

# Planning and Development Reports

**Committee Consideration – 2 December 2014**  
**Council Resolution – 16 December 2014**

## Table of Contents

Item No.		Page No.
PD47.14	Scheme Amendment 204 – Initiation Report (Proposal to Re-zone Captain Stirling Site) .....	2
PD48.14	(Lot 4) No. 4/95 Stirling Highway, Nedlands – Retrospective Air-Conditioning Condenser Units and Prospective Acoustic Screen... ..	12
PD49.14	Scheme Amendment 202 – Initiation Report (Proposal to Re-zone Land for Multi-use Dwelling) .....	21
PD50.14	Department of Education – Extension to Lease Area at Nedlands Park Early Learning Centre – 150 Melvista Avenue, Nedlands ..	33
PD51.14	Sustainable Nedlands Committee – Appointment of Committee Members.....	41

<b>PD47.14</b>	<b>Scheme Amendment 204 – Initiation Report (Proposal to Re-zone Captain Stirling Site)</b>
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<b>Committee</b>	2 December 2014
<b>Council</b>	16 December 2014
<b>Applicant</b>	RPS Australia East Pty Ltd
<b>Owner</b>	Various
<b>Officer</b>	Christie Downie – Sustainable Planning Officer
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	PLAN-PA-00005
<b>Previous Item</b>	N/A

## 1.0 Executive Summary

The purpose of this report is for Council to consider an application to initiate an amendment to Town Planning Scheme No. 2. RPS Australia East Pty Ltd has submitted an application to amend the zoning of;

- Lot 1 Stirling Highway from “Hotel” to “Special Use”,
- Lots 21-23 Florence Road “Residential” to “Special Use and,
- Lots 32-33 Stanley Street from “Residential” to “Special Use”.

The scheme amendment proposal has been assessed on its planning merits and is considered inappropriate as it will result in a centre that lacks diversity and does not genuinely contribute to meeting dwelling targets, the Transport Assessment does not contain a comprehensive analysis of the traffic impacts and the provisions are not sufficient to address integration with the existing built form.

### 1.1 Recommendation to Committee

**Council does not proceed with the Scheme Amendment No. 204 for the following reasons:**

1. the proposal will result in a centre that lacks diversity and does not genuinely contribute to meeting dwelling targets, both key objectives in the state planning framework,
2. the Transport Assessment does not adequately address the traffic and movement issues, and

3. the proposed provisions are not sufficient to address integration with the existing built form.

## 1.2 Strategic Community Plan

KFA: Natural and Built Environment

This report relates to land use planning, which contributes to properly managed development in the City of Nedlands.

## 2.0 Background

Address	MRS	TPS2	Use	Lot area
80 (Lot 1) Stirling Highway	Urban and Road Reserve	Hotel	Captain Stirling Hotel and liquor store	7618 m <sup>2</sup>
2 (Lot 21) Florence Road	Urban	Residential R10	Single house	1012 m <sup>2</sup>
4 (Lot 22) Florence Road	Urban	Residential R10	Vacant	1012 m <sup>2</sup>
6 (Lot 23) Florence Road	Urban	Residential R10	Single house	1012 m <sup>2</sup>
7 (Lot 33) Stanley Street	Urban	Residential R10	Single house	1012 m <sup>2</sup>
9 (Lot 32) Stanley Street	Urban	Residential R10	Single house	1012 m <sup>2</sup>
<b>Total</b>				12 678 m <sup>2</sup>

The current attributes of the subject site can be seen in the table above and in the Locality Map (1). The site abuts Stirling Highway, in a predominantly low density residential area serviced by a traditional grid street network. The site forms part of a local commercial hub and is classified as a neighbourhood centre.

The existing neighbourhood centre is not well defined, however in this report is assumed to include the commercial activities abutting the southern edge of Stirling Highway between Dalkeith Road and Stanley Street. This includes the Captain Stirling Shopping Centre, a small amount of office and the Captain Stirling Hotel and Bottle Shop. Further history relating to the hotel can be found in **Attachment 2**.

There are a number of state and local strategic planning documents that affect the subject site.

### 2.1 Key Relevant Previous Council Decisions

Council considered a scheme amendment for the above-mentioned lots in November 2012, and resolved not to initiate the scheme amendment. The application and assessment of the proposal received in 2012 has not been considered in the assessment of this current proposal.

## 2.2 Legislation / Policy

*Planning and Development Act 2005 (P&D Act)*

*Town Planning Regulations 1967*

City of Nedlands Town Planning Scheme No. 2

## 3.0 Consultation Process

Before a scheme amendment is initiated, there is no requirement for public consultation. Despite this, the City has received correspondence from the community relating to this proposal. This correspondence is summarised in **Attachment 3**, and a full copy has been provided the Councillors prior to the Council meeting.

Required by legislation:                      Yes                       No   
Required by City of Nedlands policy:      Yes                       No

If Council initiates this amendment there is a statutory process to follow that requires environmental review and consultation with people and agencies likely to be affected by the proposed scheme amendment, as per Part 5 of the *P&D Act*.

## 4.0 Budget / Financial Implications

Within current approved budget:              Yes                       No   
Requires further budget consideration:      Yes                       No

This proposal has no budget or financial implications for the City. The applicant is responsible for meeting the costs associated with the processing of this application.

## 5.0 Risk management

If Council resolves not to initiate this scheme amendment proposal, the Minister for Planning may instruct that the amendment be initiated. Section 76 of the *P&D Act* states that where the Minister is satisfied on any representation that the local government has failed to adopt (initiate) a proposal which “ought to be adopted”, the Minister may order the local government to do so.

## 6.0 Discussion

### 6.1 Proposal

The scheme amendment is proposed to facilitate redevelopment of the site, and expansion of the neighbourhood centre. The proposal includes rezoning the site to 'Special Use' which would define the uses permitted on the site and include specific provisions relating to;

- Design requirements,
- Retail floor space,
- Residential density,
- Building height,
- Car parking, and
- Setbacks.

The applicant has provided a planning report in support of the scheme amendment (**Attachment 4**). In addition to the proposed changes to the scheme map and text (**Attachment 5**), the report includes justification in relation to state and local planning documents, describes the purpose, rationale and planning merit of the amendment. The report is supported by additional documents; Retail Sustainability Assessment, Conceptual Site Layout, Heritage Assessment (all included within **Attachment 4**) and Transport Assessment Report (**Attachment 6**).

## **6.2 State Planning Framework**

There are a number of state planning framework documents that are considered relevant to this amendment;

### **6.2.1 Directions 2031 and Beyond and Central Metropolitan Perth Sub-regional Strategy**

Directions 2031 and Beyond provides a high level spatial framework for the future growth of metropolitan Perth and Peel. Major themes promoted in Directions 2031 that relate to this proposal include increased housing diversity by infill development, facilitating employment across the metropolitan area, developing key corridors to accommodate more housing and fostering development of activity centres within a defined hierarchy (discussed in more detail below).

The Central Metropolitan Perth Sub-regional Strategy is based on the outcomes sought by Directions 2031 and investigates opportunities for the delivery of the targets and sets strategic priorities for the long-term development of the sub-region. The Stirling Highway corridor is identified as a growth area for dwellings. The infill housing targets set out in this strategy (and as revised in progress reports), have continually been reinforced as of high importance to meeting the expectations of state planning bodies.

The conceptual site layout does show a portion of the site fronting Stanley Street be developed as residential. If this area was to be developed to maximise the dwelling yield, it is expected 10 – 12 new dwellings would result. It must be noted however that the conceptual site layout is a non-statutory figure and the proposed amendment allows for a built outcome that does not include any dwellings. If there is no new residential development on the site, the net dwelling yield will be negative, and this does not meet the objectives of these high level documents.

It is accepted this proposal will result in an increase in employment however the diversity in types of employment is questionable, given the dominance of Shop / Retail space.

### 6.2.2 State Planning Policy 4.2 Activity Centres for Perth and Peel (SPP 4.2)

SPP 4.2 is a State Planning Policy for the planning and development of activity centres throughout Perth and Peel. The main purpose of this policy is to specify broad planning requirements for the planning and development of new activity centres and the redevelopment and renewal of existing centres. It is mainly concerned with the distribution, function, broad land use and urban design criteria of activity centres, and with coordinating their land use and infrastructure planning.

Other purposes of the policy include the integration of activity centres with public transport; ensuring they contain a range of activities to promote community benefits through infrastructure efficiency and economic benefits of business clusters; and lower transport energy use and associated carbon emissions. The policy also reflects the Western Australian Planning Commission's (WAPC) intention to encourage and consolidate residential and commercial development in activity centres.

The performance of the proposed amendment against the policy objectives is discussed in the table below.

