



City of Nedlands

## Planning and Development Reports

**Committee Consideration – 8 September 2020**

**Council Resolution – 22 September 2020**

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<b>PD44.20</b>	<b>No. 37 Strickland Street, Mount Claremont – Holiday House (Short Term Accommodation)</b>
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<b>Committee</b>	8 September 2020
<b>Council</b>	22 September 2020
<b>Applicant</b>	David Joseph
<b>Landowner</b>	David Joseph and Christine Joseph
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	Nil
<b>Report Type</b>  Quasi-Judicial	When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal.
<b>Reference</b>	DA20/48595
<b>Previous Item</b>	Nil
<b>Delegation</b>	In accordance with the City's Instrument of Delegation, Council is required to determine the application due to objections being received.
<b>Attachments</b>	1. Applicant's Justification Report
<b>Confidential Attachments</b>	1. Plans 2. Management Plan 3. Submissions 4. Assessment

## 1.0 Executive Summary

The purpose of this report is for Council to determine a retrospective Development application for an existing Holiday House (Short-Term Accommodation) to a residential property at No. 37 Strickland Street, Mount Claremont.

A Holiday House is an 'A' use under the City of Nedlands Local Planning Scheme No. 3 (LPS3). As such, the application was advertised to adjoining neighbours in accordance with the City's Local Planning Policy - Consultation of Planning Proposals. Four (4) objections were received during the advertising period.

It is recommended that the application be approved by Council as it is considered to satisfy the Objectives and Policy Measures for a Holiday House of the City of Nedlands Short Term Accommodation Local Planning Policy (LPP). Further, it is unlikely to have a significant adverse impact on the character of the locality.

## **2.0 Recommendation to Committee**

**Council approves the retrospective development application dated 27 May 2020 for a Holiday House at Lot 96 (No. 37) Strickland Street, Mount Claremont, subject to the following conditions and advice notes:**

- 1. This approval is for a Holiday House. Development shall be in accordance with the land use as defined within Local Planning Scheme No. 3, the approved plan(s), any other supporting information and conditions of approval. It does not relate to any other development on the lot.**
- 2. The approval period for the Holiday House is limited to 12 months (1 year) from the date of this decision letter.**
- 3. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
- 4. The proposed use complying with the Holiday House definition stipulated under the City's Local Planning Scheme No. 3 (refer to advice note 1).**
- 5. A maximum of 6 guests are permitted on the reside at the Holiday House at any one time.**
- 6. Each booking for the Holiday House must be for a minimum stay of 2 consecutive nights.**
- 7. A maximum of 2 guest vehicles for guests of the Holiday House are permitted on the premises at any given time. (from standard conditions)**
- 8. The Management Plan forms part of this approval and is to be complied with at all times to the City's satisfaction.**
- 9. All vehicles (for the owners of the property and the guests of the Holiday House) shall be parked within the property boundaries of the subject site. No guest parking is permitted on the verge or street.**

### **Advice Notes specific to this proposal:**

- 1. With regard to condition 1, the applicant and landowner are advised that the use Holiday House is defined as the following in accordance with the City of Nedlands Local Planning Scheme No. 3 and the City of Nedlands Short Term Accommodation Local Planning Policy:**

**'Holiday House means a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast'.**

2. In relation to Condition 2, the applicant is advised that if the applicant wishes to continue the use of the land for the Holiday House, an Amendment Development Application must be submitted to the City's Planning Department for assessment prior to the completion of the 12 month temporary approval period. The applicant is advised to contact the City's Planning Services closer to the expiry date for assistance in lodging an Amendment Development Application and the required fees for the application.
3. A separate development application is required to be submitted to and approved by the City prior to increasing the maximum number of guests at the Holiday House.
4. This is a Planning Approval only and does not remove the responsibility of the applicant/owner to comply with all relevant building, health and engineering requirements of the City, or the requirements of any other external agency
5. This planning decision is confined to the authority of the *Planning and Development Act 2005*, the City of Nedlands' Local Planning Scheme No. 3 and all subsidiary legislation. This decision does not remove the obligation of the applicant and/or property owner to ensure that all other required local government approvals are first obtained, all other applicable state and federal legislation is complied with, and any restrictions, easements, or encumbrances are adhered to.
6. Noise levels are to comply with the *Environmental Protection (Noise) Regulations 1997*.
7. Compliance with the assigned noise levels of the *Environmental Protection (Noise) Regulations 1997*, when received at neighboring noise sensitive receivers (in all day and time categories).
8. The applicant is advised that any increase to the number of guests at the Holiday House will require further Development approval by the City of Nedlands.
9. The applicant is advised that any increase to the number of guest vehicles which are parked at the Holiday House will require further Development approval by the City of Nedlands.
10. All solid waste and refuse and waste to be managed so as to not create a nuisance to neighbors (in accordance with City requirements).
11. No materials and/or equipment being stored externally on the property, which is visible from off site, and/or obstructs vehicle manoeuvring areas, vehicle access ways, pedestrian access ways, parking bays and/or (un)loading bays.

