

CITY OF ARMADALE

MINUTES

OF DEVELOPMENT SERVICES COMMITTEE HELD IN THE COMMITTEE ROOM, ADMINISTRATION CENTRE, 7 ORCHARD AVENUE, ARMADALE ON TUESDAY, 20 FEBRUARY 2018 AT 7PM.

PRESENT: Cr D M Shaw (Chair)
Cr C M Wielinga (Deputy Chair)
Cr M Geary
Cr L Sargeson
Cr M Silver
Cr H A Zelones OAM JP
Cr G J Smith (Deputy to Cr Busby)

APOLOGIES: Cr K Busby (Leave of Absence)

OBSERVERS: Cr J A Stewart

IN ATTENDANCE: Mr P Sanders Executive Director Development Services
Mr G Dine Health Services Manager
Mr A Beales A/Building Services Manager
Mrs N Cranfield Executive Assistant EDDS

PUBLIC: Nil

“For details of Councillor Membership on this Committee, please refer to the City’s website – www.armadale.wa.gov.au/your_council/councillors.”

DISCLAIMER

The Disclaimer for protecting Councillors and staff from liability of information and advice given at Committee meetings was not read by the Chair as there were no members of the public present.

DECLARATION OF MEMBERS' INTERESTS

Nil.

QUESTION TIME

Nil.

DEPUTATION

Nil.

CONFIRMATION OF MINUTES

RECOMMEND

Minutes of the Development Services Committee Meeting held on 23 January 2018 be confirmed.

**Moved Cr C M Wielinga
MOTION CARRIED**

(7/0)

ITEMS REFERRED FROM INFORMATION BULLETIN - ISSUE 1 / 2018

Outstanding Matters & Information Items

Report on Outstanding Matters - Development Services Committee
Reviews before the State Administrative Tribunal (SAT)

Health

Health Services Manager's Report - December 2017

Planning

Planning Applications Report - December 2017

Town Planning Scheme No.4 - Amendment Action Table

Subdivision Applications - WAPC Approvals/Refusals - December 2017

Subdivision Applications - Report on Lots Registered for 2017/2018

PAW Closure Report - Significant Actions during December 2017

Compliance Officer's Report - December 2017

Building

Building Services Manager's Report - December 2017

Building Health/Compliance Officer's Report - December 2017

Building Applications Monthly Statistics - December 2017

ITEMS REFERRED FROM INFORMATION BULLETIN - ISSUE 2 / 2018

Outstanding Matters & Information Items

Report on Outstanding Matters - Development Services Committee
Reviews before the State Administrative Tribunal (SAT)

Health

Health Services Manager's Report - January 2018

Planning

Planning Applications Report - January 2018

Town Planning Scheme No.4 - Amendment Action Table

Subdivision Applications - WAPC Approvals/Refusals - January 2018

Subdivision Applications - Report on Lots Registered for 2017/2018

PAW Closure Report - Significant Actions during January 2018

Compliance Officer's Report - January 2018

Building

Building Services Manager's Report - January 2018

Building Health/Compliance Officer's Report - January 2018

Building Applications Monthly Statistics - January 2018

Committee discussed the progress of planning in the Kelmscott District Centre under the jurisdiction of the MRA Planning Area.

Committee noted the information and no further items were raised for discussion and/or further report purposes.

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****1.1 - REVIEW OF HEALTH LOCAL LAW 2002**

WARD : ALL
FILE No. : M/80/18
DATE : 14 February 2018
REF : GD
RESPONSIBLE : EDDS
MANAGER

In Brief:

- Under the *Local Government Act 1995*, there is a requirement to review Local Laws every eight (8) years. The last eight (8) year review of the Health Local Law 2002 was completed on 22 March 2010.
- A review of the Health Local Laws 2002 has recently been undertaken.
- This report presents the findings of the review process, and recommends that the City's Health Local Laws 2002 continue in operation without amendment.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Nil

Legislation Implications

Local Government Act 1995 Section 3.16

Council Policy/Local Law Implications

Health Local Laws 2002
Public Health Act 2016
Town Planning Scheme No.4

Budget/Financial Implications

The cost of advertising in Local and State newspapers and any other costs associated with its adoption and gazettal can be accommodated within the Health Services Budget.

Consultation

- Corporate Services
- Development Services
- Department of Health WA
- Public notices issued for the general public.

BACKGROUND

Council at its meeting on the 21st January 2002 resolved (C25/02) to adopt the Health Local Laws 2002 which were subsequently published in the *Government Gazette* on the 1st March 2002. Since adoption in 2002 there have been a series of amendments to these local laws with the last eight (8) yearly being adopted by Council on 22 March 2010 (D21/3/10).

The purpose of the Health Local Laws 2002 is to provide for current and effective local health laws in regard to the administration and control of health standards and conditions within the City of Armadale. The Health Local 2002 has effect in regard to the control of the following:

- Sanitation;
- Housing;
- Waste Food and Refuse;
- Nuisances;
- Pest Control;
- Infectious Disease;
- Food Premises;
- Lodging Houses; and
- Offensive Trade.

The Health Local Laws 2002 also sets out offences and penalties for non – compliance.

DETAIL OF PROPOSAL

Local Government Act 1995, Section 3.16 – Periodic review of local laws; states the following:

- “(1) Within a period of 8 years from the day when a local law commenced or a report of review of the local law was accepted under this section as the case requires, a local government is to carry out a review of the local law to determine whether or not it considers that it should be repealed or amended.*
- (2) The local government is to give Statewide public notice stating that –*
- a. the local government proposes to review the local law;*
 - b. a copy of the local law may be inspected or obtained at any place specified in the notice; and*
 - c. submissions about the local law may be made to the local government before a day to be specified in the notice, being a day that is not less than 6 weeks after the notice is given.”*

(2a) A notice under subsection (2) is also to be published and exhibited as if it were a local public notice.

(3) After the last day for submissions, the local government is to consider any submissions made and cause a report of the review to be prepared and submitted to its council.

(4) When its council has considered the report, the local government may determine whether or not it considers that the local law should be repealed or amended.*

Pursuant to the requirements of the *Local Government Act 1995*, an eight (8) yearly review of the City of Armadale Health Local Law 2002, has recently been undertaken and this report presents the findings of this review which recommends that the local law continue in operation without amendment.

COMMENT

As per the requirements of the *Local Government Act 1995*, Statewide public notice was given of Council's intent to conduct an eight (8) yearly review of the Health Local Law, with submissions closing on the 6 January 2018. Notices were placed in the West Australian Newspaper and on the City's website and displayed on the Administration Centre notice board and the Armadale Library, Kelmscott Library and Seville Grove Library notice boards.

Following the close of the submissions period, no submissions were received.

In determining whether to amend, repeal or retain this local law consideration has been given to the major review of the *Health Act 1911* and the transitioning to the new *Public Health Act 2016*.

The *Public Health Act 2016* and *Public Health (Consequential Provisions) Act 2016* facilitate the comprehensive reform of public health regulation in Western Australia. As there is a significant amount of work required to transition to the new regulatory framework, implementation is to occur in a staged manner over the next 3 to 5 years. There will be five main stages of implementation, summarised below:

Public Health Act 2016 Implementation

Stages 1 and 2

These stages came into operation in September 2016 and involve various technical matters required to facilitate the transition from the *Health Act 1911* to the *Public Health Act 2016*. The *Health Act 1911* and regulations, by-laws and local laws made under that Act will remain in operation at these two stages.

Stage 3

Part of stage 3 came into operation in January 2017 with the remainder coming into operation in September 2017. During this stage, key elements of the administrative framework provided by Part 2 of the Public Health Act 2016 came into operation to replace the equivalent administrative framework provided by Part II of the Health Act 1911. This includes provisions establishing the Chief Health Officer and enabling local governments to designate authorised officers.

In order to minimise the impact on local governments, section 312 of the Public Health Act 2016 includes a transitional provision. Under that section, persons who are currently appointed as environmental health officers will be deemed to be designated as authorised officers for the purpose of the Public Health Act 2016, the Health Act 1911 and a range of other relevant Acts.

All other regulations, by-laws and local laws made under the *Health (Miscellaneous Provisions) Act 1911* will remain in operation at this stage.

A significant change under the new Public Health Act 2016 is that the power to make local laws for matters relating to public health have been deleted from the *Public Health Act 2016* and are now provided for in the *Local Government Act 1995*.

Stage 4

Provisions in the *Public Health Act 2016* relating to notifiable infectious diseases and related conditions, prescribed conditions of health, serious public health incident powers and public health emergencies will be commenced during this stage. Equivalent provisions in the *Health (Miscellaneous Provisions) Act 1911* and regulations made under that Act will be repealed. Implementation will occur on a date to be fixed by proclamation.

Stage 5 – (in process)

Provisions in the *Public Health Act 2016* relating to environmental health matters will be commenced. Amongst other things, this will involve the development of new regulations in respect to broad subject areas including the built environment, water, personal safety, pests and vectors. Equivalent provisions in the *Health (Miscellaneous Provisions) Act 1911* and regulations and by-laws made under that Act will be repealed. Unfortunately at this point in time the City officers are not aware of what provisions will be incorporated into these regulations.