	<b>Policy Objectives</b>
<b>Activity Centre Hierarchy</b>	1. Distribute activity centres to meet different levels of community need and enable employment, goods and services to be accessed efficiently and equitably by the community
	2. Apply the activity centre hierarchy as part of a long-term and integrated approach by public authorities and private stakeholders to the development of economic and social infrastructure.
	3. Plan activity centres to support a wide range of retail and commercial premises and promote a competitive retail and commercial market.
	<b>Officer comment:</b> <ul style="list-style-type: none"> <li>• It is accepted that this site is within a neighbourhood centre and could accommodate increased activity.</li> <li>• The permitted land uses are narrow and may stifle development of future land uses that would make a positive contribution to the diversity of the centre.</li> <li>• The maximum Shop / Retail floor space to be allowed has the potential to result in a centre dominated by this one use.</li> <li>• If development was to occur at the highest intensity allowable under the amendment, it is likely the remainder of the neighbour centre will stagnate and this does not promote a competitive retail and commercial market.</li> </ul>
<b>Activity</b>	4. Increase the range of employment in activity centres and contribute to the achievement of sub-regional employment self-sufficiency targets.
	5. Increase the density and diversity of housing in and around activity centres to improve land efficiency, housing variety and support centre facilities.
	<b>Officer comment:</b> <ul style="list-style-type: none"> <li>• The policy notes the responsible authority should encourage a mix of land</li> </ul>

	<p>uses, this is not reflected in the proposed amendment.</p> <ul style="list-style-type: none"> <li>• The dominance of Shop / Retail floor space does not contribute to the range of employment available in the centre.</li> <li>• The proposed amendment allows for, but does not give certainty to any housing diversity on the site.</li> </ul>
<b>Movement</b>	6. Ensure activity centres provide sufficient development intensity and land use mix to support high-frequency public transport.
	7. Maximise access to activity centres by walking, cycling and public transport while reducing private car trips. <b>Officer comment:</b> <ul style="list-style-type: none"> <li>• The site is currently served by one high-frequency bus route (Circle Route), and given the long time frames associated with changing the road environment of Stirling Highway, this is not expected to be improved in the near future.</li> <li>• The bus stops servicing the centre all require users to cross at least one road. Assisting these crossing movements is not addressed.</li> <li>• There are no end of trip facility requirements within the proposal.</li> <li>• In general, the proposed amendment and accompanying report is car-centric and largely fails to address alternative transport movements.</li> </ul>
<b>Urban Form</b>	8. Plan activity centre development around a legible street network and quality public spaces.
	<b>Officer comment:</b> <ul style="list-style-type: none"> <li>• The grid street network of the local area is already legible.</li> <li>• The public realm requirements are addressed in the 'Design Requirements' however the phrase 'wherever practical' suggests may not be enforceable at a development assessment phase.</li> <li>• The treatment of external walls and frontages are not addressed with enough detail to ensure active frontages rather than blank walls and services.</li> </ul>
<b>Out-of-centre Development</b>	9. Concentrate activities, particularly those that generate high numbers of trips, within activity centres.
	<b>Officer comment:</b> <ul style="list-style-type: none"> <li>• The Shop / Retail proposed by this amendment is considered a high trip generating land use.</li> </ul>

### 6.2.3 Stirling Highway Activity Corridor Study (SHACS) and associated Metropolitan Region Scheme (MRS) amendment

The SHACS is an integrated transport and land use planning study being undertaken by the Department of Planning at the request of the WAPC. The study is investigating opportunities to improve and guide future planning of Stirling Highway, as an activity corridor. SHACS seeks to plan for providing better amenity for residents, cyclists, pedestrians and public transport patrons.

Substantial work has been completed to produce a set of concept plans for the carriageway. These concept plans have been used to inform an MRS amendment proposal which aims rationalise the Primary Regional Road Reserve.

The current reservation affecting the subject site can be seen in **Attachment 1**. The reservation proposed as a result of the MRS amendment is substantially reduced but still potentially impacts the existing hotel and bottle shop buildings. The City has requested this be revisited before the amendment is finalised, however the outcome is unlikely to affect the amendment that is the subject of this report.

The current concept plans for the carriageway substantially impact access to the neighbourhood centre, by restricting access between Stirling Highway and Florence Road as left-in, left-out only.

It is anticipated that only the second stage of SHACS (when complete) would provide meaningful guidance as to the built form expectations along the corridor.

#### **6.2.4 Development Control Policy 1.6 – Transit Oriented Developments**

This policy seeks to maximise the benefits to the community of an effective and well used public transport system by promoting planning and development outcomes that will support and sustain public transport use. This proposal goes some way towards addressing the objectives of the policy by increasing the range of uses that may develop on the site. However the proposal does not guarantee an increase in higher density residential development and does not address strengthening links to public transport stops.

The policy is considered less relevant for this proposal as the site is only served by one high frequency bus route and SPP 4.2 addresses movement more effectively.

### **6.3 Local Planning Framework**

There is no holistic Local Planning Strategy to guide the City in its decision making. The local planning framework documents that are considered relevant to this amendment are as follows;

#### **6.3.1 Town Planning Scheme No. 2**

It is accepted that the current zoning of the subject site and the general provisions of TPS2 will not allow the neighbourhood centre to develop as envisaged by state or local documents.

#### **6.3.2 Draft Stirling Highway Special Control Area Provisions**

This document was initially developed as a response to the Housing Diversity Study, which identified the Stirling Highway corridor as suitable for accommodating increased housing diversity. This document has never advanced past a draft format and was only ever endorsed in principle for inclusion into Draft Local Planning Scheme No. 3. This means for planning purposes, the Special Control Area Provisions are not a seriously entertained proposal and as such it is premature to assess the proposed amendment against the provisions in this document.

Despite this document's draft status, it does identify the subject site as part of a hub and this is reinforced in the City's Local Hubs Framework. This is the only hub identified in this document, indicating the importance placed on the proper planning



of the area. The concept plan demonstrates the strategic intent for this area is to include substantial housing diversity and commercial developments of a finer grain, in order to create a neighbourhood centre that has 'village' characteristics.

The proposed amendment differs notably from the concept plan contained within the draft Stirling Highway document as it;

- does not require a Detailed Area Plan,
- does not include substantial residential development, and
- allows a single 'big box' development of one dominant commercial use with little articulation.

### **6.3.3 Local Commercial Strategy**

This document was adopted by Council in 2000 and is therefore considered outdated and unsuitable to assess this current proposal against.

## **6.4 Key Issues**

### **6.4.1 Characteristics of the Neighbourhood Centre**

Foremost, there are concerns that the amendment will create a neighbourhood centre that does not align with the objectives of SPP 4.2 and the City's vision for the centre. The lack of diversity in uses and the lack of certainty relating to increased residential diversity are flaws of the proposal.

SPP 4.2 does not provide numerical targets for the mix of land uses in neighbourhood centres, however diversity is still an objective for a successful neighbourhood centre.

The retail floor space provisions of the amendment would allow a maximum net lettable area of 4100m<sup>2</sup> of Shop / Retail floor space to be established on the site. Further information contained in the Retail Sustainability Assessment elaborates on the intended development of the site. This assessment shows within the current neighbourhood centre approximately 20% of the 'Shop / Retail' floor space is considered 'Supermarket'. Under the proposed amendment, this has potential to increase to approximately 60% 'Supermarket' floor space.

Given the proposed amendment does not preclude otherwise, the potential overall floor space of supermarket retail and the potential size of a dominant tenancy is not considered appropriate for the neighbourhood centre.

At this early stage of the scheme amendment process, the Retail Sustainability Assessment has not been subject to a detailed review. This would be required if the amendment were to be initiated.

Currently, the area does not reach the residential density targets (minimum 15, desirable 25, dwellings per gross hectare) within the 200m walkable catchment of the centre. Therefore the subject site is key in providing a substantial portion of the required dwellings for the area.

The potential for residential development on the subject site proposed by the amendment is limited to;

- the two southern most lots containing one dwelling each, and
- any other portion of the site to be developed to a residential density coding of R60.

These residential developments are not required by the proposed amendment, and as such the proposal could result in a loss of dwellings. This contradicts the state and local planning residential density targets that ought to be associated with a neighbourhood centre or major transport corridor.

#### **6.4.2 Movement and Parking**

The proposal included a Transport Assessment Report prepared by Uloth and Associates. The City engaged Worley Parsons to provide comment on this report. The conclusions of the Worley Parsons review are reproduced below.

WorleyParson's review found that the Uloth Transport Assessment (TA) did not contain a comprehensive analysis of the traffic impacts of the proposed development.

*"It is recommended that further assessment should be undertaken to improve the TA. Further assessment is also required for pedestrians, cyclists, public transport, freight and parking issues.*

*In particular, it is highly likely that the proposed development will cause significant increases in traffic volumes and queuing along Florence Road and along Stanley Street in peak periods. The Uloth TA provides no discussion of these impacts, how they should be managed or the network improvements that may be required to accommodate these increased traffic levels.*

*The proposed development will also see Florence Road exceed the desirable maximum traffic volumes for a residential street while Stanley Street will approach this desirable maximum. Further recommendations from the TA are required in order to address the traffic impacts. No intersection analysis for the Thursday PM peak and Saturday mid-day peak hours for both the short term and long term future scenarios has been undertaken. As a result, the suitability of the proposed intersection treatments is difficult to ascertain.*

*Overall, it can be concluded that more analysis is required in order to assess the full traffic impact of the proposed Stirling Hotel redevelopment."*

#### **6.4.3 Interface with existing built form**

The 'transition' between the commercial developments within the subject site and the existing residential lots to the south is considered inappropriate. The proposal restricts the two most southern lots (Lots 23 and 32) to a built form of a low density (R10) residential nature. This will present a jarring contrast to the 31.5 metre wall height allowable with nil setback on the adjoining lots. The proposal is likely to result

in Lots 23 and 32 experiencing very low amenity values which is undesirable. Additionally, this is viewed as a missed opportunity to introduce a medium density residential built form that would act as a 'buffer' and contribute to increasing dwelling yield. The prominent, single tenancy nature of the development that could be the result of the amendment is not sympathetic to the site's context.

