



LOCAL PLANNING POLICY 1.2: REMOVAL OF OCCUPANCY RESTRICTIONS

1.0 PURPOSE

- 1.1 The purpose of this policy is to provide guidance and provisions relating to the removal of occupancy restrictions on residential properties and ancillary dwellings.

2.0 APPLICATION OF POLICY

- 2.1 This policy applies to all applications for the removal of occupancy restrictions related to residential dwellings including ancillary dwellings within all zones in the City of Nedlands.
- 2.2 Where this Policy is inconsistent with a Local Development Plan or Local Planning Policy that applies to a specific site, area or R-Code, the provisions of that specific Local Development Plan or Local Planning Policy shall prevail.

3.0 OBJECTIVES

- 3.1 To ensure the removal of occupancy restrictions results in residential development that is compatible with the surrounding area.
- 3.2 To maintain a high standard of amenity for the surrounding neighbourhood through statutory planning controls.
- 3.3 To establish a clear framework for the assessment and determination of the removal of occupancy restrictions on residential lots.

4.0 POLICY MEASURES

Occupancy Restrictions – Aged and Dependant Persons Dwellings (Over 55's Dwellings)

- 4.1 All properties restricted to Aged and Dependant Persons (over 55's) Dwellings through the provision of an Additional Use and associated Development Approval issued under Town Planning Scheme No 2 (TPS2) shall no longer be required to maintain this occupancy restriction under Local Planning Scheme No 3 (LPS3).
- 4.2 The properties shall remain burdened by the occupancy restriction mechanism imposed over the site via a condition of development approval or notification on the Certificate of Title until the owner of the subject property completes the process for removal of the occupancy restriction mechanism.
- 4.3 In accordance with Clause 77 of the Planning and Development (Local Planning Schemes) Regulations, the owner of the affected property shall submit a Development Application to the City of Nedlands to request the amendment or removal of the condition of Development Approval related to the occupancy restriction of the Aged and Dependent Persons Dwelling (over 55's).



- 4.4 As per the Register of Delegations, if the original decision resulting in Development Approval for the Aged and Dependent Persons Dwelling(s) (over 55's) was made by Council, the application to remove a condition/s of approval shall also be required to be determined by Council.
- 4.5 Where the City approves the removal of the occupancy restriction from an Aged and Dependant Persons Dwelling (over 55's), it is the responsibility of the landowner to have the notification on their Certificate of Title removed. The property shall continue to be burdened by the occupancy restriction until the process for the removal of the notification on the Certificate of Title has been completed.

Occupancy Restrictions - Ancillary Dwellings

- 4.6 All ancillary dwellings that were previously restricted to occupancy by family members through a condition of a Development Approval shall be eligible to apply for the amendment or removal of this occupancy restriction under LPS3. Restrictions relating to occupancy by a family member were removed from the Residential Design Codes in 2013 and SPP 7.3 – Residential Design Codes Volume 1 was adopted into Local Planning Scheme No.3 in April 2019.
- 4.7 In accordance with Clause 77 of the Planning and Development (Local Planning Schemes) Regulations, the owner of the affected property shall be required to submit a Development Application to the City of Nedlands to request the amendment or removal of the condition of Development Approval related to the occupancy restriction of the ancillary dwelling.
- 4.8 As per the Register of Delegations at the City of Nedlands, if the original decision resulting in Development Approval of the ancillary dwelling was made at a Council meeting for the original development / use, then the removal of the subject condition/s of approval shall also require a decision of Council.

Notes: *For guidance on the process of removing notification on a Certificate of Title in relation to occupancy restrictions, refer to the Procedure for removing notifications on title – over 55's.*

5.0 CAR PARKING

- 5.1 Car parking is to be in accordance with the requirements of the Parking Local Planning Policy and the Residential Design Codes where these provisions are not augmented by the Parking Local Planning Policy.

6.0 CONSULTATION

- 6.1 Consultation with affected landowners will be undertaken in accordance with the City's Consultation of Planning Proposals Local Planning Policy.

7.0 OTHER CONSIDERATIONS – HEALTH AND BUILDING APPROVAL

- 7.1 The applicant is advised to consult with the City's Building Services & Environmental Health Services to determine if a Building or Health approval is required.