This stage will be the most significant stage of implementation. It will be the point at which local governments move from the framework provided by the *Health (Miscellaneous Provisions) Act 1911* to the framework provided by the *Public Health Act 2016*. Provisions in the Public Health Act relating to public health planning, assessments, registration and licensing will be commenced along with the enforcement provisions.

The Department of Health will work closely with local government in the lead up to this stage, including consulting in respect of the development of required regulations.

Impact on Local Law 2002

The transitional period moving from the provisions of the Public Health Act 1911 to the Public Health Act 2016, through the 5 stages will have no effect on the legitimacy of our existing local law and therefore it will continue to remain in effect. Should amendments be required, the power to make these now falls under the Local Government Act.

However, prior to making any amendments or a new Health Local Law between stages 3 and 5, the City will need to be mindful that any laws made before the development of the new regulations will need to be reviewed and possibly repealed when stage 5 of implementation of the new Act occurs. This is anticipated to be within the next 3 to 5 years.

OPTIONS

Council could:

1. Repeal Local Law 2002 and establish a new Local Law once the Public Health Act 2016 is fully implemented and the City understands what provisions need to be enforced through the making of a Local Law.
2. Retain Local Law 2002 without amendment and undertake a further review of the Local Law once the new Public Health Act 2016 is fully implemented and enforceable.

CONCLUSION

The *Health local Law 2002* is relevant and necessary in maintaining public health standards within the City of Armadale, however, it is expected that the scope of health local laws will narrow in view of the risk based framework provided by the new *Public Health Act 2016* once fully operational.

Without knowing what provisions will be contained within the new regulations supporting the new Public Health Act 2016 repealing the Local Law will diminish the City's ability to enforce certain Health provisions, accordingly repealing the Local Law at this stage is premature.

Once the new regulations are in operation, the City will be in a better position to review Local Laws 2002 as all provisions of the new legislation will be known, therefore option 2 is preferred.

ATTACHMENTS

There are no attachments for this report.

RECOMMEND

D10/2/18

That Council:

1. Pursuant to section 3.16(4) of the *Local Government Act 1995*, resolve* that the City of Armadale *Health Local Law 2002* continue in operation without amendment.
2. Note that a review of the *Health Local Law 2002* will occur once the new *Public Health Act 2016* is fully operational.

***ABSOLUTE MAJORITY RESOLUTION REQUIRED (for Part 1)**

Moved Cr H A Zelones
MOTION CARRIED

(7/0)

2.1 - PROPOSED AMENDMENT NO.94 TO TPS NO.4 - AMENDING LAND USE PERMISSIBILITY IN THE SPECIAL RESIDENTIAL ZONE AND OTHER CHANGES TO THE SCHEME MAP AND TEXT

WARD : Heron, Hills, Lake and River
FILE No. : - M/772/17
DATE : 14 February 2018
REF : CC
RESPONSIBLE MANAGER : EDDS
SUBJECT LAND : All land zoned Special Residential
ZONING MRS / : Rural and Urban
TPS No.4 : Special Residential

In Brief:

- The amendment proposes to implement the outcomes of the City's review of land uses and their permissibility for the Special Residential zone that commenced with the Councillors' workshop briefing held on 28 August 2017.
- The amendment proposes to:
 - change the permissibility of 10 land uses to 'X' (not permitted) in the Special Residential zone;
 - reclassify local park land to Parks and Recreation (Local) on the Scheme Map;
 - add two additional uses to the Araluen Golf Course Additional Uses No.30 area in the Scheme Text; and,
 - remove Restricted Uses No.5 area from the Scheme Text and Map.
- It is recommended that Council resolve to initiate Amendment No.94, for the purpose of public consultation.

Tabled Items

Nil.

Officer Interest Declaration

Nil

Strategic Implications

2.5.1 Implement and administer the City's Town Planning Scheme and Local Planning Strategy to deliver quality development outcome.

Legislation Implications

Planning and Development Act 2005
Planning and Development (Local Planning Scheme) Regulations 2015
Metropolitan Region Scheme
Town Planning Scheme No.4
WAPC Statement of Planning Policy 3.7 Planning in Bushfire Prone Areas
WAPC Development Control Policy 2.5 Special Residential Zones

Council Policy/Local Law Implications

Local Planning Strategy 2016
PLN 3.2 Child Care Premises and Family Day Care

Budget/Financial Implications

Nil.

Consultation

If initiated, the scheme amendment will undergo a process of advertising for public submissions for a period of 42 days in accordance with the requirements of the '*Planning and Development (Local Planning Schemes) Regulations 2015*'.

BACKGROUND

A Councillors' workshop briefing was held on 28 August 2017 as an introduction to a project to review the existing range of land uses and their permissibility in the Special Residential, Rural Living and General Rural zones of Town Planning Scheme No.4 (TPS No.4).

The review was prompted by concerns that some 'P' (permitted) and 'D' or 'A' discretionary land uses in the subject zones have the potential to cause amenity impacts i.e. traffic and noise, would result in further land clearing, are vulnerable to fire risk, or, the uses may be more appropriately located in other zones i.e. Centre zones of TPS No.4.

At the workshop briefing, Councillors were provided with relevant extracts from TPS No.4 and a Survey Feedback Form with a request to provide comments and recommendations to the City on land use permissibility in the Special Residential, Rural Living and General Rural zones, particularly those land uses that Councillors considered the current permissibility land use category ('P', 'A', 'D' or 'X') should be amended. The opportunity to provide feedback was also extended to new Councillors who did not take part in the workshop briefing. Three Councillors completed the Survey Feedback Form.

As the land use permissibility review impacts on distinct zones with varied land use, development histories, site characteristics, and landowner interests/expectations, the land use recommendations of the review are being implemented on a zone-by-zone basis via separate scheme amendments. This approach allows the City to focus on issues and obtain community feedback for each zone which is particularly important given the high number of landowners in each zone.

Town Planning Scheme Amendment No.95 which deals with land use permissibility in the General Rural zone, was initiated by Council at its meeting on 29 January 2018 and will be advertised for public comment once appropriate Environmental Protection Authority (EPA) advice is received.

Town Planning Scheme Amendment No.94 (current proposal) principally proposes to modify the permissibility of various land uses to 'X' (not permitted) use in the Special Residential zone of TPS No.4 as well as make some other modifications to the TPS No.4 Text and Map.

It is noted that the Western Australian Planning Commission (WAPC) can adopt a conservative view of scheme amendment proposals that seek to diminish the number of permitted/discretionary land uses in zones. A case in point is Amendment No.69 to TPS No.4 which changed the permissibility of "place of worship" to 'X' (not permitted) use in the Special Residential zone of TPS No.4. The City had to lobby and provide additional justification to the Department of Planning officers before the WAPC supported the change of "place of worship" to 'X' (not permitted) use Special Residential zone.

The Special Residential zones are made up of both planned estates and some areas of historic subdivision brought under the Special Residential zone in the transition from Town Planning Scheme No.2 (TPS No.2) to TPS No.4 in 2005. Planned Estates are as follows.

Brookwood Estate, Hilbert Special Residential Zone

Brookwood Estate in Hilbert comprises 131 housing lots. The estate exhibits a strong single residential character with substantial “single houses”. The surrounding context of Brookwood Estate is changing from rural to urban/residential as adjoining land in the Metropolitan Redevelopment Authority’s ‘*Wungong Urban Water Master Plan*’ area is being planned for residential. The Department of Planning Lands and Heritage has verbally advised that it is considering an Urban zone for Brookwood Estate area under the Metropolitan Region Scheme (MRS).

Araluen Golf Course Estate Special Residential Zone

The Araluen Golf Course Estate comprises 284 housing lots set around a private golf course development site. The estate exhibits a strong single residential character with substantial “single house” set amongst remnant vegetation. The estate is also subject to Schedule 2-Additional Uses No.30 area under TPS No.4 which adds ‘shop-kiosk’, “restaurant”, “reception centre”, “caretaker’s house’ and “extraction of ground water” as ‘P’ (permitted) uses, but restricted to the golf course super-lot. The development of up to 50 “holiday accommodation” units on the golf course land is provided for in restrictions/conditions of Additional Use No.30 area but no units have been developed yet. The Araluen Golf Course is identified in the City’s ‘*Local Planning Strategy (LPS)*’ as a strategically significant special use site contributing to the growth of tourism in the Armadale hills.

Bedforddale Estates Special Residential Zone

The Bedforddale Estates Special Residential zone comprises 616 housing lots created in a number of separate development areas via scheme amendments including Churchman Brook and Waterwheel Ridge estates and others such developments. These estates exhibit a strong single residential character with substantial “single house” set amongst remnant vegetation.

There is a Schedule 2-Additional Uses area and a Schedule 3-Restricted Uses area in TPS No.4 over land in the Bedforddale Estates Special Residential zone. Additional Use No.42 area adds “convenience store” as a ‘P’ (permitted) use and “shop” as a ‘D’ (discretionary) use for Lot 409 Waterwheel Way, a small commercial development adjacent to the Churchman Brook Community Centre site.

