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***Minutes***

***Special Council Meeting***

***12 March 2019***

**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 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.**

# Declaration of Opening

The Presiding Member declared the meeting open at 5.30 pm and drew 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)

**Councillors** His Worship the Mayor, R M C Hipkins (Presiding Member)

Councillor I S Argyle Dalkeith Ward

Councillor W R B Hassell Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor B G Hodsdon Hollywood Ward

Councillor J D Wetherall Hollywood Ward

Councillor G A R Hay Melvista Ward

Councillor T P James Melvista Ward

Councillor N W Shaw Melvista 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

Mr M A Glover Director Technical Services

Mrs N M Ceric Executive Assistant to CEO & Mayor

**Public** There were 20 members of the public present.

**Press** The Western Suburbs Weekly representative.

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

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

**Apologies** Mrs L M Driscoll Director Corporate & Strategy

**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

## Mr Steven Curtis, 18 Archdeacon Street, Nedlands – Local Planning Scheme 3

Question 1

On what basis does the Council believe that the Local Planning Strategy reflects the communities’ vision for Nedlands? How many Nedlands residents supported the Local Planning Strategy?

Question 2

The advertising material which was issued to support the community consultation for the Local Planning Strategy depicted the Council’s vision for the transition zones. This is very different from what is currently proposed for transition zones as part of LPS3. Who is accountable for the consequences of potentially misleading residents?

Question 3

There are significant misalignments between The Minister’s version of LPS3 and the Local Planning Strategy. How can the Council approve the Minister’s version of LPS3 while these two documents remain misaligned?

Question 4

What number (and %) of responses to LPS3 from Q1 2018 consultation were not supportive of the scheme as advertised (i.e. did not support the scheme as advertised without amendment); What proportion of the concerns raised by residents does the Minister’s version of LPS3 address?

Question 5

Is the Council’s Council Strategic Planning Team supportive of the Minister’s version of LPS3? If so, they are in conflict with the view of the large proportion of Nedlands ratepayers and the elected members that represent them. Why should ratepayers continue to fund the City’s planners working on LPS3 when they appear to be acting against the interest of ratepayers and elected members?

Question 6

Does the Council consider the failure to inform individual residents directly affected of the full implications of the zoning changes (from a low-density residential area to a target area for medium/high density redevelopment) to be a material breach of the consultation requirements?

Question 7

Do the Councillors have a free choice in tonight’s vote? Has robust legal advice been provided to the Councillors on the consequences of directing the Mayor and CEO not to execute the modified Local Planning Scheme document?

Question 8

Should the Council direct the Mayor and CEO to execute the Local Planning Scheme under protest how will this be recorded? Will the Councillors still be held to account for the consequences to the community of having directed the Mayor and CEO to execute LPS3?

Question 9

How does the council intend to avoid the inevitable conflict of size, scale and front set-backs within the Transition Zones should the Council recommend to execute the Minister’s LPS3 this evening?

Answers 1-9

These questions have been ruled out of order as the only item of business on the agenda is the Minister’s directive in relation to LPS3 and the Community Engagement Plan.

# Addresses by Members of the Public

Ms Sonya Derry, 38 Napier Street, Nedlands Item 6

(spoke in relation to LPS3)

Mr Peter Plaisted, 22 Vincent Street, Nedlands Item 6

(spoke in support of the recommendation)

Mr Guy Churchill, 67 Hardy Road, Nedlands Item 6

(spoke in opposition to the recommendation)

# Disclosures of Financial 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.

There were no disclosures of financial interest.

# 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*.

There were no disclosures affecting impartiality.

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

Nil.

# Local Planning Scheme 3 – Process for approval

|  |  |
| --- | --- |
| **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) |

**Regulation 11(da) – Council determined that the resolution was sufficient to comply with the order from the Minister.**

Moved – Mayor Hipkins

Seconded – Councillor Hassell

**Council Resolution**

**Council directs the Chief Executive Officer to forward two copies of the modified scheme documents, as required by the Minister, as specified by the Western Australian Planning Commission in its communication to the City dated 1 February 2019, in accordance with section 87 of the *Planning and Development Act 2005.***

**CARRIED 6/5**

**(Against: Crs. Argyle Mangano Hodsdon McManus & Smyth)**

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. **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. **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:

|  |  |
| --- | --- |
| **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.

Moved – Councillor Hassell

Seconded – Councillor James

**That the meeting be adjourned until after the Council Committee Meeting this evening.**

**CARRIED UNANIMOUSLY 11/-**

The meeting adjourned at 6.28 pm and reconvened at 9.23 pm with the following people in attendance:

**Councillors** His Worship the Mayor, R M C Hipkins (Presiding Member)

Councillor I S Argyle Dalkeith Ward

Councillor W R B Hassell Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor B G Hodsdon Hollywood Ward

Councillor J D Wetherall Hollywood Ward

Councillor G A R Hay Melvista Ward

Councillor T P James Melvista Ward

Councillor N W Shaw Melvista 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

Mr M A Glover Director Technical Services

Mrs N M Ceric Executive Assistant to CEO & Mayor

**Public** There were 2 members of the public present.

**Press** The Post Newspaper & Western Suburbs Weekly representative.

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

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

**Apologies** Mrs L M Driscoll Director Corporate & Strategy

# Local Planning Scheme 3 – Community Engagement Plan

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

Councillor McManus left the room at 9.23 pm.

**Regulation 11(da) – The Council determined that the additional clause was needed in order to provide timely information to the public.**

Moved – Councillor Hassell

Seconded – Councillor Hay

**That the Recommendation to Council be adopted.**

(Printed below for ease of reference)

Councillor McManus returned to the room at 9.24 pm.

Amendment

Moved - Councillor James

Seconded – Mayor Hipkins

**Agrees that a letter from the Mayor in collaboration with the CEO regarding the current process and next stages for LPS3 be sent out as soon as possible.**

Councillor Hodsdon left the room at 9.28 pm and returned at 9.30 pm.

Councillor Hay left the room at 9.32 pm and returned at 9.35 pm.

Councillor Hassell left the room at 10.05 pm.

**The AMENDMENT was PUT and was**

**CARRIED 9/1**

**(Against: Cr. Wetherall)**

Councillor Hassell returned the room at 10.09 pm.

**The Substantive Motion was PUT and was**

**CARRIED 10/1**

**(Against: Cr. Wetherall)**

**Council Resolution**

**Council:**

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

1. **agrees that a letter from the Mayor in collaboration with the CEO regarding the current process and next stages for LPS3 be sent out as soon as possible.**

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.

**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.

**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 declared the meeting closed at 10.10 pm.