s.212(7)** |

1. **Breach of Act and failure to govern**

Further to the above, the legal advice also advises Council that should it fail to perform its regulatory functions as set out in the *Planning and Development Act* and *Planning and Development (Local Planning Schemes) Regulations 2015* it could be taken that the Minister perceives the Council as not being fit to govern. In this circumstance the Planning Minister may seek intervention by the Local Government Minister to remove a Council that is not capable of fulfilling its regulatory functions.

# Local Planning Scheme 3 – Community Engagement Plan

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| --- | --- |
| **Council** | 12 March 2019 |
| **Applicant** | City of Nedlands |
| **Officer** | Aron Holbrook |
| **Director** | Peter Mickleson – Director Planning and Development Services |
| **Attachments** | 1. Community Engagement Plan |

**Executive Summary**

Administration has prepared a Community Engagement Plan for the final implementation of Local Planning Scheme 3 (LPS3).

The purpose of the community engagement is to inform the community about the changes introduced with Local Planning Scheme 3 and to provide an opportunity for the community to find out more information about the new scheme and how it may impact on them, their property and community.

**Recommendation to Council**

**Council endorses the Engagement Plan as presented in Attachment 1 to be implemented upon the gazettal of Local Planning Scheme No. 3.**

**Discussion/Overview**

**Key Relevant Previous Council Decisions:**

Item 7 – Draft Local Planning Scheme No. 3 - Special Council Minutes 13 December 2016

‘Council adopts draft Local Planning Scheme No. 3 in accordance with r. 21(1) of the Planning and Development (Local Planning Schemes) Regulations 2015 and proceeds to advertise with modifications.’

Item 5 – Draft Local Planning Scheme No. 3 - Special Council Minutes 31 July 2018

‘Council resolves to not support draft Local Planning Scheme 3.’

1. **Engagement Plan**

Administration has prepared a Community Engagement Plan for the final implementation of Local Planning Scheme 3 (LPS3). The Engagement Plan is an internal document used to set out the purpose of an engagement activity and then organise all the relevant communications, materials, messages, timing and actions required to engaged successfully with the community. See Attachment 1.

1. **About the engagement**

The purpose of the engagement is to inform the community about the changes that are introduced with Local Planning Scheme 3 and to provide an opportunity for the community to find out more about the new scheme, answer their questions and address their concerns.

The goal is that residents and property owners will be informed on the new scheme requirements in relation to their individual properties and their local community as well as outline the next projects that are linked with the Scheme including the Public Open Space (POS) Strategy and local planning policies.

1. **Timing**

All engagement activities have been booked to begin on 29 April 2019 until 31 May 2019, however, this is subject to change given that the final gazettal of the scheme has no fixed date and is dependent on the Minister for Planning as well as the timing of the government gazette.

Engagement activities cannot begin earlier as the gazettal of the scheme (LPS3) is unlikely to have occurred and its final form will not be known and is subject to change until that date.

Further to this, Open Day venues are unavailable, and the Public Open Space Strategy engagement activities will still be underway.

1. **Stakeholders**

Internal stakeholders are identified as Councillors, Planning Services staff, Planning and Development Divisional staff, Customer Services and all associated business units. These stakeholders will be informed through briefings, CEO weekly updates, emails and discussion.

External stakeholders include residents and property owners, LPS3 submitters and businesses and organisations with an interest in LPS3. These stakeholders will be informed through:

* Flyer
* Letter
* Website (Nedlands & YourVoice)
* E-newsletter
* Newspaper adverts
* Posters
* Information sheets
* Media release
* Updates on Social Media (Facebook, Twitter, Instagram)
* Information Open Days

1. **Project Description**

The Project Description forms the basis of the message to be communicated across all methods of communication.

‘The City’s Local Planning Scheme No.3 (which replaces Town Planning Scheme No. 2) has now been published in the Government Gazette and has full force and effect.

Local Planning Scheme No.3 has changed the zones, land use permissibility, density codes and development standards within the City of Nedlands.

The full approved copy of the Scheme text and maps are available for public viewing on the engagement page and through intramaps on the City’s website.

The Community are invited to attend three open days scheduled throughout May to talk to a City Planner who can assist with understanding the Scheme and any impacts on residents.’

# Declaration of Closure

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