The Schedule 3 “Restricted Use No.5” area covers 43 lots serviced by Observation Circle, Bedforddale, a former quarry and landfill site now separated on its own land title in the estate. The following land uses are ‘X’ (not permitted) uses in Restricted Use No.5 area: “child care premises”, “civic use”, “club premises”, “community purpose”, “consulting rooms”, “convenience store”, “educational establishment”, “exhibition centre”, “occasional uses”, “place of worship”, “recreation-private”, “residential building”, “industry-cottage” and “holiday accommodation”. As these restricted uses closely match those proposed to be designated ‘X’ (not permitted) uses under Amendment No.94, Restricted Use No.5 area is proposed to be removed from TPS No.4 Map and Text. The 43 lots serviced by Observation Circle will be subject to land use permissibility of Table 1 (Zoning Table) only and in this regard the following uses that were restricted would become discretionary uses: “industry-cottage”, “occasional uses” and “residential building” by way of Amendment No.94. Further discussion of these land uses is provided in the ‘Analysis’ section of this report.

Historic subdivision areas in the Special Residential zones are as follows –

Champion Lakes Special Residential Zone

The Champion Lakes Special Residential zone comprises 84 lots. There is a commercial chicken hatchery at No.41 Lake Road, and No.49 Lake Road is subject to Schedule 2-Additional Uses No.10 area which adds “caravan park”, “shop” and “restaurant” as ‘P’ (permitted) uses that allow for the existing development on the lot. The land is zoned Rural in the Metropolitan Region Scheme (MRS) and is subject to Schedule 8 “Development (Structure Planning) No.12” area in TPS No.4 which indicates the need for structure planning to guide subdivision and development. At the Council’s meeting in June 2009 the Council considered feedback from a public meeting and a survey questionnaire of landowners’ views and the Council confirmed urban/residential use for Champion Lakes Special Residential zone subject to necessary studies being undertaken to justify MRS and TPS No.4 rezonings.

Karragullen (town site) Special Residential Zone

The Karragullen (town site) Special Residential zone comprises 28 lots. The town site is not serviced with reticulated water or sewer. A large allotment in the zone is subject to Schedule 2 “Additional Use No.16” area which adds “warehouse” and “incidental car park” as ‘P’ (permitted) uses. This site is developed with Karragullen Cool Storage facility which provides packaging, cool room and distribution facilities for orchards.

Gilwell Avenue, Kelmscott Special Residential Zone

The Gilwell Avenue, Kelmscott Special Residential zone comprises 18 lots. These lots, and adjacent land areas in the Urban Development zone of TPS No.4, are currently unsewered. A rezoning to Residential zone may be considered in the future once planning and servicing issues are resolved.

Barnes Road, Roleystone Special Residential Zone

The Barnes Road, Roleystone Special Residential zone comprises only 4 lots at the boundary of the Residential R5 and Rural Living zones of TPS No.4.

DETAILS OF PROPOSAL

The City proposes to amend TPS No.4 Text and Map as follows:

- A. Modify the permissibility symbols of land uses in the Special Residential zone Column of Table 1 (Zoning Table) as follows:
- i) civic use and display home centre from ‘D’ (discretionary) to ‘X’ (not permitted); and,
 - ii) child care premises, club premises, consulting rooms, community purpose, education establishment, exhibition centre, holiday accommodation, and recreation-private from ‘A’ (discretionary) to ‘X’ (not permitted).
- B. Modify Schedule 2 - Additional Uses, No.30 area (Araluen Golf Course Estate) by:
- i) adding to the Additional Use column the following:
Discretionary (D) Uses:
 - holiday accommodation; and
 - recreation-private,and;

- ii) adding to the Conditions and Requirements column under 30.1 the following:
- holiday accommodation
 - recreation-private .

(Note: B. above is to address the changes proposed in A, as they relate to Araluen Golf Course Estate)

- C. Delete Restricted Uses No.5 from Schedule 3-Restricted Uses of Scheme Text and Map.
- D. Amend the TPS No.4 Map by reclassifying from Special Residential zone to Parks and Recreation (Local) reservation the following:

Lots 4000, 4001 and 4002 Darling Range Drive, Bedfordale;

Lots 188, 3000, 4005 and 4009 Waterwheel Road, Bedfordale;

Lots 4000, 4001, 4002, 4003 and 4004 Grieve Way, Bedfordale;

Lot 4010 Devonleigh Street, Bedfordale;

Lot 4007 Aulini Drive, Bedfordale;

Lot 4003 and 4004 Fyfield Way, Bedfordale;

Lot 500 Vellender Road, Bedfordale;

Lot 3000 Aviemore Drive, Bedfordale; and

Lot 4006 and 4008 Blissett Drive, Bedfordale.

A copy of the Location Plan and Zoning Maps of Amendment No.94 to TPS No.4 are presented in the Attachments to this report.

The permissibility symbols are defined in Clause 3.3.2 of the TPS No.4, as specified below:

3.3.2 *'The symbols used in the cross reference in the Zoning Table have the following meanings —*

'P' means that the use is permitted by the Scheme providing the use complies with the relevant development standards and the requirements of the Scheme;

'D' means that the use is not permitted unless the local government has exercised its discretion by granting development approval;

'A' means that the use is not permitted unless the local government has exercised its discretion by granting development approval after giving special notice in accordance with clause 64 of the Deemed Provisions;

'X' means a use that is not permitted by the Scheme.'

An extract from Schedule 1 of TPS No.4 Land Use Definitions, is included in the Attachments to this report.

COMMENT

Development Control Unit (DCU)

The DCU and the City's Assets and Service Group both considered the proposed land reclassifications on the TPS No.4 Map and modifications to the permissibility of land uses in TPS No.4 text and raised no objections.

Councillors Feedback

Three Councillors completed Survey Feedback Forms on land use permissibility in the Special Residential zone. Two Councillors recommended "child care premises", "club premises" and "consulting rooms" become 'X' (not permitted) uses on the grounds that these land uses are: inconsistent with the zone objectives; vulnerable to bushfire; more appropriately located in other zones (i.e. Centre zones); not appropriate for the prevailing (small) Special Residential zone lot sizes; and, would result in excessive noise and traffic impacts to residents. One of these two Councillor also recommended "civic use", "community purpose", "commercial vehicle parking", "educational establishment", "exhibition centre", "home business", "holiday accommodation" and "recreation-public" become 'X' (not permitted) use in the zone on similar grounds outlined above. Further consideration of the above land uses is provided in the 'Analysis' Section of this report. One Councillor generally supported the existing permissibility regime of TPS No.4 Zoning Table for the Special Residential zone.

ANALYSIS

The changes to land use permissibility proposed have been considered in terms of the following parameters: TPS No.4 zone objectives; consistency with the City's 'Local Planning Strategy'; State planning and development policy; the relative permissibility of land uses in other TPS Np.4 zones; potential development issues; Councillors' feedback and other considerations as necessary.

TPS No.4 - Special Residential Zone Objectives

The objectives of the Special Residential zone under clause 3.2.2 of the TPS No.4, are as follows:

- (a) To provide for low density residential development in a rural setting, in which natural environmental values are conserved as far as possible for the enjoyment of residents as well as the maintenance of ecological and landscape values.*
- (b) To ensure development is sited and designed to achieve an integrated and harmonious character within each of the estates.'*

Town Planning Scheme Amendment No.94 does not compromise the intent of the zone objectives as the fundamental residential land uses including "single house", "residential building" and "ancillary accommodation", will continue to be permitted/discretionary uses in the Special Residential zone. Commercial orientated land uses that are generally restricted to the owner/occupier of a house also continue to be permitted/discretionary uses in the zone, including: "bed and breakfast", "commercial vehicle parking", "family day care", "home business/ occupation/office", "industry-cottage" and "recreation-domestic".

Other land uses that are considered to be compatible with the zone objects are “occasional uses” and “recreation-public”. The land use “occasional uses” provides for infrequent activities i.e. swap meet, market, cake stall and artistic performance that do not compromise a locality’s amenity. Such activities when undertaken infrequently can enliven neighbourhoods and strengthen community bonds. The “Recreation-Public” land use is mostly provided by the State and local government and includes local parks, which is a compatible land use in all Residential zones. Accordingly, these two land use are to continue as discretionary uses in the Special Residential zone.

The land uses proposed to be designated ‘X’ (not permitted) uses are considered to be inconsistent with the zone objectives as they are not low density residential land use and if some of these land uses were approved their impacts could compromise the zone’s environmental/ecological and landscape objectives. Although amenity impacts would be dependent on the scale of development proposed and vary from site to site land uses such as “civic use”, “club premises”, “education establishment”, “holiday accommodation”, and “recreation-private” are often developed in a large format for economies of scale and/or to service a catchment larger than the local area. The development footprints (buildings, car parks, communal facilities etc.) of these land uses would be greater than those of the “single house” land use and would likely result in less open space provision, and/or clearing of remnant site vegetation, especially in the Special Residential zones in the Armadale hills area. Further discussion on potential amenity impacts is provided under heading ‘Potential Development Issues’, below.

Local Planning Strategy 2016 (LPS)

The *LPS* includes a number of references to the Special Residential zones that can be used as a general guide in the review and consideration of changes to land use permissibility in the zone. The *LPS* ‘Strategic Plan’ indicates that Special Residential zones will continue to play a role in the land use planning framework of the City. Under the *LPS* ‘*Rural Hills Visual Landscape Strategy*’ the protection of visual landscapes in the Armadale hills is a high priority and that a local planning policy should be developed to assess and manage visual impacts of development including that of individual buildings. A planning policy is being developed and will be presented to Council once scheme amendments for the land use permissibility review are substantially progressed or finalised. The *LPS* strategy to protect rural hills visual landscapes, ‘mirrors’ TPS No.4 Special Residential zone objectives therefore, the comments provided above regarding the zone objectives would equally apply to consideration under the *LPS*.