#### **6.4.4 Interface with Stirling Highway**

The retention of the Captain Stirling Hotel is a positive outcome for the area, as it is a landmark building with considerable heritage significance. While the proposal does include retention of the hotel and bottle shop, it does not preclude substantial redevelopment and there are no further provisions to guide any upgrade or enhancement. Given Stirling Highway is the major frontage for the site it would be appropriate for measures to be included to ensure further works are sympathetic to the existing hotel and bottle shop and genuinely activate this frontage.

### **6.5 Conclusion**

The City does not have a holistic Local Planning Strategy to guide decision making, however the Draft Stirling Highway Redevelopment Provisions do provide the most current community vision for the subject site. Additionally the state planning framework addresses the development of neighbourhood centres with sufficient detail to assess the planning merit of this proposed amendment.

The main deviations from the City's expectations for the development of the centre are the lack of diversity in the centre, absence of any guaranteed residential development, the identification and treatment of traffic impacts are inadequate and the provisions are not sufficient to address integration with the existing built form.

It is therefore recommended that the scheme amendment is not initiated.

## **7.0 Attachments**

1. Locality Plan
2. Place Record – Captain Stirling Hotel and Drive Through Bottle Shop
3. Summary of comments
4. Scheme Amendment Report
5. Scheme Map and Text changes (excerpt of Scheme Amendment Report)
6. Transport Assessment Report

<b>PD48.14</b>	<b>(Lot 4) No. 4/95 Stirling Highway, Nedlands – Retrospective Air-Conditioning Condenser Units and Prospective Acoustic Screen</b>
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<b>Committee</b>	2 December 2014
<b>Council</b>	16 December 2014
<b>Applicant</b>	Dislocation Holdings Pty Ltd
<b>Owner</b>	Dislocation Holdings Pty Ltd
<b>Officer</b>	Andrew Gizariotis – Planning Consultant
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	DA2014/29 - ST6/95
<b>Previous Item</b>	D87.06 - 14 November 2006 - Original Four Storey Mixed Use Development - Approved

## 1.0 Executive Summary

The application seeks retrospective approval for the installation of air conditioning condenser units ('units' or 'air conditioning units') and the prospective approval of an acoustic screen at 4/95 Stirling Highway, Nedlands.

The original application was advertised to affected neighbours and objections were received from five (5) neighbours. The objections primarily related to the acoustic and aesthetic impacts of the air conditioning units and acoustic screen.

The applicant has submitted a modified design of the acoustic screen which has been provided to the objectors.

In accordance with delegation 6A, the Council's determination is required as neighbour objections have been received and have not been resolved.

The application is recommended for approval.

### 1.1 Recommendation to Committee

**Council approves the application for retrospective air conditioning condenser units and prospective acoustic screen at (Lot 4) No. 4/95 Stirling Highway Nedlands, in accordance with the application received on 16 January 2014, subject to the following conditions:**

- 1. The development shall at all times comply with the approved plans.**

2. Unless otherwise demonstrated that noise from the condenser units complies with the assigned levels of the Environmental Protection (Noise) Regulations 1997 at all times, the air conditioning units shall not be operated outside of 7:00am to 7:00pm on any day.
3. Within 21 days of the date of this approval, the applicant is to lodge with the City an application for Building Permit for the acoustic screen.
4. Within 21 days of approval of the Building Permit, the acoustic screen is to be installed to meet the Environmental Protection (Noise) Regulations 1997.
5. The acoustic screen is to be finished to a professional standard and in a colour that complements the main building, to the satisfaction of the City.
6. Within 14 days of installation of the acoustic screen, the applicant is to provide the City with an acoustic report, prepared by a suitably qualified acoustic engineer, verifying that the air conditioning condenser units meet the Environmental Protection (Noise) Regulations 1997, taking into account the installed acoustic screen.

**Advice Notes specific to this proposal:**

1. This property is affected by land reserved in the proposed Metropolitan Region Scheme Amendment 1210/41 as shown on the enclosed extract of Main Roads drawings 1.7145 and 1.7138 and will be required for road purposes at some time in the future.
2. The project for the upgrading/widening of Stirling Highway is not in main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided.
3. A lessor or agent for the lease or sale of the building, or any part thereof, should explicitly make a buyer or lessee of the building, or any part thereof, aware of the requirements of condition (2) and this should be reflected in the terms and conditions of any such lease or sale.

## **1.2 Strategic Community Plan**

KFA: Natural and Built Environment

This report addresses the Key Focus Area of Natural and Built Environment through adherence to the design principles of the Residential Design Codes of Western Australia, contributing to well-planned and managed development in the City of Nedlands.

## **2.0 Background**

<b>Property address</b>	No. 4/95 Stirling Highway, Nedlands	
<b>Lot area</b>	1011.7m <sup>2</sup> (parent lot area)	
<b>Zoning / Density Code</b>	<b>MRS</b>	Urban
	<b>TPS2</b>	Office/Showroom

In November 2006, the City approved the original four storey mixed use development (D87.06 - 14 November 2006, Planning Approval DA2006/292).

The mixed use development comprised of four stories with the lower two stories containing two walls on the eastern boundary. These two walls are separated by an 8m long and 2m deep recess which is positioned adjacent to the common courtyard of the apartments at 93 Stirling Highway.

The original Council report indicated that the boundary walls of the first floor of the building were considered acceptable *“based on broken up features along [the] eastern boundary [i.e. 8m x 2m recess] and that future development along Stirling Highway can build up to the proposed parapet walls.”*

The original four storey mixed use development also contained a dedicated air conditioning unit/plant area on the roof of the building. The original air conditioning units were installed in this location, however, they have since failed and require replacement.

The applicant indicates that replacement of the original air conditioning units in the dedicated air conditioning unit/plant area will require significant expense (in excess of \$45,000), as all existing pipework will need to be removed due to a change in air conditioning standards. There is also a risk that removal of existing pipework could accidentally damage other pipework given the limited space within the conduits of the building.

Given the above, the applicant proceeded to install five air conditioning units on the eastern face of the building without Council approval. Following the City’s investigation of the air conditioning units, the applicant submitted the subject application for retrospective approval of the air conditioning units.

As part of the assessment process, the City requested the applicant demonstrate that the air conditioning units meet the *Environmental Protection (Noise) Regulations 1997* (‘noise regulations’). To do this, the applicant engaged an Acoustic Engineer to prepare a report on whether the air conditioning units met the noise regulations and if not, provide a recommendation as to how compliance could be achieved.

The acoustic assessment (**‘Attachment 2’**) identified that the air conditioning units did not currently meet the noise regulations and recommended a 1.8m high acoustic screen be installed above the existing dividing fence.

Following neighbours consultation for the proposed 1.8m high acoustic screen to be installed above the existing dividing fence, of which five objections were received, the applicant submitted a revised acoustic screen design on 11 November 2014,

which resulted in the acoustic screen being setback from the boundary and being reduced in length.

The modified acoustic screen was referred to the Acoustic Engineer and was deemed to meet the noise regulations.

The modified acoustic screen design is the subject of this report.

## 2.1 Key Relevant Previous Council Decisions



Figure 1: Locality Plan - Area



Figure 2: Locality Plan - Property



## 2.2 Legislation / Policy

- *Planning and Development Act 2005 (P&D Act)*
- City of Nedlands Town Planning Scheme No. 2 ('TPS2')
- City of Nedlands Fencing Local Law 2007

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

Required by legislation:                      Yes                       No   
Required by City of Nedlands policy:      Yes                       No

### 3.2 How and when was the community consulted?

Consultation occurred on a number of occasions between February 2014 and August 2014, due to various amendments to the prospective component of the application.

During the consultation period, objections were received from five (5) affected neighbours (one of these neighbours has since sold the property). Note that the objections relate to the initial 1.8m acoustic screen being constructed atop the existing dividing fence.

The objections primarily relate to the acoustic and aesthetic impacts of the air conditioning units and acoustic screen, and are summarised as follows:

1. The 1.8m screen atop the existing wall will be very claustrophobic and detrimentally impact on the outlook and living conditions of 93 Stirling Highway. The original approval required this recess to preserve visual amenity for 93 Stirling Highway.
2. The screen will also further restrict sunlight to 93 Stirling Highway.
3. The air conditioning units may reduce the acoustic impact, but there will still be some impact.
4. The screen does not comply with the setback requirements.
5. There is a plant room on the roof which is intended to house the air conditioning units.

In response to the neighbours' objections, the applicant has made the following submission:

1. The plans have been modified to achieve a setback of approximately 0.8m from the boundary.



2. It is our opinion that the screen would not restrict sunlight as the sun rises from the apartment side of the building and sets behind the office block.
3. Any concerns regarding noise should be considered in light of the fact that the units run at 48dB and normal human speech is at 60dB. In reality the noise of traffic and other environmental street noises are much louder than this i.e. 100dB. The units will also only run during business hours.
4. The plans have been modified to achieve a setback of approximately 0.8m from the boundary.
5. In relation to the plant room on the roof, we understand that the plant room was enclosed due to a requirement of Council, and this contributed to the overheating issues. This should also be considered by the Council in any decision.