12. **Emergency exits and safety of premises to be assessed for adequacy by the Department of Fire and Emergency Services (DFES).**
13. **Should the occupancy capacity of the proposal exceed 6 persons (exclusive of the property owners) the proposal will require reassessment as a “lodging house” under the *Health (Miscellaneous Provisions) Act 1911* and the *City of Nedlands Health Local Laws 2017*.**
14. **Where applicable the applicant shall upgrade the premises to comply with the relevant provisions applicable for a Class 1b Building, Please contact the City’s Building Services for further advice.**

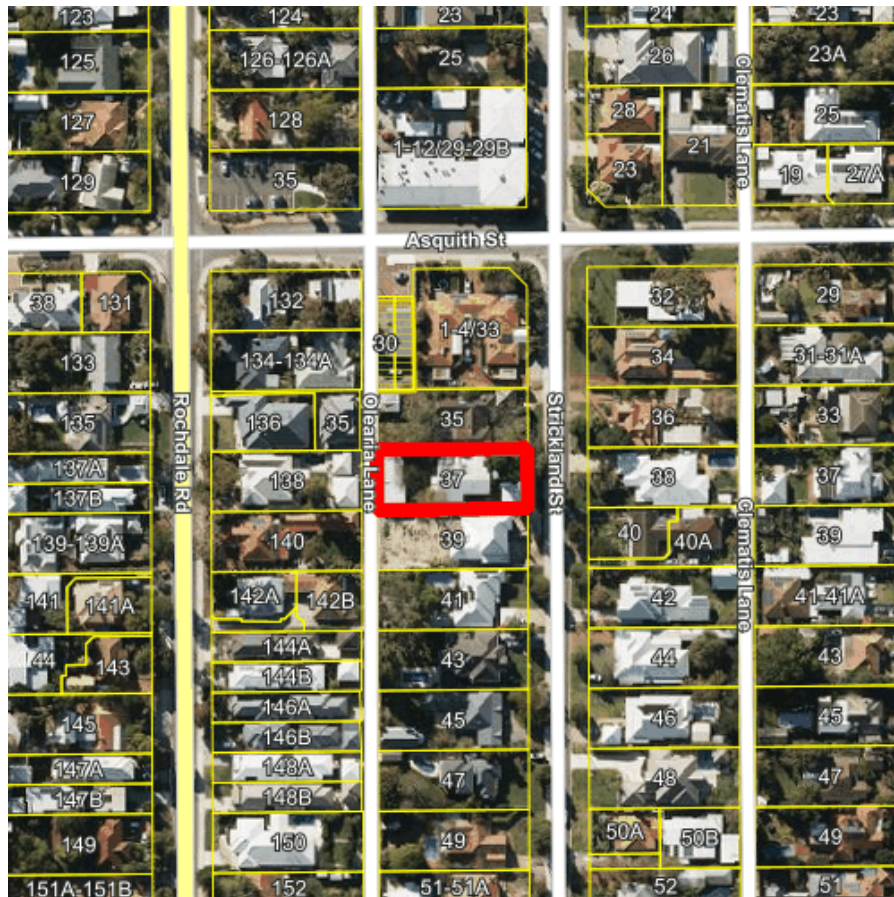
### 3.0 Background

#### 3.1 Land Details

<b>Metropolitan Region Scheme Zone</b>	Urban
<b>Local Planning Scheme Zone</b>	Residential
<b>R-Code</b>	R20
<b>Land area</b>	1012.00m <sup>2</sup>
<b>Additional Use</b>	No
<b>Special Use</b>	No
<b>Local Development Plan</b>	No
<b>Structure Plan</b>	No
<b>Land Use</b>	Existing – Residential Proposed – Residential and Holiday House
<b>Use Class</b>	Proposed – ‘A’ use class for Holiday House in a Residential zoned area.

#### 3.2 Locality Plan

The subject property is located within an area which displays a predominantly residential character with a density of R20 under LPS 3 as shown in the aerial map below.



Approximately 80m to the north of the subject property is the Mount Claremont Local Centre which consists of a small variety of retail and commercial tenancies as shown on the map below.



#### 4.0 Application Details

The applicant seeks development approval for the use of the subject property for a Holiday House. As per the City of Nedlands Local Planning Scheme No. 3, a Holiday House is defined as:

“a single dwelling on one lot used to provide short-term accommodation but does not include a bed and breakfast.”

The City of Nedlands Local Planning Scheme No. 3 defines a Short Term Accommodation as:

“temporary accommodation provided either continuously or from time-to-time with no guest/s accommodated for periods totalling more than 3 months in any 12-month period.”

The applicant (who is also the owner of the property) is seeking to operate the Holiday House at the subject property and the owners of the property will reside on site and manage the holiday house.

In the Management Plan contained as Confidential Attachment 2 of this report, the applicant has explained:

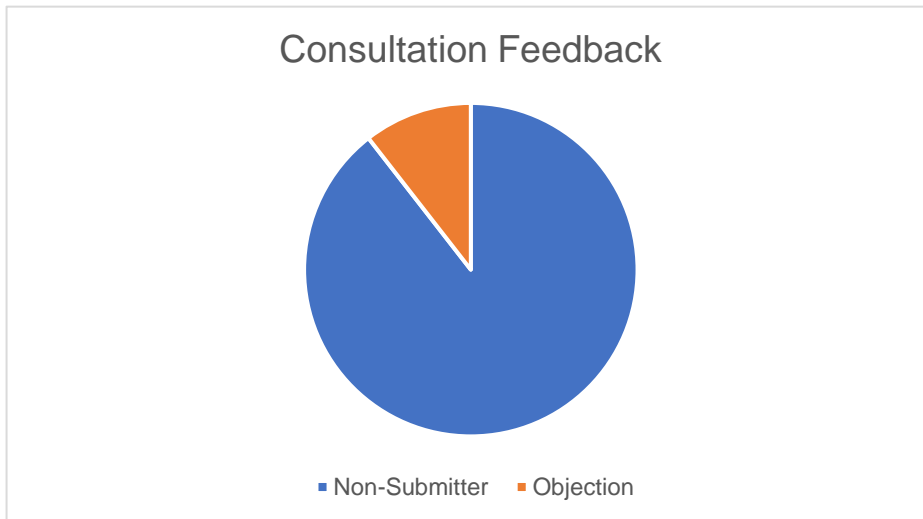
- There will be one booking taken at a time
- The maximum number of guests at the property will be between 4 to 6 guests and each booking will be for a minimum of 2 consecutive nights

- The maximum number of guest cars the property will be 2 guest cars.
- The hosting requirements of the holiday house will be managed by 'Houst' (a management company) to take care of bookings, guest data and check in and check out dates
- The Management Plan also contains a Code of Conduct which will be provided to guests of the Holiday House

## 5.0 Consultation

The applicant is proposing a change of use to 'Holiday House' as a form of Short-Term Accommodation at the subject property. A Holiday House is an 'A' Use in a Residential Zone. An 'A' use, means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions.