As discussed, Araluen Golf Course Estate is identified under the *LPS* as a strategically significant special use site contributing towards tourism to the Armadale hills. The Golf Course is also a significant recreation asset. Amendment No.94 ensures the ongoing role of Araluen Golf Course Estate by including “holiday accommodation” and “recreation-private” land uses into Schedule 2-Addition Use No.30 area applicable to the estate, given these uses are proposed to be designated ‘X’ (not permitted) use in the Special Residential zone.

The lack of reticulated sewer and a pump station is identified in the *LPS* as infrastructure constraints to the development of Champion Lakes for more intensive land use. The intrusion of non-residential land uses like the land uses proposed to be designated ‘X’ (not permitted) can, in some instances, hinder structure planning for more intensive development (including the economical provision of service infrastructure) by landowners seeking to progress applications to the WAPC to rezone land to Urban in the MRS.

Development Control Policy 2.5 Special Residential zones (DCP 2.5)

The WAPC's *DCP 2.5* provides guidance for development of Special Residential zones. The implementation provisions of *DCP 2.5*, includes provision d) which states: "that permitted uses should be confined to those which are consistent with maintaining the amenity of the residential environment." The land uses proposed to be designated 'X' (not permitted) uses are considered to be inconsistent with maintaining the zones 'residential environment' by reason of the potential for land use, built form, traffic and/or noise impacts in the zone.

It is noted that a new Draft of *DCP 2.5* was released for public comments (submissions closing 16 March 2018). The Draft includes the same implementation provision discussed above, and the City has made a written submission to the WAPC in support of this policy and provision.

Statement of Planning Policy 3.7 Planning in Bushfire Prone Areas (SPP 3.7) & Guidelines for Planning in Bushfire Prone Areas (Guidelines)

The proposed changes to land use permissibility have had regard to the *SPP 3.7* and the associated *Guidelines*. The Special Residential zones for the most part are identified as bushfire prone areas. Whilst many of the land uses proposed to be designated 'X' (not permitted) use are, or are likely to be vulnerable land uses in bush fire prone areas, there is no requirement for local governments under *SPP 3.7* to prohibit vulnerable land uses in bush fire prone areas. The acceptability or otherwise of land use and development in bush fire prone areas is subject to a satisfactory bushfire assessment and management in accordance with *SPP 3.7*. It is noted that *SPP 3.7* is subject to regular updates by the WAPC to address changing circumstances in bushfire planning.

Permissibility in other Scheme Zones

The land uses proposed to be designated 'X' (not permitted) use in the Special Residential zone are all permitted/discretionary in other zones (and reservations) of the TPS No.4 to varying degrees. The permissibility of some of the land uses is however also subject to review in the General Rural and Rural Living zones.

Land uses including "child care premises", "civic use", "club premises", "community purpose", "consulting rooms", "educational establishment" and "recreation-private" are permitted/discretionary land uses in the Residential, Industry Business and Local/District/Strategic Regional Centre zones (and more zones in some instances) of TPS No.4. The land uses "exhibition centre" and "holiday accommodation" are permitted/discretionary uses in the General Rural, Rural Living zone and Local/District/Strategic Regional Centre zones (and more zones in some instances), noting again that permissibility in the General Rural and Rural Living zones is also subject to review (including scheme amendments).

Land uses including "public-recreation", "civic use", "community purpose" and "educational establishment" where undertaken by a government agency may also be accommodated under Parks and Recreation and Public Purpose local and regional reservations of TPS No.4.

The Special Residential zones are generally not considered ideal locations for the land uses proposed to be designated 'X' (not permitted) as they are remote from centres of commercial and social activity and in most case are remote from population catchments and public transport. Champion Lakes and Gilwell Avenue, Kelmscott Special Residential zones are exceptions to this, however as noted in the above discussion these areas are likely to be rezoned to Urban and Residential zones in the future.

Potential Development Issues

The potential development impacts of built form, vegetation clearing, traffic and noise would likely impact the residential and environmental amenity of Special Residential zones if some of the land uses proposed to be designated 'X' (not permitted) use were to be approved. The impacts would vary from site to site and would be dependent on the scale and nature of development proposed.

The development of land uses such as "civic use", "educational establishment", "exhibit centre", "club premises", "holiday accommodation" and "recreation-private" could result in a commercial or institutional built form out of scale and character with the prevailing single houses in the zone. As discussed, development footprints (buildings, car parks and common facilities) would be larger than a "single house" use development resulting in less open space, increased potential for land clearing and building envelope modification requests.

The Special Residential zones are predominately serviced via local roads with corresponding low traffic volumes. Some land uses including "child care premises", "club premises", "educational establishment", and "recreation-private" are known to generate intense traffic at particular times including pick-up and drop-off times, after work hours and/or on weekends for activities. The traffic impact from these land uses would likely have a detrimental impact on a low density residential environment that exists in the Special Residential zone areas. Other uses, "consulting rooms", "display home centre" and "civic use" traffic impacts may be more spread out during opening hours but still a noticeable increase on local roads. Notwithstanding, it is noted that traffic impacts would be less of an amenity issue for Special Residential zone lots fronting higher order roads including Rowley Road (Brookdale Estate), Lake Road (Champion Lakes) and Gilwell Avenue (Kelmscott).

While developments are generally required to comply with environmental noise regulations some developments such as "child care premises", "educational establishments", "club premises" or "recreation-private" are often inherently noisy due to the nature of their activity especially where it occurs outdoors. Methods to attenuate noise i.e. solid masonry fencing and earth bunds would likely be visually intrusive in this zone where open style fencing especially in front setback areas, is generally required.

Existing Developments

The land uses proposed to be designated 'X' (not permitted) uses are absent for the most part in the Special Residential zone areas. The following exceptions are appropriately dealt with in Amendment No.94 to ensure they continue to be permitted/discretionary land uses on particular sites.

The Churchman Brook Community Centre at 29 Waterwheel Road, Bedfordale which may be considered to be “community purpose”, “civic use” and/or “recreation-public” land uses is proposed to be reclassified from Special Residential zone to Parks and Recreation (Local) reservation on the TPS No.4 Map. The activities occurring at the Churchman Brook Community Centre site including community functions and passive and active recreation can continue as previously approved or similar new activities may occur as allowed under the Parks and Recreation (Local) reservation.

The “holiday accommodation” and “recreation – private” land uses will be entered into Schedule 2-Additional Use No.30 area (Araluen Golf Course Estate) to allow for continuation of these existing and planned uses which would become ‘X’ (not permitted) use in the Special Residential zone if Amendment No.94 is granted final approval.

It is noted that under Clause 3.8 Non-Conforming Uses, of TPS No.4, an approved use can continue to operate legally in a zone even if it later becomes a ‘X’ (not permitted) use by way of a scheme amendment. Should there be any approved and operational developments of the land uses proposed to be designated ‘X’ (not permitted) use in the Special Residential zones they could continue to operate in accordance with Clause 3.8 Non-Conforming Uses of TPS No.4.

Planning and Development (Local Planning Schemes) Regulations 2015

Amendment No.94 is considered a ‘*standard amendment*’ under Part 5, Clause 34 - standard amendment, subsection (a), (b), (c), (e), (f) and (g) of the *Planning and Development Regulations 2015 (Regulations)*.

If initiated, Amendment No.94 will be subject to community consultation which includes advertising for public submissions in accordance with Part 5, Clause 47 of the *Regulations*. Community consultation by various methods may include the notification by mail of the owners of the approximately 1165 Special Residential zone lots. Following the closure of advertising Amendment No.94 and any submissions received will be referred back to Council for its consideration for final adoption and recommendation to the Hon. Minister for Planning for a decision.

OPTIONS

1. Council may initiate the Scheme Amendment as proposed or with modifications.
2. Council may decline to initiate of the Scheme Amendment if it considers the proposed reclassification and scheme text amendments to be contrary to the orderly and proper planning of the area or for any other reason.

CONCLUSION

Amendment No.94 proposes to implement the outcomes of the review of land uses and their permissibility for the Special Residential zone.

The ten (10) land uses proposed to be designated ‘X’ (not permitted) uses are considered to be inconsistent with TPS No.4 Special Residential zone objectives for low density housing in a rural setting and maintenance of ecological and landscape values of the zone.

If some of the subject land uses were to be approved, they would likely result in land use conflicts in terms of built form, traffic and noise impacts with the prevailing low density residential character of the Special Residential zone areas.

The land uses proposed to be designated 'X' (not permitted) are permitted/discretionary use in other zones and reservations of TPS No.4 to varying degrees including the Residential and Centre zones which are more logical locations for the subject land uses on the grounds that they are centres of commercial and social activity, and are closer to population catchments and public transport access in most instances.

Amendment No.94 adds into Schedule 2-Additional Uses No.30 area "recreation-private" and "holiday accommodation" to allow for existing and planned development on the Araluen Golf Course Estate super-lot. These land uses support the estates strategic tourism and recreation functions and maintains their permissibility.