We also note that air conditioners have been installed on the side of the building at 93 Stirling Highway.

Further to the neighbours' consultation, the application was referred to Main Roads WA, as the property is affected by a Regional Road Reservation. Main Roads WA have provided comment in support of the application, subject to the following advice notes being applied to any approval issued by the City:

1. This property is affected by land reserved in the proposed Metropolitan Region Scheme Amendment 1210/41 as shown on the enclosed extract of Main Roads drawings 1.7145 and 1.7138 and will be required for road purposes at some time in the future.
2. The project for the upgrading/widening of Stirling Highway is not in Main Roads current 4-year forward estimated construction program and all projects not listed are considered long term. Please be aware that timing information is subject to change and that Main Roads assumes no liability whatsoever for the information provided.

It is recommended that these advice notes be applied to any approval issued by the City, in accordance with the Western Australian Planning Commission's Instrument of Delegation.

## **4.0 Budget / Financial Implications**

Not applicable.

## **5.0 Risk management**

Not applicable.

## **6.0 Discussion**

## 6.1 Introduction

The application seeks retrospective approval for the installation of air conditioning units and the prospective approval of an acoustic screen at 4/95 Stirling Highway, Nedlands.

The existing building at 4/95 Stirling Highway comprises of four stories with the lower two stories containing two walls on the eastern boundary. These two walls are separated by an 8m long and 2m deep recess which is positioned adjacent to the common courtyard of the apartments at 93 Stirling Highway.

The retrospective element of the application relates to five air conditioning units installed within the 8m x 2m recess. The units are located above the existing dividing fence (approximately 3.5m above ground level) and are visible from the common courtyard of the apartments at 93 Stirling Highway (east of 95 Stirling Highway).

Following neighbours consultation, of which five objections were received, the applicant submitted a revised acoustic screen design on 11 November 2014, which resulted in the acoustic screen being setback from the boundary and being reduced in length.

The modified acoustic screen design is the subject of this discussion.

## 6.2 Requirements

TPS2 does not specifically prescribe controls in relation to air conditioning units or acoustic screens/dividing fences. Notwithstanding, TPS2 prescribes the following general amenity considerations, which must be satisfied:

Cl. 5.5.1:

*“Without limiting the generality of Clause 6.5 the Council may refuse to approve any development if in its opinion the development would adversely affect the amenity of the surrounding area having regard to the likely effect on the locality in terms of the external appearance of the development, traffic congestion and hazard, noise or any factor inconsistent with the use for which the lot is zoned.”*

Cl. 5.6.4:

*“No fence or screen wall shall be erected within 0.9m of a dividing boundary to a height greater than 1.8m above natural ground level without the approval of the Council. The Council may refuse to grant approval of a screen wall or fence higher than 1.8m above natural ground level if in the opinion of the Council such additional height would adversely affect the amenity of the occupants of the adjoining lot.”*

Cl. 6.5.1:

*“The Council may determine an application by granting approval, refusing approval or granting approval subject to such conditions as it thinks fit, having regard to the orderly and proper planning of the area.”*

### 6.3 Consultation

The consultation period resulted in five (5) objections to the application. The objections related to:

1. Bulk and aesthetic impacts.
2. Sunlight restriction.
3. Noise impact.
4. Setbacks.
5. Alternate, more suitable locations for the air conditioning units (i.e. the roof).

In response to the neighbours' objections, administration considers the following:

1. The bulk and aesthetic matters are discussed in section 6.4 - *Assessment* below.
2. Given the orientation of the property, the height of the existing building and the location of the acoustic screen, the acoustic screen will result in negligible sunlight restriction confined to the early afternoon hours during peak Summer periods.
3. If the acoustic screen is installed, the air conditioning units will meet the noise regulations. If the acoustic screen is not installed, the air conditioning units will not meet the noise regulations.
4. The bulk and aesthetic considerations regarding the acoustic screen are discussed in section 6.4 - *Assessment* below.
5. It is noted that the rooftop air conditioning/plant area is the most appropriate location for the air conditioning units. Notwithstanding, the City can consider alternate locations, subject to bulk, aesthetic and amenity considerations. These are discussed in section 6.4 - *Assessment* below.

### 6.4 Assessment

The Acoustic Engineer has determined that the proposed acoustic screen would ensure that the air conditioning units would meet the noise regulations. Therefore, the only outstanding consideration is whether the acoustic screen should be approved, taking into account its bulk/aesthetic impact.

A site inspection on 2 October 2014 identified that the acoustic screen would be located adjacent to the common courtyard area of 93 Stirling Highway. The courtyard area measures approximately 10.5m in width and 7m in depth and contains a significant amount of vegetation, as shown in the attached photographs (**Attachment 3**). An approximation of the acoustic screen dimensions has also been superimposed in the attached photographs (**Attachment 4**).

In determining whether the bulk/aesthetic impact is acceptable, administration considers the following:

- The original Council report indicated that the eastern setbacks were acceptable *“based on broken up features along [the] eastern boundary and that future development along Stirling Highway can build up to the proposed parapet walls”*. The proposed acoustic screen generally maintains the appearance of ‘broken up features’ by incorporating a setback to the acoustic screen that introduces a vertical stepping of the walls (i.e. dividing fence on the boundary, acoustic screen setback 0.8m, main building setback 2m). This generally remains consistent with the original approval and assists in moderating the visual impact of the building.
- The screen is of solid construction and is intended to be finished to a professional standard, in a colour that complements the existing building.
- There is a significant amount of vegetation spread throughout the courtyard which assists in minimising the visual impact of the proposed acoustic screen, as shown in the attached photographs (**Attachment 3**).

## 6.5 Conclusion

Whilst it is noted that the building contains a dedicated air conditioning unit/plant area on the roof, the applicant seeks the City’s consideration for the air conditioning units to be installed on the eastern façade of the building.

An assessment of the proposal concludes that the noise, bulk and aesthetic impacts of the air conditioning units and associated acoustic screen are considered acceptable given the acoustic screens setback from the boundary and the use and configuration of the adjacent courtyard.

Accordingly, the retrospective air conditioning units and the prospective acoustic screen are recommended for approval.

## 7.0 Attachments

1. Plans
2. Acoustic Report
3. Photographs
4. Superimposed acoustic screen

<b>PD49.14</b>	<b>Scheme Amendment 202 – Initiation Report (Proposal to Re-zone Land for Multi-use Dwelling)</b>
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<b>Committee</b>	2 December 2014
<b>Council</b>	16 December 2014
<b>Applicant</b>	Planning Solutions (Aust) Pty Ltd
<b>Owner</b>	Stirling 52 Pty Ltd
<b>Officer</b>	Holly White – Strategic Planning Officer
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	PLAN-PA-00003
<b>Previous Item</b>	D13.05

## 1.0 Executive Summary

The purpose of this report is for Council to consider an application to initiate an amendment to the Town Planning Scheme No. 2 (TPS No. 2). The application is to amend the zoning of Lot 7 (No. 52) Stirling Highway, Nedlands from 'Residential R35' to 'Special Use'.

The amendment has been assessed against the current State and Local Planning framework and it is recommended that the amendment is initiated as it generally meets the direction set out in these frameworks. However, it is considered that several components of the amendment need reconsideration, and in particular, the built form guidelines.

The initiation of the amendment will allow for the amendment to be advertised to the community and relevant stakeholders, and for the Council to make further consideration following this consultation. The Council will then be in a position to either adopt the amendment, with or without modification, or refuse to adopt the amendment.

### 1.1 Recommendation to Committee

That Council:

4. Pursuant to Section 75 of the *Planning and Development Act 2005*, initiate an Amendment to Town Planning Scheme No. 2 to rezone Lot 7 (No. 52) Stirling Highway, Nedlands from 'Residential R35' to 'Special Use'.

And,

5. Advise the applicant that Council’s preliminary support for the Scheme Amendment is not to be construed as approval of the built form provisions in Table 2, and that reconsideration is expected in regard to these provisions.

## 1.2 Strategic Community Plan

KFA: Natural and Built Environment

The proposed Scheme Amendment concerns the Natural and Built Environment in regards to amending the controls set out in TPS No. 2. This will effect land use planning, development approvals, streetscape and compliance.

## 2.0 Background

<b>Property address</b>	Lot 7 (No. 52) Stirling Highway, Nedlands
<b>Lot area</b>	1044m <sup>2</sup>
<b>Zoning</b>	R35
<b>Metropolitan Region Scheme</b>	Urban
<b>Town Planning Scheme No. 2</b>	Residential

The site abuts Stirling Highway, in a predominantly low density residential area serviced by a traditional grid network. The existing structure on the site consists of a two-storey brick residential dwelling. The adjoining sites are single and double-storey dwellings. Under the provisions of the Metropolitan Region Scheme (MRS) the front portion of Lot 7 (No. 52) Stirling Highway is reserved ‘Primary Regional Road’ and the balance of the lot is zoned ‘Urban’.

### 2.1 Key Relevant Previous Council Decisions

In 2005, Scheme Amendment No. 166 proposed to rezone Lot 7 (No. 52) Stirling Highway from ‘Residential R35’ to ‘Office/Showroom – Additional Use: Residential R50 Grouped Dwellings and Multiple Dwellings’.