The development application was therefore advertised in accordance with the City's Local Planning Policy - Consultation of Planning Proposals to a total of 38 owners and occupiers. During the consultation period, 4 objections were received as per below pie graph.



By way of justification, in support of the retrospective development application the applicant has provided a letter of response, addressing the submissions received. This has been provided as Attachment 1 of this Council Report.

The following table is a summary of the concerns/comments raised and the City's response and action taken in relation to each issue:

Submission	No. of times issue raised	Officer Response	Action Taken
Subject property is already operating as a short term accommodation	1	As per the description of the application, the use of the site as a Holiday House is retrospective. The applicant (also the landowner) has lodged a Development Application to seek approval for the use of	No action required



holiday house and the submitter assumed it already had approval.		the land as a Holiday House in accordance with the City of Nedlands LPS 3 and City of Nedlands Short Term Accommodation LPP	
A constant turnover of people will make Strickland St uncomfortable, worrying and unsafe as Strickland St is currently a family suburban street.	2	Residential amenity will be assessed for this proposal under Section 6.0 – Assessment of Statutory Provisions of this report.	Refer to Section 6.0 of this Report.
Concerns relating to noise levels.	3	Noise levels are to comply with the <i>Environmental Protection (Noise) Regulations 1997</i> and the applicant is advised to comply with the assigned noise levels of the Regulations.  As per the Management Plan submitted by the applicant, the landowners who will also manage the Holiday House will continue to reside on the property and as such, will be able to manage the noise levels at the Holiday House.	Advice Note 6 and 7 recommended.
Concerns relating to rubbish and excessive rubbish left on the verge on bin collection day.	1	All solid waste and refuse and waste is to be managed so as to not create a nuisance to neighbours to the City's requirements.  In the Management Plan, the owners have explained that a Management Company called Houst will take care of hosting requirements, including rubbish disposal.	Advice Note 10 recommended.
Concerns about the car parking and hazardous driving conditions due to overflowing parking.	2	A parking assessment against the City's Parking LPP is provided under Section 6.3.2 of this report.  A recommended condition of the determination is for all guest vehicles to be parked within the property boundaries of the subject site and no guest parking is permitted on the verge or street.  A recommended condition of the determination is for a maximum of 2 guest vehicles to be permitted on site at any given time.  The resulting traffic movements associated with the operation of the property as a holiday house are in keeping with those expected for a single residential dwelling and	Condition 7 recommended for maximum 2 guest parking bays permitted.  Condition 9 recommended for all parking to be within the property's boundaries.  Refer to Section 6.3.2 for an assessment of the parking.

		are unlikely to increase congestion and traffic movements in the area.	
Concern that more than 6 guests will be staying in the house at any one time and that the owner will not be present on the site.	2	As per Condition 5 of the recommendation, a maximum of 6 guests are permitted to reside at the Holiday House at any one time. An increase in the number of guests will require further approval from the City.  As per the Management Plan provided by the applicant, Point 1 identifies that the owner will reside on site. Condition 8 requires that the management plan forms part of the approval and is to be complied with at all times to the satisfaction of the City.	Condition 5 and 8 recommended.
Concern that the holiday house will be used as student accommodation or a boarding house.	1	This application is only for a Holiday House as per recommended Condition 1. The use of the land for student accommodation or a boarding house would be in breach of the Planning Approval and would be subject to compliance action.  As per Point 3 of the Applicant's Management Plan and Condition 6 of the recommended approval, the bookings will be for a minimum of 2 consecutive nights.	Condition 1 and 6 and Advice Note 1 recommended.
Concern about the negative impact on the current street and suburb.	1	A Holiday House is an 'A' Use in a Residential Zone which means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving notice in accordance with clause 64 of the deemed provisions. The application has been advertised in accordance with Clause 64 of the deemed provisions and an assessment on the impact of the proposal is outlined in Section 6.0 of this Report.	No action required
Concern that the Holiday House will devalue the property of the submitters and other properties in the area.	2	A decrease in property value is not a valid planning consideration.	No action required.

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

## 6.0 Assessment of Statutory Provisions

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

Schedule 2, Part 9, clause 67 (Matters to be considered by local government) stipulates those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections.

In accordance with provisions (m) and (n) of the Regulations clause 67, due regard is to be given to the likely effect of the proposed development’s potential impact it will upon the local amenity.

## 6.2 Local Planning Scheme No. 3 – Residential Zone Objectives

Requirement	Proposal	Satisfies
a) To provide for a range of housing and a choice of residential densities to meet the needs of the community;	The proposal is considered to positively contribute to the City’s housing diversity through the proposal of a Holiday House. Temporary accommodation through the proposal of a Holiday House is seen to meet the needs of the community, which seeks for a diverse range of housing options.	Yes
b) To facilitate and encourage high quality design, built form and streetscapes throughout residential areas;	Not applicable as the application is only seeking approval for the use of the existing dwelling as a Holiday House. No works are proposed as part of this development application.	N/A
c) To provide for a range of non-residential uses, which are compatible with and complementary to residential development;	As above.  It is noted that the proposal for a Holiday House is seen complementary to the existing residential development on site and the residential land use in the locality of Mount Claremont.  As seen in the locality plan, the surrounding land uses all include Residential dwellings in an R20 coding. The dwelling which will be used for the Holiday House is an existing dwelling and the proposal of the Holiday House is seen to be compatible with this existing land use of the site and the adjoining residential use of the locality.	N/A
d) To ensure development maintains compatibility with the desired streetscape in terms of bulk, scale, height, street alignment and setbacks;	As above – no works are proposed as part of this development application.	N/A