Amendment No.94 also reclassifies land holdings used for recreation/drainage in Bedfordale Special Residential Estates zones to Parks and Recreation (Local) reservation which is typically how such land uses are provided for in local planning schemes and reflects how local reserves in earlier stages of the Bedfordale estate have been dealt with on the TPS No.4 Map.

Lastly, Schedule 3-Restricted Uses, No.5 area is proposed to be deleted from TPS No.4 on the grounds that the land use permissibility changes to the Special Residential zone substantially reflect the land use restrictions of Restricted Uses area No.5 making it redundant.

Given the above justifications, Option 1 is recommended.

ATTACHMENTS

1. Extract From Schedule 1 of TPS No.4 - Land Use Definitions
2. Location Plan - TPS No.4 - Amendment No.94
3. Zoning Plan 1 - TPS No.4 - Amendment No.94
4. Zoning Plan 2 - TPS No.4 - Amendment No.94

RECOMMEND

D11/2/18

That Council:

1. **Pursuant to Section 72 of the Planning and Development Act 2005, initiate Amendment No.94 to Town Planning Scheme No.4 as a standard amendment in accordance with Part 5, Clause 34 – standard amendment, subsections (a), (b), (c), (e), (f) and (g) of the Planning and Development (Local Planning Scheme) Regulations 2015, as follows:**
 - A. **Modify the permissibility symbols of land uses in the Special Residential column of Table 1 (Zoning Table) as follows:**
 - i) **civic use and display home centre from 'D' (discretionary) to 'X' (not permitted); and,**
 - ii) **child care premises, club premises, consulting rooms, community purpose, education establishment, exhibition centre, holiday accommodation, and recreation-private from 'A' (discretionary) to 'X' (not permitted).**

- B. Modify Schedule 2-Additional Uses No.30 area (Araluen Golf Course Estate) by:**
- i) adding to the Additional Use column the following:**
Discretionary (D) Uses:
 - holiday accommodation,
 - recreation-private.**and;**
 - ii) adding to the Conditions and Requirements column under 30.1 the following:**
 - holiday accommodation;
 - recreation-private;
- C. Delete Restricted Use No.5 from Schedule 3-Restricted Uses of the Scheme Text and Map.**
- D. Reclassify from Special Residential zone to Parks and Recreation (Local) reservation on the Scheme Map the following:**
- Lots 4000, 4001 and 4002 Darling Range Drive, Bedfordale;**
Lots 188, 3000, 4005 and 4009 Waterwheel Road, Bedfordale;
Lots 4000, 4001, 4002, 4003 and 4004 Grieve Way, Bedfordale;
Lot 4010 Devonleigh Street, Bedfordale;
Lot 4007 Aulini Drive, Bedfordale;
Lot 4003 and 4004 Fyfield Way, Bedfordale;
Lot 500 Vellender Road, Bedfordale;
Lot 3000 Aviemore Drive, Bedfordale; and
Lot 4006 and 4008 Blissett Drive, Bedfordale.
- 2. Refer the above Amendment to Town Planning Scheme No.4 to the Environmental Protection Authority (EPA) pursuant to section 81 of the *Planning and Development Act 2005*. Should the EPA advise that the amendment does not require assessment, advertise the amendment for a period of 42 days.**
- 3. Authorise the Mayor and the Chief Executive Officer to execute the Amendment documents.**
- 4. Forward a copy of the amendment to the Western Australian Planning Commission for information.**

Moved Cr C M Wielinga
MOTION CARRIED

(7/0)

3.1 - THIRD PARTY APPEAL RIGHTS IN PLANNING

WARD : ALL
FILE No. : M/787/17
DATE : 9 February 2018
REF : SW
RESPONSIBLE : EDDS
MANAGER

In Brief:

- During 2017 the Western Australian Local Government Association (WALGA) undertook consultation with Local Government regarding the notion of Third Party appeal rights in the Western Australian planning system.
- Following the consultation process WALGA prepared a report summarising the outcome, and requested that members consider supporting the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels.
- After careful consideration of WALGA's recommendation, the current planning framework in general, and the current operation of Development Assessment Panels in the Armadale context, it is recommended that Council advise WALGA that it does not consider it necessary to introduce Third Party Rights for decisions made by Development Assessment Panels.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

Nil.

Legislation Implications

Planning and Development Act 2005

Planning and Development (Development Assessment Panels) Regulations 2011

Council Policy/Local Law Implications

Nil.

Budget/Financial Implications

Potential for further administrative costs (including legal costs, consultants and City staff resources) and extended timeframes for approvals in the event that third party appeals are implemented, for decisions made by Development Assessment Panels.

Consultation

Nil.

BACKGROUND

An appeal against a planning decision, which was lodged by a party who was not the applicant for that proposal, is known as a third party appeal.

There are varying forms of third party appeal rights operating in other states and their potential introduction to Western Australia has been discussed and debated on a number of occasions in the past. This section of the report provides some of the relevant background to those considerations, and WALGA's current position on the subject.

Previous Council Consideration

In 2007 Dr Janet Woollard MLA wrote to all Councils to advise them of a proposed private members bill that she intended to introduce into Parliament the following year. That private members bill proposed, amongst other things, to amend the *Planning and Development Act 2005* to allow objectors and third parties to appeal planning approvals.

Council considered Dr Woollard's proposal at its Ordinary Meeting of 17 December 2007 (D151/12/07) and resolved to:

- “1. *Advise the Member for Alfred Cove of the general concern that the proposed legislation requires considerable refinements before it can be seriously commented upon.*
2. *Provide a copy of this report to the Western Australian Local Government Association.*
3. *Provide a copy of this report to the Western Australian Planning Commission.*”

Current WALGA Position Regarding Third Party Appeals

WALGA formulated its current position on third party appeal rights as a result of Dr Woollard's proposal; in February 2008 it's State Council passed a resolution that, “*Local Government does not support the introduction of Third Party Appeal rights*”. At the time WALGA considered that the strategic and statutory planning framework and processes, including consideration of applications by Local Governments, already took into account the views of affected parties and the community in general and it also noted that there were significant negative implications for Local Government, industry and the community, should third party appeals be seriously entertained.

Development Assessment Panels

On 18 November 2009, the Minister for Planning advised State Parliament that Development Assessment Panels would be introduced, ‘*to improve the planning system by providing more transparency, consistency and reliability in decision making on complex development applications.*’. Development Assessment Panels subsequently became operational in Western Australia on 1 July 2011.

The Metro East Joint Development Assessment Panel (JDAP) determines all development applications in the City of Armadale with an estimated value of \$10 million or more, and at the discretion of applicants, development applications of an estimated value of \$2 million or more and less than \$10 million.

Since the introduction of Development Assessment Panels in 2011 the Metro East JDAP has determined 10 development applications in the City. The JDAP has made only one determination against the City's Responsible Authority Report (RAR), which was an application for a Motor Vehicle Wash, two (2) Fast Food Outlets, Convenience Store and Service Station at Lot 200 (4) Church Street, Kelmscott; for further information regarding that determination refer to the report which was presented to Council in March 2017 (refer Item 6.2).

It should be noted that numerous applicants have elected to seek development approval from the City rather than nominate the JDAP to be the decision maker (due to the City's improved processing times, delegation of authority arrangements and being able to seek advice direct from the decision maker).

State Government Review of the Planning and Development (Development Assessment Panels) Regulations 2011

In September 2015 a Standing Committee on Uniform Legislation and Statutes Review presented a report to the Legislative Council on the operation and effectiveness of the Planning and Development (Development Assessment Panels) Regulations 2011. That report dealt with the issue of third party appeal rights in detail, and the following conclusions on the subject are relevant:

“3.51 However, the Committee is not of the view that the introduction of a third party right of appeal from decisions by DAPs is warranted in order for the Regulations, as drafted, to be operationally effective. The Committee has formed this view on the basis that:

- *DAPs ‘stand in the shoes’ of the responsible authority, such as the local government, in making a determination on a planning application and the relevant planning instrument under which the application is made applies to this determination.⁹²*
- *If the planning instrument does not provide for a third party right of appeal, determinations by the relevant local government or the DAP are not open to an appeal on the merits to the SAT other than by the applicant.*
- *While it may be possible for the Regulations to provide for a third party right of appeal from determinations by DAPs (by virtue of Regulation 16(2A)),⁹³ restricting this right to DAPs would disadvantage applicants for mandatory DAP applications.*

3.52 The Committee is of the view that, should third party appeal rights be introduced in Western Australia in the future, this should be undertaken on a state-wide basis for all planning decisions to ensure a level playing field. This is a matter for Government policy.”

WALGA Considerations Regarding Development Assessment Panels

At WALGA's 2016 Annual General Meeting held on 3 August 2016, it considered the matter of Development Assessment Panels and resolved, amongst other things, that WALGA should advocate that the Regulations be amended so that a Local Government aggrieved by a DAP decision has a right of review at the State Administrative Tribunal.