Council adopted for final approval the scheme amendment at its Ordinary Council meeting on 28 June 2005. On 26 October 2006 the Minister of Planning refused to grant final approval on the basis of it being ‘ad-hoc’ and decisions needed to be of a more ‘holistic’ approach.

Specifically, the Minister for Planning and Infrastructure refused to grant final approval for the following reasons:

1. The amendment is ad-hoc and fails to properly recognise the location of the subject land in relation to abutting and nearby residential zoning and development;

2. Intensification of uses along Stirling highway needs to take into account the principles of Network City, including not only further commercial uses but also the need for provision of a wider choice of housing types; and
3. Any rezoning in this vicinity, whether by means of amendments to Town Planning Scheme No. 2 or by inclusion in proposed Town Planning Scheme No. 3, would need to be carried out in a more holistic manner, possibly on a block-by-block basis, and possibly offering significant incentives for amalgamation and comprehensive redevelopment, and taking into account traffic and vehicle circulation issues, building mass and design, and management of the impact on abutting residential areas.

## 2.2 Legislation / Policy

*Planning and Development Act 2005 (P&D Act)*

*Town Planning Regulations 1967*

City of Nedlands Town Planning Scheme No. 2 (TPS No. 2)

## 3.0 Consultation Process

Before a Scheme Amendment is initially adopted, there is no requirement for public consultation.

### 3.1 What consultation process was undertaken?

Required by legislation:                      Yes                       No   
 Required by City of Nedlands policy:      Yes                       No

### 3.2 How and when was the community consulted?

If Council initiates this amendment there is a statutory process to follow that requires environmental review, referrals to agencies likely to be affected by the proposed scheme amendment and advertisement of the scheme amendment for public inspection as per Part 5 of the *P&D Act*.

## 4.0 Budget / Financial Implications

Within current approved budget:              Yes                       No   
 Requires further budget consideration:      Yes                       No

This proposal has no budget or financial implications for the City. The applicant is responsible for meeting the costs associated with the processing of this application.

## 5.0 Risk management

If Council resolves not to initiate this scheme amendment proposal, the Minister for Planning may instruct that the amendment be initiated. Section 76 of the *P&D Act* states that where the Minister is satisfied on any representation that the local

government has failed to adopt (initiate) a proposal which “ought to be adopted”, the Minister may order the local government to do so.

## **6.0 Discussion**

### **6.1 Introduction**

#### **6.1.1 Site Details**

The subject site is located within the suburb of Nedlands, with the City of Nedlands Library 100 metres to the west on Stirling Highway. Predominantly low scale residential properties are located to east, south and west of the subject site, as well as northern properties adjacent on Stirling Highway being residential.

To the south of the lot is a unique layout of three grouped dwellings with a four (4) metre wide access leg which runs parallel to the rear of Lot 7 (No. 52) Stirling Highway and connects to Thomas Street. Please refer to ‘**Attachment 2**’ for a detailed map of the site and surroundings.

The wider surrounding areas include a mix of zonings. To the northeast of the subject site, a larger presence of ‘Office/Showroom’ exists. To the west and northwest of the subject site, the City of Nedlands Library and Administration Building are present. Further west to this is the Captain Stirling site and then the Windsor Cinema.

#### **6.1.2 Proposed Amendment Details**

The scheme amendment proposes to rezone Lot 7 (No. 52) Stirling Highway, Nedlands from ‘Residential R35’ to ‘Special Use’. Provisions relating to the ‘Special Use’ would be inserted into the Scheme to control land use and development.

The scheme amendment proposes to include within the Special Use provisions, permissible land uses of:

- Dwelling House – Single
- Dwelling House – Grouped / Attached
- Dwelling House – Multiple
- Home Business
- Home Occupation
- Office – General
- Office – Professional
- Officer – Service

The proposed amendment also includes ‘Build Form Provisions’ which will be included into the scheme. These address; plot ratio, building heights, residential uses, setbacks and car parking.

Including ‘Permitted Uses’ and ‘Built Form Provisions’ into TPS No. 2 will result in permissible land uses and a building envelope endorsing the above. Please refer to



section 6.2.3 of this document for a comprehensive breakdown of the 'Built Form Provisions'.

## **6.2 Planning Context**

### **6.2.1 State Planning Framework**

The State Planning Framework unites existing state and regional policies, strategies and guidelines within a central framework which provides a context for decision-making on land use and development in Western Australia. It informs the Commission, local government and others involved in the planning process on those aspects of state level planning policy which are to be taken into account, and given effect to, in order to ensure integrated decision-making across all spheres of planning.

The State Planning Framework indicates the primary policies and strategies used to clarify and inform the public and those administering planning instruments of the framework of policies and strategies that come into play in planning decisions.

Local governments must have due regard to the provisions that form part of this framework in preparing planning schemes and scheme amendments, and making decisions on planning matters.

The Commission will assess local government town planning schemes and amendments against the State Planning Framework to ensure they are consistent with state and regional policies.

#### ***Directions 2031 and Beyond***

Directions 2031 and Beyond (Directions 2031) is the overarching spatial framework and strategic plan that establishes a vision for the future growth of the Perth and Peel region; and it provides a framework to guide the detailed planning and delivery of housing, infrastructure and services necessary to accommodate a range of growth scenarios. In relation to the land use, Directions 2031 promotes diversity of dwelling types in residential areas. It identifies Stirling Highway as a growth area.

#### ***Central Metropolitan Perth Sub-Regional Strategy***

The Central Metropolitan Perth Sub-Regional Strategy (Sub-Regional Strategy) is a product of Directions 2031, which groups outcomes into more specific regions. It identifies eight strategic priorities to deliver the outcomes sought by Directions 2031.

The strategy sets housing targets for local governments and 'Future Growth Areas'. The revised City of Nedlands' housing target is 2,540 additional dwellings by 2031. The targets also encourage a mix of housing types to provide more opportunities for the renewal and redevelopment of established urban areas while recognising the character of detached housing stock in established suburbs.

The Stirling Highway corridor has been targeted as a 'Future Growth Area' with an aim to providing an additional 1400 dwellings by 2031.

Section 4.2 of the applicants proposed Scheme Amendment Report (see 'Attachment 1') states:

*'The current restrictions on the use of the subject portion prevent forward planning for Stirling Highway, and has been prepared having regard to SHACS and the rationalisation of the Stirling Highway reservation through Metropolitan Region Scheme Amendment 1210/40.'*

### **Stirling Highway Activity Corridor Study**

The Stirling Highway Activity Corridor Study (SHACS) is an integrated transport and land use planning study for the Stirling Highway precinct. The study is made up of two phases, the first being the MRS Amendment 1210/41 – Rationalisation of Stirling Highway Reservation and the second phase will focus on the preparation of a guidance document for future redevelopment along Stirling Highway.

This document will focus on smaller dwelling provisions to increase housing diversity along the corridor. Street level activity will not be encouraged in existing residential parts of Stirling Highway where the existing character mainly consists of residential uses. Upon completion of the first amendment phase, this will commence.

The MRS Amendment 1210/41 is anticipated to be considered by the WAPC by late 2014 or early 2015. The process generally takes another 12 months before the amendment may be subject of disallowance. However, the amendment is given significant weight as it is being seriously entertained to guide development along this portion of Stirling Highway.

### **Metropolitan Region Scheme**

The subject site is predominantly zoned 'Urban' under the provisions of the MRS. Under the MRS, a portion of the subject site fronting Stirling Highway is reserved Primary Regional Road.

### **Metropolitan Region Scheme Amendment 1210/40**

The MRS amendment proposes a rationalisation of the existing Stirling Highway Primary Regional Roads reservation. Amending the reservation over Stirling Highway will provide clarity and certainty for landowners, enable orderly land use planning and, for the first time, confirm the long-term highway design.

Please refer to 'Attachment 2' for a diagrammatic representation of the current MRS.

Please refer to 'Attachment 1' section 5.1.1 for a diagrammatic representation of the proposed MRS amendment.

### **Summary of State Planning Framework**

Generally, the above state planning documents require local governments to provide greater housing diversity and for inner City metropolitan areas this will mean housing infill resulting from increased density.

The State Planning Framework sets out specific housing targets for each Local Government and the City should be working to achieve these objectives. The State

Planning Framework identifies that Specialised Centres, Activity Centres and Activity Corridors should be the focus areas where these housing infill targets should be met. In relation to this scheme amendment, Stirling Highway has been identified as an 'Activity Corridor' and as such is a location that the City should be actively encouraging development.

The City needs to start achieving its housing diversity targets and this proposal would work towards that objective.

This proposed scheme amendment seeks to allow for a mostly residential development, that introduces housing diversity, and therefore would be consistent with the State Planning Framework.

## **6.2.2 Local Planning Framework**

### ***City of Nedlands Town Planning Scheme No. 2***

Lot 7 (No. 52) Stirling Highway, Nedlands is currently reserved MRS Primary Regional Road across the portion of the lot fronting Stirling Highway and is zoned 'Residential R35' across the balance of the lot under Town Planning Scheme No. 2 (TPS No. 2).

The existing zoning does not allow an 'Office' land use and TPS No. 2 does not permit 'Multiple Dwelling'.

A 'Multiple Dwelling' defined by the R-Codes as 'a dwelling in a group of more than one dwelling on a lot where any part of a plot area of a dwelling is vertically above any part of the plot ratio... does not include grouped dwelling; and includes any dwellings above the ground floor in a mixed use development.'