## 6.3 Local Planning Policy

### 6.3.1 – Short Term Accommodation Local Planning Policy

<b>Policy Objective</b>
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<p>3.1 To ensure the location and scale of short-term accommodation uses are compatible with the surrounding area.</p> <p>3.2 To maintain a high standard of amenity for the surrounding neighbourhood through required management controls.</p> <p>3.3 To ensure properties used for a short-term accommodation uses do not have an undue impact on the residential amenity of the area by way of noise, traffic, or parking.</p> <p>3.4 To establish a clear framework for the assessment and determination of applications for short-term accommodation.</p>
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**Policy Requirement**

<p>4.2 Applications for Holiday House, where a keeper does not reside on-site may be supported where:</p> <p>a) The number of guests is limited to 6 persons; and</p> <p>b) Bookings must be for a minimum stay of 2 consecutive nights</p>
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**Proposed**

<p>The application proposes:</p> <ul style="list-style-type: none"> <li>- A Holiday House which proposes the owners to reside on site,</li> <li>- Only one booking will be taken at a time,</li> <li>- The maximum number of guests which will reside at the Holiday House is 6 people,</li> <li>- Each booking will be for a minimum stay of two consecutive nights,</li> <li>- Check in time is 3PM and check out time is 11AM.</li> </ul>
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**Administration Assessment**

<p>The application for the Holiday House is considered to meet the objectives and requirements of a Holiday House under the City of Nedlands Short Term Accommodation LPP. The applicant has demonstrated through the submitted management plan that the use of the residential dwelling as a Holiday House will likely have a negligible impact on neighbouring landowners and the surrounding amenity of the property.</p> <p>As per recommended Condition 8 of the determination, the Management Plan forms part of the approval and is to be complied with at all times to the City’s satisfaction.</p> <p>Administration also notes that this Application was proposed during the Amenity period which was provided by Council through the adoption of the City of Nedlands Short Term Accommodation LPP.</p> <p>As per recommended Condition 2 of determination, this Approval would only be valid for a period of 12 months (1 year). During this time, the City can keep a record of complaints or concerns raised through the use of the Holiday House. Should the applicant wish to continue operating the Holiday House after the 12 months lapses, an Amendment to the Development application will be required to be submitted to the City for further review and assessment of the short term accommodation, taking into consideration any complaints received during the 12 month period.</p>
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**6.3.2 – Parking Local Planning Policy**

**Policy Objective**

<p>3.1 To facilitate the development of sufficient parking facilities for cars and other wheeled vehicles.</p>
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<b>Policy Requirement</b>
For a Holiday House, the Parking LPP prescribes that 1 car parking bay is required per guest bedroom, in addition to any bays required under the R-Codes for the dwelling
<b>Proposed</b>
<p>As per the plans, 4 rooms will be used for the Holiday House. These rooms include Bedroom 2, 3, 4 and 5.</p> <p>On point 2 of the Management Plan, the applicant (and landowner) has advised that there will be a maximum of 2 guest cars on the property.</p> <p>As per the requirements of the R-Codes, 2 car parking bays are required for the dwelling.</p> <p>Therefore, a total of 4 car parking bays are required for this proposal.</p> <p>The subject property has 3 carports at the rear of the site abutting Olearia Lane to the rear and there is a double carport for 2 cars at the front of the property facing Strickland Street. Therefore, a total of 5 car parking bays are provided on the subject property.</p>
<b>Administration Assessment</b>
<p>The application for a Holiday House is considered to meet the objectives and requirements of a Holiday House under the City of Nedlands Parking LPP. The applicant has demonstrated through the submitted Management Plan contained as Confidential Attachment 2 that the use of the residential dwelling as a Holiday House will likely have a negligible impact on neighbouring landowners and the surrounding amenity of the property.</p> <p>As per recommended Condition 7 of the determination, a maximum of 2 guest vehicles are permitted for the guests of the Holiday House at any given time.</p> <p>As per recommended Condition 8 of the determination, the Management Plan (which also indicates that a maximum of 2 guest cars are permitted on the property) forms part of the approval and is to be complied with at all times to the City's satisfaction.</p> <p>As per recommended Condition 9, all guest vehicles shall be parked within the property boundaries of the subject site and no guest parking is permitted on the verge or street.</p>

## 7.0 Conclusion

The application for a retrospective Holiday House is considered to satisfy the objectives and requirements of the City of Nedlands Local Planning Scheme No. 3, the City of Nedlands Short Term Accommodation Local Planning Policy and the City of Nedlands Parking Local Planning Policy.

Through the proposed Management Plan submitted by the applicant (and owner of the subject property), the applicant has demonstrated that the Holiday House is unlikely to have an undue impact on the residential amenity of the area by way of noise or parking. The Holiday House proposes sufficient parking facilities on the site for the operation of the Holiday House.

As per the Management Plan submitted with this application, the owners will reside on site which will allow for any potential neighbour concerns of the Holiday House to be readily addressed in comparison to a proposal for an unsupervised Holiday House.

Accordingly, it is recommended that the application be approved by Council for a 12 month period, subject to Conditions and Advice Notes.

City of Nedlands  
Received  
3 August 2020

## **RESPONSE TO SUBMISSIONS**

The main reason we decided to put up our home for a Holiday House was due to the fact that the Travel Business which I have owned for 20 years was gradually deteriorating due to competition from the Internet.