The following month, on 9 September 2016, WALGA held a State Council Meeting where its review of the Development Assessment Panels performance from 2011-2016 was considered. The following information from that review is relevant:

- *'Figure 3 shows that nearly all DAPs determinations align with the recommendation set out in the Responsible Authority Report (RAR) with some 94% of all DAs determined by DAPs matching the recommendation set out in the RAR.*
- *Table 2 shows that approximately two thirds of DAs determined by a DAPs during 2015-16 had at least one development condition or reason for refusal amended. This remains generally consistent with the level of amendments to applications in previous years and with the overall average of 66.1% of all DAs having at least one recommended condition amended. However, the table also shows that only a relatively small number of conditions, some 14% of all DAPs approval conditions, were amended from those conditions set out in the RAR report. Whilst the rate of variation to DA approval conditions varies between DAPs, where the number of applications determined by a Panel creates a sufficient sample size of approval conditions, the level of variation to development conditions remains largely consistent with the overall average of 13.9%. However, the rate of variation to conditions within the Metro NW, which does have a large sample size, is significantly higher at 18%.'*
- The review notes an increased number of SAT reconsiderations, which it theorises may be due to a rise in the number of refused applications during the 2014-15 financial year.

Recent WALGA Considerations Regarding Third Party Appeals

In December 2016 the WALGA State Council resolved to undertake research on third party appeals around Australia and consult with members regarding its current policy position. In making that decision it noted that:

"The decision making environment in WA has changed since the formation of the position in 2008 with changes to legislation arising from the State's planning reform 'Planning Makes it Happen: Phase 1 and 2', and the introduction of Development Assessment Panels (DAPs). Given the substantial changes that have occurred within the decision-making environment in Western Australia, and the recent community concerns over the creation of the DAP system to determine development applications in place of Local Governments, it is considered appropriate to initiate a discussion on the possible role of Third Party Appeal Rights in the Western Australian planning system."

WALGA has subsequently undertaken that consultation and in its discussion paper, described the outcome of the consultation as follows:

“The submissions received on the discussion paper were closely divided between support for some form of Third Party Appeals and opposition to their introduction. Further, amongst the submissions in favour of Third Party Appeals, the level of support varied from limiting its application to specific circumstances, such as DAP decisions, to broad appeal rights similar to the Victorian system. The range of options and ideas presented were incredibly varied, and there was no clear consensus on the form and/or scope any such rights should take.”

It should be noted that some Councils favour the introduction of third party appeal rights because they view it as an opportunity for Local Governments themselves to lodge a review against decisions made by Development Assessment Panels.

WALGA has prepared the abovementioned discussion paper which it is now seeking comment on, in addition to the proposal detailed below (*refer to Attachment presented with this report*). The feedback which is received will be used to help the Association review its policy position on Third Party Appeal Rights.

DETAILS OF PROPOSAL

WALGA’s discussion paper requests that members consider supporting the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels, and provide feedback. The purpose of the consultation is not to discuss the details of how that system would operate.

COMMENT

Comments Recorded by WALGA

In November 2017 WALGA held workshops about Third Party Appeal Rights which were attended by 35 Local Government Officers and 5 Elected Members from 25 Local Government areas. The focus of the workshops was to, “...*discuss the possible scope and form any such appeal rights should take in order to determine a preferred model*”, rather than discussing the ‘pro’s’ and ‘con’s’ of introducing Third Party Appeal Rights. The current proposal, of introducing Third Party Appeal Rights for decisions made by Development Assessment Panels, was the first of four Third Party Appeal Rights options listed for consideration.

The following comments for and against the current proposal were recorded by WALGA during workshops held in November 2017:

“Pros

- *Local Government would be able to appeal a JDAP decision + can defend the merits of their policies created (developed under construction) - and enforceability of the conditions.*
- *Could address community concerns that decisions are made 'removed' from the local community - more influence in the process.*

- *Confidence in the decision making process - reinstate community confidence in the decision making process - different at each Local Government depending on the make-up/location.*
- *More transparent process + more accountable JDAP members, in decision making + condition setting.*
- *Community members can appeal decisions.*
- *Form 2's included in the process - ability to appeal the amendment + the conditions setting.*
- *More applications will come back to council.*
- *Legal nexus between Local Government /State policies + decision making -> Third Party Appeal Rights would give this.*
- *Spread the costs between the applicants/developers/appellants/third parties.*
- *Could appeal on conditions that may have been removed from a RAR - (i.e. cash-in-lieu conditions removed from RAR).*
- *Submissions of more compliant applications /outcomes of better developments -> possible costs and time savings for developers.*
- *1st stage approach for TPAR - could be expanded later.*
- *Community satisfaction that JDAPs' can be appealable - feeling of loss of inclusion in the process.*
- *Community can appeal to JDAP to enable better transparency of decisions.*
- *Local Government can appeal a decision (particularly when RAR is overturned + conditions).*
- *JDAPs - can appeal any decisions that don't align with strategic vision.*
- *Being limited to those complex applications/complicated issues.*
- *Justify the argument against the development before an appeal can be lodged - direct impact needs to be shown.*
- *Direct impact needs to be shown.*
- *Good balance.*
- *Appellants would have to pay for their own costs.*
- *Takes out the decisions that are political.*
- *Applications could then just go to council in the \$2-\$10m range.*
- *Would filter out 'smaller' impact applications which could potentially overburden system.*
- *May be rarely used in rural areas - almost status quo - (is it even worth having?).*
- *Not supportive of Third Party Appeal Rights - BUT would reluctantly support this option.*

Cons

- *Only DAPs - not includes \$2-10m for council determinations.*
- *Political only fix.*
- *Form 2 process back into Local Government now - so decision could then be appealed? Even if Local Government originally didn't like it. Quantitative measure for whether it is then appealable.*
- *Resource hungry for all involved - particularly for Local Governments.*
- *Not all JDAP members would be brought to SAT - only Chair.*

- *If Local Government supports - but the item is appealed - Local Government would be dragged in.*
- *Lack of certainty in the decision making process.*
- *Possibility for more people to be attending an appeal - how to manage? Does it become a numbers game?*
- *Elected Members may be pressured to put in an appeal rather than the community initiating an Appeal.*
- *Possibility that the Minister could remove Elected Members from JDAP if Local Government can appeal anyway.*
- *Conflict of interest for Elected Member who sits on the panel if the Local Government appeals it.*
- *Conditions - in or out?*
- *More applications will come back to council.*
- *Odd paradigm to review a decision - Local Government appealing JDAP when they are making a decision on their behalf.*
- *Could undermine the whole reason for DAPs being set up in the beginning.*
- *Who would prepare the appeal? Independent? Or Local Government?*
- *What level of strategic oversight would be included - is it local or regional benefits. Multiple appeals? Degrees of appeal issues.*
- *State or regional policy provisions/what takes precedence?*
- *Connection to structure planning provisions within the system - 'due regard' less weight.*
- *Costs unknown.*
- *Uncertainty for development industry.*
- *Advertised applications only - would JDAP then have all applications as 'advertised'? Greenfield sites/deemed to comply.*
- *Resources of JDAP's - who submit the appeal and manages the process?*
- *Could undermine the purpose of DAPs.*
- *Could reduce the pool of quality DAP panel members.*
- *Another layer to add to the system.*
- *Don't get many DAP applications in smaller areas.*
- *If applicant does not opt in to DAPs then they avoid Third Party Appeal Rights."*

ANALYSIS

Third Party Appeal Rights: City of Armadale Perspective

The City's evaluation of WALGA's proposal is summarised below and in the following headings.

- The City receives, on average, approximately 350 development applications per year, which does not include Residential Design Code Variation (RDCV) applications;
- If third party appeal rights were considered, the issue of which determinations are the subject of those rights is a contentious one that would be the subject of some debate: potentially, all discretionary decisions including single houses where deemed-to-comply provisions of the R-Codes are not being met, could be the subject of third party appeal rights;

- Given that the majority of planning determinations made in the City are not made by the JDAP, there is a likelihood that any third party appeals which would be lodged, would be lodged against decisions made by Council and officers under delegated authority;
- One of the actions in the City's Economic Development Strategy is to, "*Continue to improve Armadale City's regulatory environment and make necessary modifications to streamline processes in order to facilitate business attraction, investment and employment growth in the City of Armadale.*", whereas third party appeal rights would create an additional process, particularly where consultation has already provided an opportunity for input;
- It is possible that, in the case of commercial developments, third party appeal rights could be used to try and prevent or minimize commercial competition;
- Dealing with an appeal is a complex and time/resource intensive process involving Directions Hearings, Mediation Sessions, Council Reports and, if necessary, Full Hearings;
- In many cases, due to choices made by the other party, resourcing pressures or in order to best defend the decision, a third party is engaged to assist the City, and the cost of this type of representation can be substantial;
- The current system typically involves a Local Authority defending its assessment of the appellant's proposal against objective planning criteria in the Town Planning Scheme (and other legislation): third party appeal rights would put the Local Authority in a position where, in a sense, it has to not only defend its decision, but also advocate for the proposal without regard for its individual merits;
- A development application is often the final step in a process which has previously required a Town Planning Scheme Amendment and Structure Planning, both of which would have been advertised to the public and progressed taking account of any submissions received; the City's planning framework also includes advertising requirements for those development applications which are most likely to impact neighbours, and all comments that are submitted are considered when making a determination;
- A neighbour who is aggrieved by a planning determination has an existing opportunity of complaint to the WAPC, Minister for Planning or Ombudsman;
- Because there are comparatively few JDAP determinations made in the City and as mentioned above, the majority of those determinations are (generally) consistent with the RAR recommendation prepared by the City, it seems unlikely that the City would exercise a right to lodge an application for review against a JDAP determination; and
- On balance, the introduction of third party appeal rights would create few benefits for the City, while creating a substantial amount of additional (unfunded) costs and uncertainty.