**8.0 VARIATIONS TO POLICY**

8.1 Where a variation to this policy is sought, consideration shall be given to objectives of the policy.

9.0 RELATED LEGISLATION

9.1 This policy has been prepared in accordance with Schedule 2 Part 2 Clause 4 of the Planning and Development (Local Planning Schemes) Regulations 2015.

9.2 This policy should be read in conjunction with the following additional planning instruments and its requirements apply unless specifically stipulated elsewhere in any of the below:

- Planning and Development (Local Planning Schemes) Regulations 2015
- Local Planning Scheme No. 3
- State Planning Policy 7.3 – Residential Design Codes
- State Planning Policy 3.7 – Planning in Bushfire Prone Areas
- Parking Local Planning Policy
- Consultation of Planning Proposals Local Planning Policy

10.0 DEFINITIONS

10.1 For this policy the following definitions apply:

Definition	Meaning
Additional Use	A class of use for specified land that are additional to the classes of use permissible in the zone in which the land is located.
Aged Person	A person who is aged 55 years or over.
Ancillary Dwelling	Self-contained dwelling on the same lot as a single house which may be attached to, integrated with or detached from the single house.
Dependent Person	A person with a recognised form of disability requiring special accommodation for independent living or special care.
Caveat	A caveat is a form of registration which is noted on a property's Certificate of Title for the purpose of providing notification of an interest in that property.
Over 55's Dwellings	Residential dwellings where only persons 55 years of age or over are permitted to reside, as per the specifications of clause 5.5.2 of the Residential Design Codes Volume 1. Occupancy restrictions on the Certificate of Title or Strata Plan are often used as mechanisms to enforce this occupancy restriction.
Restrictive Covenant	A restrictive covenant is an agreement between two parties that restricts the use or enjoyment of land owned by one of those parties, for the benefit of another party. A restrictive covenant is noted on a Certificate of Title for the land.
Section 70A	A Section 70A is a section of the Transfer of Land Act 1893 that allows notifications to be placed on a property's Certificate of Title. The notifications advise of potential circumstances that might impact the enjoyment of that property.
Strata Titles Act	The governing legislation for the operation of strata titles within Western Australia.

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REMOVAL OF NOTIFICATIONS ON TITLE PROCEDURE (OVER 55's ACCOMMODATION / ANCILLARY DWELLINGS)

Development Approval and Additional Use under TPS2

Under Town Planning Scheme No. 2 (TPS2), a number of single residential properties were granted additional land use rights to build two Aged and Dependent Persons Dwellings in place of a single house on a single lot. These dwellings are colloquially known as over 55's accommodation, and are restricted to occupation by people aged 55 years and over. These dwellings are classified as Aged and Dependent Persons Dwellings in accordance with clause 5.5.2 of State Planning Policy 7.3 R Codes Volume 1, and through a condition of development approval and/or a notification on the Certificate of Title.

Under TPS2, a number of single residential properties were granted Development Approval to build an ancillary dwelling on the site, with occupation of this dwelling restricted to members of the property owners family via a condition of Development Approval and/or a notification on the Certificate of Title.

Different forms of restrictions

There are several different ways in which a restriction may have been placed on a property's Certificate of Title to ensure the dwellings were occupied as per the requirements of their development approval. The most common mechanisms are:

- Section 70A notification on the certificate of title;
- Restrictive covenant on the certificate of title; and
- Restriction on the strata plan under the Strata Titles Act.

What will happen to these occupancy restrictions under Local Planning Scheme No. 3?

Under Local Planning Scheme No. 3 (LPS3), the additional uses on these properties are no longer in effect.

However, the properties will still have restrictions on occupancy under the mechanism, which was originally chosen as per the original development approval granted.

Not all properties with the additional use provisions under TPS2 have been upcoded under LPS3, however Council has resolved to remove the occupancy restrictions on all Aged and Dependent Persons (over 55's dwellings) and ancillary accommodation.

How do I remove the restrictions from my property?