### ***Draft Stirling Highway Redevelopment Project (2009)***

This document has never advanced past a draft format and was only ever endorsed in principle for inclusion into draft Town Planning Scheme No. 3 (draft TPS No. 3). As a draft document, endorsed only as part of a bigger draft document, the City is unable to give its provisions significant weight in the decision making process as it is not a seriously entertained document.

The draft Stirling Highway Redevelopment Project sought to apply provisions to all development within the Stirling Highway Special Control Area (SCA) within draft TPS No. 3. The control area was then divided into specific Precincts, each with its own Precinct Plan. The document addresses Stirling Highway and the creation of an urban corridor. It promotes a variety of dwelling types, activity nodes and mixed-use development to occur along this urban corridor.

### ***Housing Diversity Study (2006)***

The aim of the Housing Diversity Study was to research in a definitive way how to address:

1. Current housing diversity and land availability in the City;
2. Statistical trends in City Demographics;
3. Trends in housing development;
4. State and Local Government policy;

5. Current Strategic directions within the housing industry; and
6. Strategic direction of the City.

Whilst this document is eight years old and there has been a shift in the State Planning Framework the majority of the local contextual issues are still relevant and recommendations still valid.

The key recommendation from this study states that the most suitable areas to absorb change with minimum impact on City amenity are in precincts adjacent to Stirling Highway, including Broadway. These areas can be considered for introduction of opportunity for subdivision.

### ***Local Housing Strategy (2001)***

Under the provisions of the Local Housing Strategy adopted by Council in 2001, one of the recommendations was that incentives are required to encourage residential development to occur above new commercial developments. The residential density permitted could be equivalent to R50/60. The strategy did recommend that a series of design guidelines for Stirling Highway be introduced to ensure that future development is of high quality.

### **Summary of Local Planning Framework**

There is no holistic Local Planning Strategy to guide the City in its decision making.

The current Local Planning Framework is outdated by a more recent State Planning Framework. Planning philosophies have evolved since the majority of these documents have been published and the draft format of some of these documents means that they do not hold a significant amount of weight.

The scheme amendment may be considered premature due to the lack of a suitable Local Planning Framework, specifically a Local Planning Strategy, being in place. This could be considered a reason for not proceeding with the scheme amendment and would be consistent with the Ministers reasons for refusing to grant final approval to a similar application back in 2006 on this site.

Nonetheless, the current Local Planning Framework, however outdated, eludes to promoting development along Stirling Highway in some form or another in recognition that it is a 'growth corridor'.

The proposed scheme amendment, by its nature of proposing additional housing density and by introducing housing diversity into the City, is generally in line with the broad principles outlined by the City's outdated Local Planning Framework.

### **6.2.3 Built Form Provisions**

The proposed scheme amendment involves zoning the site for 'Special Use' and includes specific land use and development provisions which would control the design of any building to be developed on the site.

The following are permitted uses that are proposed by the Scheme Amendment:

*“Dwelling House – Single  
Dwelling House – Grouped / Attached  
Dwelling House – Multiple  
Home Business  
Home Occupation  
Office – General  
Officer – Professional  
Office – Service”*

The following Built Form Provisions are proposed and would control the type of development that could take place on the site:

*“Plot Ratio –*

*No density restriction applied to Multiple Dwellings. The maximum number of Multiple Dwellings will be determined by the permitted building envelope and applicable development standards for the lot (e.g. setbacks/heights/open space/car parking).*

*Building Heights –*

*Development without a residential component to be developed to a maximum of 3 storeys or equivalent to a maximum overall height of 12 metres.*

*Development with a residential component to be developed to a maximum of 4 storeys or equivalent to a maximum overall height of 16 metres.*

*Residential uses –*

*Residential uses are permitted on all floors of a development, with the exception of fronting Stirling Highway on the ground floor.*

*Setbacks –*

*Front setback – Minimum 3 metres (measured from the boundary of the Stirling Highway road reserve as proposed under MRS amendment 1210/40).*

*Side Setbacks – Nil setback for ground floor and first floor, 3 metres for all other floors.*

*Rear Setbacks – Nil setback on ground floor, minimum 1.5 metres to first floor, and minimum 4.0 metres to second floor and above.*

*Car Parking –*

*Residential – In accordance with the Residential Design Codes. Non-residential uses – In accordance with Schedule III of TPS No. 2. All car parking shall be screened from view from Stirling Highway.*

*Where a development standard mentioned in Schedule V differs from a development standard contained elsewhere in TPS No. 2 or the Residential Design Codes, the provisions of Schedule V shall prevail.*

*Where a development standard is not mentioned in Schedule I, the provisions of the Residential Design Codes apply.”*

It must be noted that the applicant has justified the proposed scheme amendment based on the draft Stirling Highway Redevelopment Project, being the most recent and site specific document the City of Nedlands has produced. However, this document is not given significant weight as it has only ever been adopted as a draft to be included in draft TPS No. 3.

Draft TPS No. 3 is not a seriously entertained document and it would be premature to make “binding” decisions based on draft provisions contained within another draft document.

For information purposes, the draft Stirling Highway Redevelopment Project provisions, in relation to Lot 7 (No. 52) Stirling Highway proposes the following land use provisions:

- *“Residential developments.*
- *Office permitted.*
- *Ground floor Shops, Cafes, Offices.*
- *Mixed use development with combination of Office/Shop.*
- *Mixed use with residential.”*

The draft Stirling Highway Redevelopment Project document contains Built Form Provisions as set out below:

- *“Front Setbacks:*
  - *Ground and 2<sup>nd</sup> floors: Minimum 3m.*
  - *3<sup>rd</sup> and 4<sup>th</sup> floors: Minimum 6m.*
- *Side Setbacks:*
  - *Secondary Street:*
    - *Ground and 2<sup>nd</sup> floors – Nil.*
    - *3<sup>rd</sup> and 4<sup>th</sup> – Minimum 3m.*
  - *Adjoining Another Lot*
    - *All floors – Nil.*
  - *Adjoining Residential*
    - *All floors – Minimum 5m.*
- *Rear Setbacks:*
  - *With Laneway:*
    - *Minimum 1m.*
  - *Without Laneway:*
    - *Minimum 5m.*
- *Height – With Residential Component:*
  - *Maximum 4 storeys and 16m for lots with residential component of minimum two (2) dwellings per 1000m<sup>2</sup> is proposed.*
- *Land Use Notes:*
  - *Prohibited Land Uses:*
    - *Ground floor residential facing Stirling Highway.*
- *Car Parking:*
  - *Without laneway:*
    - *Only visitor car parking permitted to front of development.*
    - *Access off Stirling Highway to car parking at rear of property.”*

## **Summary**

If the proposed scheme amendment Built Form Provisions were to be assessed against the draft Stirling Highway Redevelopment Project provisions the following elements would be considered non-compliant:

- **Rear Setback** - The property abutting the lot to the rear has an access leg which is not considered a ‘laneway’ and therefore the rear setback requirement is five metres.
- **Rear Setback** – Fourth storey component is required to be 15 metres.

As mentioned above, this document does not hold sufficient weight and should not be the benchmark for assessing development along Stirling Highway.

To this end, in relation to orderly and proper planning, the following concerns are raised with the proposed built form provisions:

- There is no density/plot ratio attached to the site and total dwelling yield is unknown.
- There is no assurance of residential component in order to meet State Planning policies.
- Setbacks:
  - The interface with Stirling Highway in relation to bin storage, carparking and office needs to be addressed;
  - Side and rear setbacks need to be addressed as the adjacent landowners would remain as single or double storey residential properties for the foreseeable future and the impact of this development on their amenity is unknown.
- Building height, bulk and scale may impact the amenity of the adjoining properties.

It is considered that the Built Form Provisions included in the proposed scheme amendment are not ideal, however there is little guidance in the City's current Local Planning Framework to determine what should be considered acceptable. For this reason, it is recommended that following advertising of the scheme amendment, the Built Form Guidelines be modified to be generally more in line with the Residential Design Codes and current planning policy.

### **6.3 Conclusion**

The proposed scheme amendment seeks to rezone the subject site from 'Residential R35' to 'Special Use' with provisions to allow Grouped & Multiple dwellings and Office land uses within a three to four storey building envelope.

The proposed scheme amendment is considered to address the State Planning Framework with regard to land use and development along Stirling Highway which is an identified 'Activity Corridor'. The proposed scheme amendment would aid the City in achieving its specific housing target as outlined in Directions 2031.

The City's current Local Planning Framework consists of a range of outdated and/or draft documents that give little guidance on what is considered appropriate for future development of the area and cannot be given significant weight for strategic decision making. The proposed scheme amendment may be seen as premature due to the lack of local planning direction and this may be a basis to refuse the proposed scheme amendment. However, the little guidance that is given by the City's Local planning documents suggests that this type of development has been envisioned in the past.

The Built Form Provisions stipulated within the proposed scheme amendment are considered inadequate due to their being based on a draft document and the impact the resulting development may have on the adjoining properties. It is considered

appropriate that these Built Form Provisions are further scrutinised as part of a full assessment of the proposal, following initial adoption, which will include consultation.


It is recommended that Council initiate the proposed scheme amendment on the basis that the intent of the development aligns with the State Planning Framework. It is central to note that the Built Form Provisions may have implications on the general amenity of the area and that these will require further revision.