Local Government Appeals Against DAP Decisions

- As mentioned above, WALGA has already adopted the position that a Local Government aggrieved by a DAP decision should have a right of review at the State Administrative Tribunal, and some Councils favour the introduction of third party appeal rights because it would create that opportunity; and

- That situation would incur resources and costs and be somewhat complicated, as the JDAP which made the decision would have included Local Government Members that also sit on the Council which is lodging the appeal.

Limiting Third Party Appeal Rights to DAP Decisions

- It seems highly unlikely that the State Government would introduce third party appeal rights yet limit those rights to decisions made by Development Assessment Panels: in 2015 the Standing Committee was of the view that, should third party appeal rights be introduced in Western Australia in the future, that should be undertaken on a state-wide basis for all planning decisions;
- As also pointed out by the Standing Committee and at the WALGA workshop, introducing third party appeal rights for JDAP decisions only would give applicants whose proposal is of a certain value the ability to ‘opt-out’ of a potential third party appeal, by choosing to have it determined by the Local Government rather than the DAP: that situation would be inequitable; and
- Advocating for the introduction of third party appeal rights only for DAP decisions may, therefore, inadvertently result in their broader introduction.

OPTIONS

Council could:

1. Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels.
2. Not consider it necessary to introduce Third Party Appeal Rights for decisions made by Development Assessment Panels, and advise WALGA to maintain its current policy position on Third Party Appeal Rights.
3. Decide to not make a submission.

CONCLUSION

The City itself would be unlikely to take advantage of the introduction of third party appeal rights for decisions made by Development Assessment Panels. Neighbours and the wider community are already provided with sufficient opportunities for input about development applications that might affect them, through existing consultation arrangements, TPS scheme amendments, structure plans, etc.

Advocating for the introduction of third party appeal rights only for DAP decisions may inadvertently result in their wholesale introduction. If third party appeal rights were introduced but not limited to decisions made by Development Assessment Panels, that would create a substantial additional costs and resources for the City and create additional uncertainty.

On balance, therefore, it is recommended that the proposal not be supported, and the City advise WALGA in accordance with Option 2.

ATTACHMENTS

1. WALGA - Outcomes of Consultation - Third Party Appeal Rights in Planning

RECOMMEND

D12/2/18

That Council:

1. **Advise the Western Australian Local Government Association (WALGA) that it does not consider it necessary to introduce Third Party Appeal Rights for decisions made by Development Assessment Panels, and that WALGA maintain its current policy position on Third Party Appeal Rights in general.**

Moved Cr Sargeson
MOTION CARRIED

(7/0)

3.2 - PLANNING INSTITUTE OF AUSTRALIA PLANNING CONGRESS - PERTH - 9 TO 11 MAY 2018

WARD : ALL
FILE No. : M/529/17
DATE : 15 February 2018
REF : SS
RESPONSIBLE : EDDS
MANAGER

In Brief:

- The 2018 PIA Planning Congress will be held at the Perth Convention and Exhibition Centre (PCRVC) in Perth, from 9th to 11th May 2018.
- Matters to be covered should be of relevance to Armadale.
- Recommend that consideration be given to nominating a Councillor to attend the event.

Tabled Items

Nil.

Officer Interest Declaration

Nil.

Strategic Implications

- 4.1 Visionary Civic leadership and sound governance
 - 4.1.3 Support the role of the elected body
 - 4.1.3.3 Advocate and support Councillor engagement in outside bodies and events to maintain awareness and enhance the City's knowledge base.

Legislation Implications

Nil.

Council Policy/Local Law Implications

Council Policy ADM3 – Conferences and Training
Council Policy EM1 – Reimbursement Councillor's Expenses

Budget/Financial Implications

The PIA Planning Congress is on the Approved Conference List for both Officers and Elected Members. Officer attendance will be funded from the Planning Service's Conference and Meeting budget. Sufficient funds are available in the Councillor/Member Development Budget, should a Councillor be nominated to attend. The total cost of the conference is estimate at \$2,245 per delegate.

BACKGROUND

The 2018 PIA Planning Congress will be held at the Perth Convention and Exhibition Centre, Perth, from Wednesday, 9th May to Friday, 11th May 2018. Study tours will be held on the 9th May 2018.

The PIA Planning Congress typically hosts a number of topics which are potentially applicable to the City and may provide valuable insight and information regarding a number of areas that impact the City.

A copy of the conference Brochure is included in the Attachments to this report.

DETAILS OF CONFERENCE

The 2018 Congress aspires to address what is effectual planning practice on the global frontier – whether that’s planning for the local community, a metropolitan area, a regional area, a mega-city or an emergent region. Good planning doesn’t simply mitigate and fix problems: it strives to reimagine and recreate our communities to be more inclusive, sustainable and productive.

Concurrent Sessions will run throughout the congress with streams including:

- Digital Frontiers – Rise of AI
- Shift: Movement, People, Places
- Gen – F(uture)
- Regions on the Frontier
- New Frontiers for Fairness
- Great Places – Pushing Frontiers

Keynote Speakers are:

James Thoen, Urban Planner, Copenhagenize Design Co. - Trained as an urban planner in Canada and Sweden, James brings with him an academic and professional background in community engagement and active transportation. At Copenhagenize, he coordinates the planning team in the Copenhagen office while managing communication between satellite offices. Beyond managing clients and professional networks, James leads the development of cycling strategies worldwide, bolstered by his comprehensive background in urban planning, municipal governance and project management.

Michael Wexler, Urban Designer, Copenhagenize Design Co. - As the head of Copenhagenize’s new North American office in Montreal, Michael is currently working with cities and governments across Canada and the U.S. to leverage many lessons from Copenhagen’s numerous examples of best-practice design and policy. He has a diverse background in urban planning, project management, design and visual media and a Master of Planning from McGill University.

There is no Ordinary Council Meeting scheduled during this conference. It is potentially beneficial for an Elected Member to attend the PIA Planning Congress, given a number of topics may be applicable to the City and offer insight into matters that are impacting the City. An Officer may be attending the PIA Planning Congress.

CONCLUSION

The matter is brought to the attention of Council to determine if it wishes to nominate a Councillor to attend.

ATTACHMENTS

1. PIA Planning Congress Program

Committee discussion

Nominations were received from the Committee for Cr Shaw and Cr Zelones to attend the PIA Planning Congress.

RECOMMEND

D13/2/18

That Council nominates Cr D M Shaw and Cr H A Zelones to attend the PIA Planning Congress to be held at the Perth Convention and Exhibition Centre, from Wednesday, 9th May to Friday, 11th May 2018.

**Moved Cr C M Wielinga
MOTION CARRIED**

(7/0)

3.3 - REFERRAL ITEM - ANNUAL FEES - CONDITIONS FOR COMPLIANCE

At the Council meeting held on 18th December 2018, Cr Wielinga referred the following matter to the Development Services Committee:

“That the matter of annual fees for conditions for compliance be referred to the Development Services Committee”.

Comment from Cr Wielinga

Since some development approvals have many conditions placed upon them that many need ongoing assessment I wondered if it would be possible for Officers to arrive at a system where some of the more onerous conditions that the City must monitor for compliance would have an annual fee. For example an industry approval that might have a dust management plan might need to be regularly assessed and as such would require some Officer time and therefore City funding and an annual fee from the developer would help contribute to these costs. It just appears that there are more developments being approved that have many conditions and management plans that should be regularly assessed for compliance and yet the City does not necessarily have the Officer time available for these additional compliance requirements and so perhaps some costs can be recouped from the industries and developments that require the most monitoring – similar to curb inspection fees, health compliance fees etc.

Officer Comment

It is acknowledged there is an increased reliance on and ongoing cost to the City to proactively monitor and audit conditions of development approval. Unfortunately however, there is currently no mechanism available to recoup such costs.

It should be noted that all Local Governments are required to comply with ‘Part 7 — Local government planning charges’ of the *Planning and Development Regulations 2009*, which specifies the circumstance whereby local governments are only allowed to charge a fee for planning related services. Compliance related matters are not covered by the Regulations and therefore the City is unable to lawfully charge for such matters.

In order to assist with managing ongoing costs associated with complex development approvals with ongoing requirements, the City’s current practice is to impose a condition requiring the applicant to undertake reports and submit to the City. The intent of such conditions is to place the obligation on the applicant to demonstrate compliance via the submission of appropriate reports/audits in such instances.

The following recommendation is suggested for consideration:

“That Council note officer’s comments outlined in this report.”

ATTACHMENTS

There are no attachments for this report.

RECOMMEND

D14/2/18

That Council note officer’s comments outlined in this report.

**Moved Cr C M Wielinga
MOTION CARRIED**

(7/0)

COUNCILLORS' ITEMS

Nil.

5.1 - HARRISDALE ACTIVITY CENTRE PLAN

Urbis Planning Consultants on behalf of Stockland Pty Ltd have prepared an Activity Centre Plan (ACP) for the Harrisdale District Centre and the ACP has now been lodged with the City for assessment and recommendation to the Western Australian Planning Commission (WAPC). The ACP is accompanied by a Retail Sustainability Assessment and a Transport Impact Assessment. The Harrisdale ACP will provide the primary land use, built form and strategic planning controls for the Harrisdale District Centre.