Generally, there will be three restrictions in place to manage occupancy for Aged and Dependent Persons accommodation:

- a) TPS 2 Additional Use;
- b) Planning Approval issued by the City will be for a specific land use (i.e. Aged and Dependent Persons dwellings) and will contain specific conditions related to the approval that relates to the land; and
- c) Notification placed on the title and/or strata plan.

Ancillary Dwellings will generally have two restrictions in place to manage occupancy:

- a) Planning Approval issued by the City will be for a specific land use (i.e. Ancillary Dwelling) and will contain specific conditions related to the approval that relates to the land; and
- b) Notification placed on the title and/or strata plan.

The TPS 2 Additional Use



With the gazettal of LPS 3, the TPS 2 Additional Use was automatically removed and the standard zone and land use permissibility in LPS 3 will apply.

The Development Approval

As per Clause 77 of the Planning and Development (Local Planning Schemes) Regulations, a new development approval will need to be applied for and granted to remove or amend any conditions restricting the dwellings use.

Aged and Dependent Persons (Over 55's) accommodation owners will need to apply for a Change of Use and receive Development Approval for the dwelling/s to be 'Residential land use' without age restriction conditions. It is important to note that in order to receive development approval, the dwellings will need to comply with all of the built form requirements for a single house, grouped dwelling or multiple dwelling as per the State Planning Policy 7.3 – Residential Design Codes Volume 1 or Volume 2, dependant on the type of dwelling.

Ancillary Dwellings owners will need to apply for an amendment to their conditions of approval, removing the condition requiring the occupants of the ancillary dwelling to be family members of the landowners.

1) Notification on Certificate of Title

The Notification will need to be removed from the Certificate of Title.

This process will require landowners to liaise with the City and Landgate in order to remove the notification from the title.

The process to be followed is dependant upon the type of notification on the Certificate of Title:

Section 70A Notification

- a) The owner is to print, complete and sign Landgate *Form N2: Removal or Modification of Notification under Section 70A*.
- b) The completed form is to be sent or delivered to the City of Nedlands for the CEO's signature and for completion of the Local Government/Public Authority Attestation. Please allow at least 5 business days for this section to be completed.
- c) The owner then collects the completed *Form N2: Removal or Modification of Notification under Section 70A* from the City of Nedlands and posts or delivers the Form to Landgate. Landgate will then liaise with the owner as required to complete the removal of the Section 70A from the Certificate of Title.



Caveat

- a) The owner is to print, complete and sign Landgate *Form W1: Withdrawal of Caveat*.
- b) The completed form is to be sent or delivered to the City of Nedlands for the CEO's signature and for completion of the Local Government/Public Authority Attestation. Please allow at least 5 business days for this section to be completed.
- c) The owner then collects the completed *Form W1: Withdrawal of Caveat* from the City of Nedlands and posts or delivers the Form to Landgate. Landgate will then liaise with the owner as required to complete the removal of the caveat from the Certificate of Title.

Restriction on the strata plan under the Strata Titles Act

- a) The removal of a restriction on a strata plan requires a resolution without dissent (or a unanimous resolution in the case of a two-lot scheme) from the Strata Company and it will take effect from the date of registration of the resolution at Landgate.

Registration is achieved through the following process:

The owner must print and complete a Landgate *Application Form* that is accompanied by:

- a certificate from the Strata Company in the manner of Form 19 from the Strata Titles General Regulations (with a sketch attached, if necessary, to define the portion of the parcel affected by the addition or variation of a restriction as to use);
- the written consent of the Local Government to the resolution (not required for survey-strata plans);
- the written consent of the Western Australian Planning Commission to the resolution.

Need guidance on how to complete and lodge Landgate forms?

Landgate is the government body responsible for removing notifications from Certificates of Title and Strata Plans. All forms can be downloaded from their website, www.landgate.wa.gov.au and all fees must be paid directly to Landgate.

For further information, please contact Landgate:

T: (08) 9273 7373

E: customerservice@landgate.wa.gov.au

Or visit their office at 1 Midland Square, Midland

Please note that the property owner must lodge the original copy of Landgate documents, signed by themselves and the Local Government, at Landgate. The Local Government is not permitted to do this on behalf of the property owner.

All forms can be lodged in person at 1 Midland Square, Midland, or via post to:

P.O Box 2222
MIDLAND WA 6936

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