Covid19 has made the necessity of a second income even more critical, as the income from my Travel Business has now dwindled away to negative territory, for the last 6 months.

So in April 2019 we started taking in guests and have had a very successful and event free year of clients living at home with us.

When the Council stipulation came along, we decided to do the right thing and applied for Council approval.

To address some of the points raised by the submissions received, I have tabulated them below for easy reference.

### **1. Devaluing Property value:**

There have been quite a few homes bought and sold in the suburb and the property prices would be impacted more by Covid19 than from a holiday house in the street.

Most buyers would not even know if there was a holiday house being operated in the suburb as that is not something advertised by real estate agents.

A few months ago, the property directly opposite our house was sold at the going price.

This is after a year of us running the holiday house.

Also, there are people all over Australia doing the same to augment their incomes, and it seems rather a poor objection.

### **2. Parties and unknown regular strangers**

We have lived in our home for 15 years and are very keen on making sure that our neighbours and we are not adversely affected in any way.

All prospective tenants are vetted and checked before approving them for staying in the house.

We are as interested as anyone else to have only the right people staying in our house.

Parties and gatherings are not permitted.

Prospective guests are advised of the rules prior to arrival.

By the same token we have had neighbours around us having parties well beyond midnight.

### **3. Noise**

As we are living on the property ourselves, we will ensure that noise will not be an issue.

We have never had a complaint about noise in the 15 years we have been living there.

### **4. Parking**

We have two closed Garages and open car ports for three additional cars.

Our guests have usually only had two cars and very rarely three.

Parking therefore has never been and will not be an issue.

### **5. Concern property will be used for short term accommodation or a boarding house instead of a holiday house**

We have, as I mentioned in Point 1, had this business for over a year already, and have always run it as a Holiday House.

We do not intend to run it any other way.

### **6. Concern over rubbish**

We have never had a problem thus far with managing the disposal of rubbish and I do not see how that is of any concern.

We can always use the Tip if necessary, although we have never had to do that.



<b>PD45.20</b>	<b>Establishment of a Design Review Panel</b>
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<b>Committee</b>	11 September 2020
<b>Council</b>	22 September 2020
<b>Director</b>	Peter Mickleson – Director Planning & Development
<b>Reference</b>	Nil
<b>Previous Item</b>	PD14.19 at 23 April 2019 Ordinary Council Meeting 16.1 at 17 December 2019 Ordinary Council Meeting 7 at 30 January 2020 Special Council Meeting 14.4 at 30 March 2020 Ordinary Council Meeting 14.1 at 28 July 2020 Ordinary Council Meeting
<b>Attachment</b>	1. Draft Design Review Panel Local Planning Policy 2. Draft Design Review Panel Terms of Reference 3. Design Review Guide 4. Design Principles to be considered by the Design Review
<b>Confidential Attachments</b>	Panel Nil.

## 1.0 Executive Summary

The purpose of this report is for Council to consider the Terms of Reference and a Local Planning Policy regarding the operation and function of a Design Review Panel (Panel) which would provide independent expert design review advice for complex planning proposals.

This matter was first considered at the Ordinary Council Meeting held on 23 April 2019, at which Council resolved not to establish a Panel. The resolution was reconsidered at the 17 December 2019 Ordinary Council Meeting, with Council progressing establishment of the Panel. The December 2019 resolution was amended in January 2020 to better reflect Council's intent.

The establishment of a Panel was ceased as a result of Council's resolution at the 30 March 2020 Ordinary Council Meeting. Since then, Council have resolved at the 28 July 2020 Ordinary Council Meeting to progress the establishment of a Panel, including investigating interim measures.

With the gazettal of Local Planning Scheme No. 3 (LPS 3) the City has experienced a higher level of growth in development occurring in the locality. Community expectations about the quality of built form outcomes have been increased as a result of recent applications. This community expectation has also increased with the adoption of *State Planning Policy 7.0 Design of the Built Environment*.

Larger-scale developments and projects with a strong design focus require additional expertise over and above assessment planning. A Panel can provide additional input in areas such as architecture, heritage, landscape design and sustainability. With a higher importance on ameliorating design impacts and mitigating any potential impact on established neighbourhoods, having a Panel will become an important part of the City's regulatory response.

Ensuring that the City has a consistent approach to built form design should be addressed and a Panel would be the preferred approach to achieve this. It is noted that the Development Assessment Panels (DAP's) have an expectation that applications before them would have undertaken a design review process prior to being presented for determination by the DAP.

A draft local planning policy (LPP) and draft Terms of Reference have been prepared for operational and procedural purposes to outline how the Panel members would be appointed and what type of development will be referred to the Panel. It is not proposed to form the Panel as a committee under the *Local Government Act 1995*. Rather, the Panel does not have a decision-making role and will be limited to providing advice to the City and proponents.

It is recommended that Council establishes a Panel, adopts the draft Terms of Reference and advertises the draft Design Review Panel Local Planning Policy.

## **2.0 Recommendation to Committee**

**That Council:**

- 1. Adopts the City of Nedlands Draft Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals;**
- 2. Advertises the Draft Design Review Panel Local Planning Policy for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4;**
- 3. Instructs the Chief Executive Officer to call for expressions of interest for six (6) panel members and (2) specialist members for the City of Nedlands Design Review Panel, with appointment to the Panel to be made by Council upon its adoption of the Design Review Panel Local Planning Policy; and**
- 4. Notes that a budget amount of \$20,500 is to be set aside in the mid-year Review to allow for the operation of the Design Review Panel, for strategic matters, for the remainder of the financial year up to June 2021 inclusive;**

## **3.0 Background**

This matter was first considered at the Ordinary Meeting held on 23 April 2019, at which Council resolved not to establish a Panel. This matter was re-tabled for consideration at the City's December Ordinary Council meeting (Item 16.1) where the following was resolved:

*“That Council reconsider its decision PD14.19 dated 23 April 2019 ‘That Council does not establish a Design Review Panel’ and resolves to:*

- 1. Instructs the CEO to recommend to Council a Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals;*

2. *Instructs the CEO to prepare a Local Planning Policy outlining the types of development, policies and projects that will be referred to the Panel, a set of Design Principles that the panel will use for a basis for review and relevant operations and procedures for the panel;*
3. *The cost of the Design Review Panel be borne by the applicants;*
4. *That the Design Review Panel be reviewed in 9 months from the date of establishment; and*
5. *That the CEO investigates opportunities for a cooperative arrangement with other Western Suburbs Councils to share the use of a Design Review Panel if established. “*

A recommendation to Committee was subsequently prepared and put to Council 30 January 2020 at a Special Council Meeting where Council resolved to adopt the officers recommendation, subject to amendments as outlined below:

*“Regulation 11(da) - Council determined that the amendments better reflected the earlier intent.*

*That Council:*

1. *Adopts the City of Nedlands Design Review Panel Terms of Reference for the purposes of providing independent expert design review advice for complex planning proposals as per attachment 2;*
2. *Prepares and advertises Design Review Panel Local Planning Policy for a period of 21 days, in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2, Part 2, Clause 4 as per attachment 1;*
3. *Instructs the Chief Executive Officer to call for expressions of interest for six (6) members for the City of Nedlands Design Review Panel, with appointment to the Panel to be made by Council upon its adoption of the Design Review Panel Local Planning Policy;*
4. *Instructs the Chief Executive Officer to:*
  - a. *refer the options for funding of a Design Review Panel to a Councillor Workshop to assess costs, benefits and risks, and report back to Council in March 2020 for a decision on funding; and*
  - b. *make arrangements for complex planning proposals to be considered by another Western Suburbs Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel.*
5. *Notes that a budget amount of \$30,000 is to be set aside in the MidYear Review to allow for the operation of the Design Review Panel from February – June inclusive; and*
6. *Instructs the Chief Executive Officer to make arrangements for complex planning proposals to be considered by another Western Suburbs Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel”*

At the 31 March 2020 Order Meeting of Council, the Design Review Panel process ceased, with Council resolving as follows:

1. *“does not support the introduction a City of Nedlands Design Review Panel;*
2. *instructs the CEO to cease new referrals to Design Review Panels of other Local Governments and the State Design Review Panel; and*

3. *instructs the CEO to cease all work related to implementation of a Design Review Panel;*
  - a. *for the City of Nedlands; and*
  - b. *as a cooperative arrangement for the Western Suburbs Local Governments.”*

At the July 28 2020 Ordinary Meeting of Council, Council resolved to proceed with the Panel process. Council resolved as follows:

1. *“resolves to establish a Design Review Panel; and*
2. *instructs the CEO to; Review and revise the City of Nedlands Previously Draft Design Review Panel Terms of Reference in light of the Advice Notes below;*
3. *review and revise the Previously Draft Design Review Panel Local Planning Policy in light of the Advice Notes below;*
4. *review and reschedule a call for expressions of interest members for the City of Nedlands Design Review Panel, with appointments to the Panel made by Council following its adoption of the Design Review Panel Local Planning Policy;*
5. *Council requires funding options (Clause 4) to include 100% cost recovery for development applications, from the applicant; and*
6. *refer Design Review modes and thresholds options to a Councillor Workshop, that is based on “Design Review Guide Chapter 7” where levels of escalation and the role of a City Architect are contemplated;*
7. *Make arrangements, where appropriate, for complex planning proposals to be considered by another Western Suburbs Design Review Panel or the State Design Review Panel at the proponent’s cost as an interim measure prior to the establishment of the City of Nedlands Design Review Panel; and*
8. *Give due regard to the following Advice Notes concerning the implementation and management of a Design Review Panel for the City of Nedlands.*

*Advice Notes:*

- a. *Council requires a Design Review Panel member to be connected to the City as either a ratepayer, resident or elector;*
- b. *Council expects the Design Review Panel presiding member to be highly regarded in their profession and respected by the community;*
- c. *Council requires final approval of panel members.*
- d. *Council requires modes and thresholds options (Clause 5) to include:*
  - i. *a tiered approach to Design Review Panel involvement diminishing with large, medium and small developments;*
  - ii. *consideration of a part-time City Architect role; and*
  - iii. *consideration of Community Reference Group role.*
- e. *present a re-scoped recommendation to the September 2020 Council meeting.”*

Based on the 28 July 2020 resolution of Council, the revision of the Terms of Reference, Local Planning Policy, expressions of interest for Panel members and opportunity for an interim solution are now being progressed.

With respect to the Panel, previous planning reform by the WA Planning Commission (WAPC) identified the need for initiatives and actions for the improvement of design and

development. This is now being delivered as *Design WA*. Stage 1 has been completed, which aims to deliver elements with a direct planning reform mandate, including:

- State Planning Policy 7.0 Design of the Built Environment (SPP 7.0)
- State Planning Policy 7.3 Residential Design Codes Volume 2 - Apartments
- Design Review Guide (the Guide). Refer to **Attachment 3**.

The Guide sets a best-practice model for the establishment of Panels offering practical advice on how to establish and operate a panel and to encourage consistency, as existing design review processes evolve. The Guide recommends Panels provide independent expert advice and informed assessment of proposals, guided by a performance-based set of design quality principles. It offers feedback and observations that will lead to the improvement of proposals but does not redesign them.

The majority of metropolitan local governments already have Panels established or are in the process of forming a Panel. The practice has been established for many years in neighbouring local governments. Therefore, its introduction in Nedlands is likely to be accepted by the development industry.