## **7.0 Attachments**

1. Scheme Amendment Report
2. Detailed Map



**PD50.14 Department of Education – Extension to Lease Area at Nedlands Park Early Learning Centre – 150 Melvista Avenue, Nedlands**

<b>Committee</b>	2 December 2014
<b>Council</b>	16 December 2014
<b>Applicant</b>	Department of Education
<b>Owner</b>	City of Nedlands
<b>Officer</b>	Rebecca Boley – Property Management Officer
<b>Director</b>	Peter Mickleson – Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	CAP-001914
<b>Previous Item</b>	N/A

## 1.0 Executive Summary

This item is now presented to Council to consider a request from the Department of Education for an increase in area at its leased premises at 150 Melvista Avenue, Nedlands – the Nedlands Parks Early Learning Centre. This request is made in response to a loss of pre-schooling facilities for the Nedlands Primary School from the end of the 2014 school year. The report considers the various aspects of this proposal.

### 1.1 Recommendation to Committee

This report notes several options for a Recommendation.

#### Recommendation 1

Where it is recommended that Council agree to the Department of Education’s request, in full –

Council:

1. Consents to the Department of Lands excising noted areas in Attachment 1 with blue, yellow and lime green from Class A Reserve 1669 for amalgamation into Reserve 27668 with purpose of kindergarten;
2. Upon finalisation of the boundaries of Reserve 27668, as noted above, agrees to lease to the Department of Education the current lease area along with the areas noted in Attachment 1 with blue and yellow ink.

- The terms of the lease will be based on the City's standard terms of lease. (This lease area excludes the area outline with lime green ink);
3. Until the finalisation of Reserve 27668 and lease thereof, agrees to a licence by the Department of Education for the use of the area noted in Attachment 1 with blue and yellow ink for the purpose of a kindergarten playground;
  4. Delegates to the CEO the power to agree the terms of the licence noted above; and
  5. Requests that all fees and charges incurred in executing this proposal will be borne by the Department of Education as lessee and licensee of City premises.

### **Recommendation 2**

**Alternative Recommendation where Council agrees to formalise current use of reserve land and create legal access:**

**Council:**

1. Consents to the Department of Lands excising the area in Attachment 1 with blue ink (area of encroachment) from Class A Reserve 1669 for amalgamation into Reserve 27668 with purpose of kindergarten;
2. Instructs Administration to request the Department of Lands excise area that is the reserve access road from Melvista Avenue, and formalise it as a dedicated road. The City will bear the cost of the relevant survey sketch;
3. Upon finalisation of the boundary of Reserve 27668, as noted above, agrees to lease to the Department of Education the current lease area along with the area noted in Attachment 1 with blue ink (area of encroachment). The terms of the lease will be based on the City's standard terms of lease;
4. Until the finalisation of Reserve 27668 and lease thereof, agrees to a licence by the Department of Education for the use of the area noted in Attachment 1 with blue ink (area of encroachment) for the purpose of a kindergarten playground;
5. Delegates to the CEO the power to agree the terms of the licence noted above;
6. Requests that all fees and charges incurred in this formalisation of the current area used by the Department as their lease area, be borne by the Department of Education as lessee and licensee of City premises; and
7. Refuses to grant any further extension to the Department of Education's leased area.

### **Recommendation 3**

**Alternative Recommendation where Council provides legal access but refuses any increase in the lease area:**

**Council:**

- 1. Agrees to the current reserve access road being formalised as a dedicated road; and**
- 2. Refuses to grant any extension to the Department of Education's leased premises, noting that this requires existing kindergarten playground fencing to be reinstated along lease boundaries.**

## **1.2 Strategic Community Plan**

This proposal requires Council to give consideration to aspects of community development and enhancement when resolving in this matter. The residents of Nedlands with pre-school aged children will benefit from the arrangement requested by the Department of Education (Department) as pre-schooling will be maintained at the current location in close proximity to Nedlands Primary school where siblings may attend.

Council must also consider aspects of governance and civic leadership when resolving on this issue as it is called to determine the best use of City resources, be it for early childhood education purposes or the competing public interest of preserving public open space for all to use, giving consideration to present and possible future sporting and community needs.

The City's Community Strategic Plan makes requirement for the Melvista reserve to be subject of a master planning process in 2019-22 and so Council must consider this commitment when resolving the matter. The City's 10-Year Financial Plan makes provision for a proposed multi-purpose / use centre to be constructed in the years 2019-2022 at an estimated cost of \$3,150,000.

## **2.0 Background**

The Department of Education currently leases Class "C" Crown Reserve 27688 which comprises Lot 203 on Plan 170153 addressed as 150 Melvista Avenue Nedlands. This reserve has management order vested in the City of Nedlands for the purpose of a Kindergarten. The Nedlands Primary School conducts kindergarten and pre-primary classes from this premises which is known as the Nedlands Park Early Learning Centre. The lease agreement is for a term of 10 years with an option to renew for a further 5 years. The lease commenced on 1 January 2002 and the further term expires on 31 December 2016. The terms of the lease accord the City's standard terms of lease for community and sporting groups, ie. terms of lease include a peppercorn rental and premises are maintained by the lessee.

From the end of the 2014 school year the Nedlands Primary School will lose the use of a facility at the University of Western Australia campus on Fairway, Crawley, known as the Child Study Centre. The School previously conducted both pre-primary and kindergarten classes from this centre. This year the school completed

works onsite their main campus at Kingsway, Nedlands to convert a former art classroom into a pre-primary classroom, in order to accommodate the pre-primary students previously located at the UWA Child Study Centre. The school was then faced with the challenge of re-locating the kindergarten classes. To this end the Department of Education approached the City with a request to increase their lease area at Melvista Avenue, noting an intention to install a transportable class room onsite to cope with the increased student role. The Department have applied for and received relevant approvals to install the transportable. However the Department still requires extra “play space” for the pupils in order to meet prescribed national standards.

The City has met with the Department of Lands and the Department of Education onsite to discuss their proposal and options for the site. Several aspects of land tenure which require consideration were noted and are as follows:

- The kindergarten’s current playground area already includes a portion of Class A reserve 1669 – an area outlined blue ink in **Attachment 1** (area of encroachment)
- The kindergarten requires further play space and so proposes to lease an additional portion of Reserve 1669 for the purpose of the kindergarten playground – area outlined with yellow ink in **Attachment 1**
- Lot 203 on Plan 170153 being Reserve 27668 currently does not have legal access
- A kindergarten playground does not align with Reserve 1669’s current purpose of “Recreation” and so any lease of this land to the Department of Education for this purpose will require an excision of land from the Class A reserve and amalgamation into Reserve 27668 with purpose of kindergarten.
- An excision of Class A Crown Reserve land is a lengthy process and so an interim agreement for use of the land by the Department of Education would have to be agreed between the City, Department of Education and Minister for Lands.

In consultation with both the Department of Education and the Department of Lands as representative of the Minister for Lands options for addressing issues of land tenure and resourcing were identified. The details of which are now the subject of this report.

The master planning process for the Melvista reserve is due under the City’s Strategic Community Plan to be undertaken in 2019-22. The City’s 10-year financial plan has allocated \$3,150,000 to the master planning process and re-development of the Melvista reserve. The master planning process involves identifying the needs of the community through community and interested stakeholder (i.e. current lessees of golf, croquet, tennis and bridge) consultation to determine the appropriate use of the reserve and to model any development of the reserve land based on the outcome of that consultation process. The City’s Strategic Community Plan has identified the potential for hubs or multi-purpose shared use facilities as an option for future development of facilities within the City’s reserves. The City has already been in communication with the Suburban Lions Hockey Club (lessee of the J C Smith hockey pavilion at the Melvista reserve) regarding the potential for redevelopment and the master planning process for the reserve. In this communication the hockey

club have offered to facilitate communication with the Nedlands Golf Club and other users regarding the possible re-organisation of playing fields and current activities centred on a new multi-use clubroom facilities / community complex.

## 2.1 Legislation / Policy

Relevant legislation is the *Local Government Act 1995* and the *Land Administration Act 1997*.

*The Land Administration Act 1997* includes processes for reserving land and its management and particularly relevant to this matter is class “A” reserves. The process for excision of a class “A” reserve for amalgamation into a reserve with different purposes derives from this legislation. The process includes the tabling of any proposed excise in both houses of parliament.

*The Local Government Act 1995* at s3.58 outlines the requirements of a local government authority in disposing of property – the lease or licence of land in this instance. However in this particular situation the transaction is exempt under the *Local Government (Functions and General) Regulations 1996* at Reg. 30 as the proposed lessee / licensee is a government department.

## 3.0 Consultation Process

### 3.1 What consultation process was undertaken?

The consultation required in this matter is with the requesting lessee or licensee and the Department of Lands as the Crown’s representative, noting that the land subject of this report is Class “A” Crown reserve land.

The City has met several times onsite at 150 Melvista Avenue, Nedlands with the Department of Education, the principal of Nedlands Primary School and the Department of Lands to discuss the details of the Department of Education’s proposal. The City has also been in ongoing email communication with both Departments of Education and Lands to learn processes and ensure the regulatory requirements of any agreed outcome are satisfied.

Required by legislation:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Required by City of Nedlands policy:	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

### 3.2 How and when was the community consulted?

The Nedlands Primary school has been consulted in so far as the City has met and discussed the school’s requirements for additional lease area.