The option of accessing an existing Panel operating in another local government area is being investigated. Some local governments will entertain outside proposals being considered by their respective Panels. However, there appears to be limited capacity to manage the volume of proposals expected to be generated within Nedlands. Further, any sharing of outside Panels will be subject to all costs being borne by the City. These costs will be set by the providing local government with limited ability for the City to mitigate these if considered prudent.

The use of an outside Panel is considered appropriate as an interim measure only. In the medium-to-long term, it is likely that the City will have sufficient development volume to warrant its own Panel. This option gives Council full control over the costing and make-up of the Panel. It also ensures that the Panel is available when required to deal with the City's planning assessment obligations.

#### **4.0 State Planning Policy 7.0 - Design of the Built Environment**

SPP 7.0 addresses design quality and built form outcomes in Western Australia. It seeks to deliver the broad economic, environmental, social, and cultural benefits that derive from good design outcomes and supports consistent and robust design review and assessment processes across the State.

An objective of SPP 7.0 is a coordinated strategy of design quality mechanisms to achieve design outcomes that meet government and community expectations, including, amongst others, design review (skilled evaluation expertise). SPP 7.0 stipulates that Planning authorities, including local governments, should establish or arrange access to design review processes to review complex planning proposals, those proposals identified as benefitting from design review, or as set out in the *Planning and Development (Local Planning Schemes) Regulations 2015*.

Whilst it is an advisory process, it is expected that decision-makers give due regard to the advice and any recommendations provided by the Panel.

## 5.0 Design Review Guide

The Guide (**Attachment 3**) has been prepared to assist local governments in meeting the requirement for design review outlined in SPP 7.0.

The guide has been based on design review methodology developed by the UK Commission for Architecture and the Built Environment (CABE), which is widely considered to represent international best practice and is utilised in successful design review processes throughout Australia.

The Guide stipulates that once the decision is made to form a Panel, resources must be committed to make it happen. It is important to be clear how the panel is run, the processes by which design review is accessed and how the advice and recommendations are provided and used.

The Panel's role is to provide information and advice to decision makers, not to make a decision. For this reason, a Panel should not be a committee of Council under the *Local Government Act 1995* but should be established as an independent panel with separate membership and terms of reference. The Council should endorse the terms of reference for the panel and may endorse panel appointments.

The draft Local Planning Policy and draft Terms of Reference that have been tabled for Council consideration are based on the recommendations of the Guide.

## 6.0 Draft Design Review Panel Local Planning Policy

A draft local planning policy has been prepared for Council consideration and is included at **Attachment 1**. The purpose of the draft Policy is to outline the operation of the Panel. The draft Policy covers:

- The role and objective of the Panel, namely, to provide input on architectural and design aspects of a planning proposal. The Panel's role will also include improving the design quality and functionality of new development within the City and to provide expert advice to the City.
- The proposals that are to be referred to the Panel prior to lodgement of an application. This includes all multiple dwelling proposals, grouped dwelling proposals proposing ten or more units and developments of three or more storeys, excluding single houses. All mandatory JDAP applications would also be subject to review by the Panel prior to lodgement.
- The proposals that are to be referred to the Panel post-lodgement of an application. This includes applications that are in the opinion of the City of a complex or contentious nature or are likely to be of a significant interest to the community. The Panel will also be available to consider structure plans, precinct plans and local development plans if the City considers these would benefit from a referral.
- The process of dealing with a proposal referred to the Panel, either prior to lodgement or post-lodgement. This includes arrangements for information to be provided to Panel Members, minute-taking and funding. A schedule of fees for the Panel cost (excluding administration fees) is incorporated into the LPP. The potential funding options are outlined in the Budget / Financial Implications section below, noting Council are seeking full cost-recovery.

- The matters to be considered by the Panel, including the ten design principles outlined in Schedule 1 of SPP7.0 and included at **Attachment 4**.

The Policy provides for most applications to be considered twice by the Panel. The first meeting will provide input to the proponent and the City into the preparation of the application before it is lodged. The second meeting will review the formal application and provide recommendations to the City's assessment staff.

It is recommended that Council advertises the draft Policy for a period of 21 days in accordance with clause 4 of the Deemed Provisions. Once advertising is complete, the draft Policy will be returned to Council for further consideration.

## 7.0 Draft Design Review Panel Terms of Reference

A draft Terms or Reference for the Panel is included at **Attachment 2**. The Terms of Reference will work in conjunction with the Local Planning Policy to govern the operation of the Panel.

The draft terms of reference covers:

- The statutory basis for the Panel, including its role (as outlined in the draft Local Planning Policy) and the limitation of Panel members on providing direct advice to an applicant or individual.
- The membership of the Panel, including:
  - The meetings being chaired by a member of the Panel as nominated by the City's Director Planning.
  - Membership of the Panel will comprise a pool of six (6) panel members, with an additional two (2) specialist members available to provide feedback where necessary.
  - A maximum of five members will be selected to sit at any one time, which can include the five panel members (including the Chairperson) and/or two specialist members, depending on the nature of the proposal;
  - Panel members having qualifications and experience in one or more of the following areas:
    - Architecture
    - Landscape architecture
    - Urban design
    - Heritage
    - Sustainability and environmental design
    - Services engineering
    - Accessibility
    - Transport planning
    - Planning
    - Public art
    - Civil and/or structural engineering
  - A quorum of three is required for meetings to proceed;
  - Members are to be appointed by Council and have a two-year term, extendable by Council by up to six months;
  - Members cannot be employed by or be an Elected Member of the City.
  - Members must be highly regarded in their profession and by the community; and