The City of Nedlands community and current lessees of the Melvista reserve have not been consulted as this is not a requirement of legislation or City policy for lease matters. As noted earlier in this report, a master planning process is due for the Melvista reserve in 2019-22 in which the community and current lessees of the reserve will be consulted to determine the most appropriate use of the reserve and

by implication this could be the determination of the most appropriate leasing framework for the reserve. As the Department of Education's request has been submitted to Council to address a resourcing issue it faces from the beginning of the 2015 school year, Council as the community's representative is now asked to consider the matter and resolve accordingly in the best interests of the community.

#### 4.0 Budget / Financial Implications

Within current approved budget:            Yes             No  Depends on Council's resolution  
Requires further budget consideration:    Yes             No

Any formalisation of the current reserve access off Melvista Avenue, as a dedicated road would require the City to fund the production of a survey diagram of the road.

Any financial costs associated with a variation to the Department's lease area would be borne by the Department of Education as lessee and licensee of the premises.

#### 5.0 Risk management

A particular risk the City must consider with this proposal is that associated with the loss of public open space on the excision of the Class A reserve and agreed exclusive use by the School. The loss of land from this reserve reduces the flexibility of use for present and future sporting and community uses. This risk must also be considered in the context of the size and the current use of the subject land. A portion of the subject land is already currently used by the centre in its play area and the other portion is located close to the playground fence, alongside a large tree and an area which is currently used little by the public. However, the potential for further requests to again increase this area for education purposes cannot be discounted.

#### 6.0 Options

The Department of Education's request has resulted in the following options now presented to Council:

1. The City agrees to increase the Departments lease area as requested. This option involves:
  - making a request to the Department of Lands to excise the portions of land noted in **Attachment 1** with blue and yellow ink, from Class "A" Reserve 1669 and amalgamation in to Class C Reserve 27668, for the purpose of a kindergarten.
  - The aforementioned portions of land are to be leased to the Department of Education for the purpose of accommodating an increased pupil role onsite
  - Until the excision process noted above is completed the City can agree a licence of the land by the Department of Education for purposes of a kindergarten with commencement in time for the 2015 school year. This licence is subject to the approval of the Minister for Lands. An interim

arrangement is necessary to formalise the terms of use of the area by the school.

2. The City agrees to formalise the Department's current use of land within their lease area. This option involves:
  - The City following the aforementioned process of requesting an excision of Class A reserve 1669 however only for the area noted in **Attachment 1** in blue ink (area of encroachment).
3. The City refuses to vary the Department's lease area and thereby require playground fencing to be reinstated to align the lease boundaries.

In terms of addressing the legal access requirement for a lot of land the options are:

- The City request the excision from Class A Reserve 1669 of the area noted in lime green ink for amalgamation in to Lot 203 on Plan 170153 being Reserve 27668 will satisfy the requirement for the parcel of land to have legal access. This area will not be leased to the Department of Education. OR
- The City could alternatively request that the current reserve access road be formalised as dedicated road to resolve the issue of legal access. This option would require the City funding the production of a survey sketch of the dedicated road.

The Class "A" Reserve 1669 has the purpose of "Recreation" and although the City currently leases portions of this same reserve to the Nedlands Croquet, Nedlands Bridge and Nedlands Tennis Clubs it has been advised by the Department of Lands that a kindergarten playground does not align with the reserve purpose and therefore cannot be leased for this purpose. Therefore any such lease to the Department of Education must follow a process of excision of the relevant area of land from the Class "A" reserve and amalgamation into the crown reserve with purpose of "kindergarten", being Reserve 27668. The process for formalising the proposed arrangement is prescribed by the *Land Administration Act 1997* which deals with the creation (and amendment of Crown Reserve lands). Any amendment to Class "A" Crown reserve is a lengthy process as the proposal requires tabling in both houses of parliament. So in order to provide the school with the extra play area in the time frame requested, commencement of the 2015 school year the City could licence either or both of the noted areas (in blue and yellow ink on **Attachment 1**) to the Department of Education until the amendment to Reserve areas is finalised.

It is arguable that the issue of school resourcing can be considered a state government issue for the Department of Education to procure its own land by other means such as the purchase of freehold land and therefore not within the mandate of local government. It can also be argued that it is important that the City consider the interests of the local ratepayer in maintaining a pre-school facility within the community, whom will directly benefit from any resourcing assistance the City can provide in this regard. The Nedlands Primary School have advised that the majority of the school's families reside in the City's Melvista Ward area. If it is decided that the City will increase the lease area as requested by the Department, financial costs

associated with the proposal will be borne by the Department of Education and not the ratepayer, however acknowledging that the ratepayer will face the cost of a loss of public open space, on the inclusion of the portion of reserve into the kindergarten lease area. Considering the location of the subject area, a portion is already included within the kindergarten's playground area and another portion is located adjacent to the kindergarten playground boundary fence. This area bounds a large tree (the tree will be excluded from the lease area) and is an area currently used little by the public.

## **6. Conclusion**


Council must now balance the interests of the City's residents in maintaining pre-schooling education at the current campus within the community, against the ratepayers' interests in maintaining public open space for general use by the community and the requirement for flexibility in options on redevelopment of Melvista reserve under a future master planning process for the area. Council must consider whether it will play a further role in the government's provision of educational facilities within the community. If Council considers it relevant to do so then the proposed arrangement of licence and lease ensures that the appropriate government entity bears the financial costs of this, saving the City's ratepayers from this cost.

## **7.0 Attachments**

1. Snapshot of Nedlands Park Early Learning Centre, 150 Melvista Avenue, Nedlands and noted areas of interest.



<b>PD51.14      Sustainable Nedlands Committee – Appointment of Committee Members</b>
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<b>Committee</b>	2 December 2014
<b>Council</b>	16 December 2014
<b>Applicant</b>	City of Nedlands
<b>Officer</b>	Phoebe Huigens, Policy & Projects Officer
<b>Director</b>	Peter Mickleson, Director Planning & Development
<b>Director Signature</b>	
<b>File Reference</b>	PP-EI-00009
<b>Previous Item</b>	N/A

### **Executive Summary**

The Terms of Reference of the Sustainable Nedlands Committee allow a total of 11 Committee members, including 2 Councillors, 1 Youth Member and 8 Community members. There is currently vacancy for 1 Youth Member and 2 Community Members. This report seeks to appoint 2 Community Members.

### **Recommendation to Committee**

**That Council appoint Esther Buckeridge and Matthew Yap to the Sustainable Nedlands Committee for a period ending at the next ordinary Local Government Election in October 2015.**

### **Strategic Plan**

KFA: Natural and Built Environment

The Sustainable Nedlands Committee seeks to provide research and advice to Council on sustainability issues as they relate to the City's Strategic Community Plan, projects, programs, services and operations.

### **Background**

The Sustainable Nedlands Committee is a committee of Council that has been in existence since 1997. The Committee brings together Councillors and local residents who are knowledgeable in various areas relevant to sustainability.

### **Key Relevant Previous Council Decisions:**

25 February 2014 PD1.14 Sustainable Nedlands Committee, appointment of members to the Sustainable Nedlands Committee.

## Consultation

Required by legislation: Yes  No   
Required by City of Nedlands policy: Yes  No

## Legislation / Policy

*Local Government Act 1995* Section 5.10 (1)(a) – A committee is to have its members appointed (by absolute majority) by the local government.

## Budget/Financial Implications

Within current approved budget: Yes  No   
Requires further budget consideration: Yes  No

## Risk Management

There is a risk that should Council not accept the expressions of interest submitted by community members who meet the criteria for membership of the Sustainable Nedlands Committee, there will be an insufficient number of members to meet the Terms of Reference membership requirement for the Sustainable Nedlands Committee.

## Discussion

The Committee's new Terms of Reference were approved by Council on 10 December 2013. The Terms of Reference stipulate membership to the Committee to be made up of two Councillors, 1 community youth member (secondary school student) and 8 other community members (total membership of 11). The Terms of Reference also stipulate that the Committee members are to be residents of the City of Nedlands.

Two long-serving members of the Sustainable Nedlands Committee resigned in November 2014. Agnes Pallagi served on the Committee for 12 years, and Kay White served on the Committee for 8 years (non-consecutive). The City thanks Agnes and Kay for their service.

Currently, the Committee has Cr Shaw as Presiding Member, Cr Binks, Mayor Hipkins (ex-officio) and 6 community members.

Two applications for membership to the Sustainable Nedlands Committee have been received, and Administration recommends that both applicants be appointed to the Committee.

### Esther Buckeridge

Esther Buckeridge is a resident of the City of Nedlands and is currently studying a Bachelor of Commerce at the University of Western Australia. She is interested in sustainability initiatives.

Esther meets the criteria of the Committee's terms of reference. Administration is recommending the appointment of Esther to the Committee.

### Matthew Yap

Matthew Yap is a resident of the City of Nedlands and works as a Research Assistant in the School of Primary, Aboriginal and Rural Health Care at the University of Western Australia. He has a keen interest in sustainability issues and is vice-president of the City's Mayo Community Garden.

Matthew meets the criteria of the Committee's terms of reference. Administration is recommending the appointment of Matthew to the Committee.

## **Conclusion**

This report seeks to appoint Esther Buckeridge and Matthew Yap to the Sustainable Nedlands Committee.