- Members must be connected to the City of Nedlands as either a ratepayer, resident or elector.
- The operation of the Panel meetings, which will be nominally held once per month with additional meetings called for urgent matters. Meetings will not be open to the public and all members will be subject to the City's Code of Conduct and declaration of interest requirements. The Terms of Reference will also outline the structure of the meeting and the format for providing advice to proponents and the City.
- The format of the Panel recommendation, namely the Panel will provide advice to a proponent pre-lodgement to assist in preparing the formal application. Post lodgement, the Panel will provide recommendations to the City on which design elements are supported and which would benefit from further consideration.
- The provision of advice outside of Panel meetings by a Panel Member where a full Panel meeting is not considered by the City as required. Provision has been made to allow for the Panel to provide advice to other local governments at the cost of the requesting local government.
- The financial arrangements for the Panel include a member payment of \$205 per hour exclusive of GST and Chairperson \$227 per hour exclusive of GST, up to a maximum of three hours, plus a maximum of one hour for preparation time prior to the meeting. This is based on surrounding local government rates.
- Funding of the Panel is to be entirely borne by the proponent, as per the 28 July Council Resolution. This is excluding administrative costs.

## **8.0 Budget / Financial Implications**

The likely administration cost associated with the Panel is broken down as follows:

1. Administration – to undertake minutes, attendance and the meeting and preparation of the agenda, (6 hours) at a cost of approximately \$221.16.
2. Technical officers (1x Manager/Senior Planner, 1x Planning Officer) in attendance for 3 hours = \$308.58

Total Administration Cost = \$529.74

### **Panel Member Costs**

This is based on a maximum of four Panel members being paid at \$205 per hour (excluding GST) and one Panel Chairperson being paid \$227 (excluding GST) for three hours. The actual meeting cost may be lower if the meeting is shorter or less than five members participate.

- Panel Member/Chairperson Attendance Costs = \$ 3,141.00

The Panel Chairperson and Members are to be paid for up to one hour of preparation time prior to the meeting. This is to ensure they are across all the matters raised and are appropriately compensated for their time. Based on 4 Panel members and the Chairperson attending, the cost is as follows:

- Panel Member/Chairperson Preparation Costs = \$1,047
- Total Panel Member/Chairperson Costs = \$4,188



The costs associated with operation of the Panel will be predominantly focussed on attendance fees.

- Total Meeting Cost = \$4717.74 (Administration + Panel Costs)

Using a similar hourly rate as adopted by surrounding local governments, a total meeting cost of \$4,717.74 excluding GST is expected for a maximum 3 hour meeting.

The Council resolved at the 28 July Ordinary Meeting of Council to pursue a fully proponent funded model. Therefore, the proponent is required to pay for the full costs associated with holding a Panel meeting, excluding the City's administrative costs.

There may be instances where Council wish to refer projects of strategic importance to the Panel. These may include strategic matters such as:

- local planning policies;
- local planning strategies;
- master plans;
- precinct plans;
- local development plans;
- structure plans;
- activity centre plans;
- design guidelines;
- streetscape improvements;
- local planning schemes; and
- any significant amendments to the above matters.

Council may benefit from the Panel reviewing strategic matters such as those listed above as the Panel is able to provide advice based on best practice knowledge and understanding of context, history and future desired character of the locality. Additionally, the Panel can support Council in improving the design quality of public buildings (for example, local library or community facility) and public realm projects.

With respect to the strategic project pipeline, there are several precinct plans, as well as local planning policies currently underway or due to be prepared which would benefit from review by a Panel in due course. Moreover, the development of other strategic matters such as the public open space strategy, scheme amendments, approach to residential aged care accommodation, landscaping strategy, student accommodation and public art, amongst others, could benefit from review by the independent Panel.

With the above in mind, we recommend Council set aside a budget to accommodate the assessment of strategic planning matters by the Panel, should it be established. On the basis of one two-hour meeting per month (Panel cost \$3,141; Administration cost \$205.74) for the next twelve months, the financial implication of adopting this option is estimated at \$41,000 excluding GST per annum.

We recommend Council set aside a budget for the 6-months after the establishment of the Panel (should this occur) to manage the review of strategic matters. Beyond the reasons listed above, a clear advantage of having the Panel review these matters is that it will assist in mitigating any perceived bias in the preparation of strategic planning

documents. The Panel's advice is independent, impartial and professional and as such it offers an unbiased best practice review of strategic matters moving forward.

## **10.0 Risk Management**

The risks associated with not having a Panel include the following:

- Complex applications will not be reviewed by a panel of built form design experts relating to new assessment criteria as prescribed by State Planning Policy 7.0;
- Applications before the JDAP may not be approved due to lack of Panel consideration, potentially causing delays for applicants and administration; and
- Alternative expert advice in the areas of architecture, sustainability / energy efficiency, landscape architecture and arborists amongst others will need to be engaged separately to adequately address the complex assessment items required to be vetted by the City as part of Design WA.

## **11.0 Conclusion**

Development in the City is likely to no longer be dominated by single storey dwellings. Instead, up-coded areas are likely to experience high levels of redevelopment as a result of LPS 3. This is already being experienced with a high level of applications lodged and a large 'pipeline' of proposals that are expected to be lodged in coming months.

Establishing a Panel to provide independent expert architectural and design advice on large-scale and complex development that can impact the community is seen as the next logical step for the City. As the City moves into an increasingly sophisticated planning assessment process including an increase in more intensive density and varied development typologies, the Panel becomes increasingly important. Therefore, it is imperative that the City and administration are adequately equipped with professional expertise.

It is recommended that:

1. Council pursue the establishment of a Panel through the advertising of the draft Design Review Panel Local Planning Policy and the adoption of the draft Terms of Reference for the Panel;
2. Funds be set aside to accommodate the Panel's operations, where it relates to strategic matters, for the remainder of the current Financial Year; and
3. Expressions of interest for Panel membership be called in the short term, so that Council can consider appointments in the event the Local Planning Policy is adopted by Council after advertising.