Prior to the Council making a recommendation with regard to the ACP it is necessary to advertise the ACP in accordance with the requirements of the Planning (Local Planning Schemes) Regulations 2015. Advertising will commence on 15 February 2018 and close on 7 March 2018. Advertising of the ACP will comprise:

1. Letters to residents near the shopping centre;
2. Signs on the shopping centre site;
3. A newspaper advertisement;
4. Advertisement on the City's website; and
5. Referral of the proposal to service and other government agencies.

Stage 1 of the Harrisdale ACP opened for business in June 2016 and comprises:

1. A shopping centre, anchored by Woolworths and ALDI, two mini-majors, and approximately 30 specialty stores.
2. Three (3) free-standing 'pad' sites along Nicholson Road, currently tenanted by McDonald's, KFC, and Hungry Jack's.

The Harrisdale ACP will facilitate the development of additional stages of the Harrisdale District Centre. The centre has been identified and provided for in a range of higher-level planning documents, including State Planning Policy SPP4.2 – Activity Centres for Perth and Peel (SPP4.2), the North Forrestdale Stage 1 ('Central') local structure plan and the City of Armadale Local Planning Strategy. Through the adoption of the City's current Local Planning Strategy (LPS), the WAPC has approved the development of up to 20,000m² NLA by 2021, 25,000m² by 2026 and 31,000m² by 2031. If the developer wishes to bring forward additional floorspace before the timeframes set in the LPS then a Retail Sustainability Assessment is required to be prepared to determine if the demand exists to support the increase.

The Harrisdale ACP is proposed to supersede and replace the existing Newhaven District Activity Centre Structure Plan (NDACSP). The NDACSP restricts the primary lot (shopping centre building) in the activity centre to 12,000m² Nett Lettable Area (NLA). An additional 1500m² NLA is allocated to the portion of the District Centre that is on the opposite side of Yellowwood Road (the Main Street) from the shopping centre building). The Harrisdale ACP will remove the cap on retail floor space on individual lots, and provides for ongoing expansion of the activity centre in a coordinated manner. SPP 4.2 requires WAPC adoption where the NLA of a District Centre is proposed to exceed 20,000m².

The activity centre is planned to provide:

1. Retail floor space of over 20,000sq.m NLA in the life of this activity centre plan – including the addition of a discount department store.
2. Continued development of Yellowwood Avenue as the activity centre's main street, with highly active edges, accommodating retail, commercial and entertainment land uses such as a child care centre, purpose built medical centre and a tavern.
3. Car-based retail and commercial uses along Nicholson Road.
4. A variety of potential residential development sites, both for short-term and long-term development.
5. Consolidated car parking areas and pedestrian linkages to connect all parts of the activity centre.
6. Design Guidelines for buildings including the nomination of landmark sites within the District Centre.

Following the close of the advertising period, a report on the proposal and submissions received will be prepared for Council's consideration for its recommendation to the WAPC for final adoption.

0.0 - SAT REVIEW - LOT 20 (43) BUTCHER RD, ROLEYSTONE - CHANGE OF USE TO CONSULTING ROOMS (HYDROTHERAPY) AND 'USE NOT LISTED - OCCASIONAL PROFESSIONAL DEVELOPMENT TRAINING (HYDROTHERAPY)'

At its meeting on the 27th November 2017, Council considered an amended proposal for a 'Change of Use' to Consulting Rooms (Hydrotherapy) and 'Use Not Listed' – Occasional Professional Development Training (Hydrotherapy) at Lot 20, 43 Butcher Road, Roleystone. Council resolved to refuse the proposal.

Following Council's decision, a Directions Hearing was held at the State Administrative Tribunal (SAT) on the 8th December 2017 and orders detailing the requirements from the City (Respondent) and the landowner (Applicant) were issued, which included the scheduling of a final hearing date for the 20 March 2018.

A summary of the progress to date is as follows:

- The City has engaged McLeods solicitors to represent City at the SAT hearing;
- A Planning consultant and a Bushfire consultant have been engaged as expert witnesses on behalf of City;
- Officers meet with residents on 19 February 2018 to explain the SAT process and invited them to prepare Witness Statements for review by the City's solicitor;
- Residents have been advised that they should formally lodge a separate submission to SAT by 23 February 2018.

Key milestone dates moving forward are as follows:

- Witness Statements due to be lodged with SAT by 23 February 2018;
- As per SAT Order No.10, by 1 March 2018, the City's and applicant's bushfire experts must confer and prepare a joint statement of issues and facts to identify matters they agree and disagree on;
- On 2 March 2018, SAT will consider the residents request to intervene or to make submissions;
- On 20 March 2018, the matter is listed for a two full day hearing at SAT.

MEETING DECLARED CLOSED AT 7.31PM

DEVELOPMENT SERVICES COMMITTEE		
SUMMARY OF ATTACHMENTS		
20 FEBRUARY 2018		
ATT NO.	SUBJECT	PAGE
2.1 PROPOSED AMENDMENT NO.94 TO TPS NO.4 - AMENDING LAND USE PERMISSIBILITY IN THE SPECIAL RESIDENTIAL ZONE AND OTHER CHANGES TO THE SCHEME MAP AND TEXT		
2.1.1	Extract From Schedule 1 of TPS No.4 - Land Use Definitions	42
2.1.2	Location Plan - TPS No.4 - Amendment No.94	44
2.1.3	Zoning Plan 1 - TPS No.4 - Amendment No.94	45
2.1.4	Zoning Plan 2 - TPS No.4 - Amendment No.94	46
3.1 THIRD PARTY APPEAL RIGHTS IN PLANNING		
3.1.1	WALGA - Outcomes of Consultation - Third Party Appeal Rights in Planning	47
3.2 PLANNING INSTITUTE OF AUSTRALIA PLANNING CONGRESS - PERTH - 9 TO 11 MAY 2018		
3.2.1	PIA Planning Congress Program	64
5.1 HARRISDALE ACTIVITY CENTRE PLAN		
5.1.1	Aerial Photograph - Harrisdale Activity Centre	71
5.1.2	Overall Centre Plan - Harrisdale Activity Centre	72
5.1.3	Concept Development Plan - Harrisdale Activity Centre Plan	73

Extract From Schedule 1 of TPS No.4 - Land Use Definitions

“**ancillary accommodation**” has the same meaning as in the R-Codes;

“**bed and breakfast**” means a dwelling, used by a resident of the dwelling, to provide accommodation for persons away from their normal place of residence on a short-term commercial basis and includes the provision of breakfast;

“**child care premises**” means premises used for the daily or occasional care of children in accordance with the regulations for child care under the *Child Care Services Act 2007*, but does not include a Family Day Care;

“**civic use**” means premises used by a government department, an instrumentality of the Crown, or the local government of Armadale, for administrative, recreational or other purposes;

“**club premises**” means premises used by a legally constituted club or association or other body of persons united by a common interest;

“**commercial vehicle parking**” means premises used for the parking or garaging of a commercial vehicle;

“**community purpose**” means the use of premises designed or adapted primarily for the provision of educational, social or recreational facilities or services by organizations involved in activities for community benefit;

“**consulting rooms**” means premises used by no more than 2 health consultants for the investigation or treatment of human injuries or ailments and for general outpatient care;

“**display home centre**” means a dwelling or dwellings intended to be open to the public for inspection for the purpose of marketing services and/or dwellings for a particular builder or building company;

“**educational establishment**” means premises used for the purposes of education and includes a school, tertiary institution, business college, academy or other educational centre;

“**exhibition centre**” means premises used for the display, or display and sale, of materials of an artistic, cultural or historical nature, and includes a museum or art gallery;

“**family day care**” means premises used to provide a child care service in a private dwelling in a family or domestic environment, within the meaning of the *Child Care Services Act 2007*;

“**holiday accommodation**” means accommodation comprising two or more cabins, apartments, chalets, cottages, or flats which, by way of trade or business, or for the purpose of any trade or business, is held out as being available or is made available for holiday purposes for occupation by persons other than the proprietor;

“**home business**” means a business, service or profession carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which—

- (a) does not employ more than 2 people not members of the occupier’s household;
- (b) will not cause injury to or adversely affect the amenity of the neighbourhood;
- (c) does not occupy an area greater than 50 square metres;
- (d) does not involve the retail sale, display or hire of goods of any nature;

(e) in relation to vehicles and parking, does not result in traffic difficulties as a result of the inadequacy of parking or an increase in traffic volumes in the neighbourhood, and does not involve the presence, use or calling of a vehicle more than 3.5 tonnes tare weight; and

(f) does not involve the use of an essential service of greater capacity than normally required in the zone;

“home occupation” means an occupation carried out in a dwelling or on land around a dwelling by an occupier of the dwelling which—

(a) does not employ any person not a member of the occupier’s household;

(b) will not cause injury to or adversely affect the amenity of the neighbourhood;

(c) does not occupy an area greater than 20 square metres;

(d) does not display a sign exceeding 0.2 square metres;

(e) does not involve the retail sale, display or hire of goods of any nature;

(f) in relation to vehicles and parking, does not result in the requirement for a greater number of parking facilities than normally required for a single dwelling or an increase in traffic volume in the neighbourhood, does not involve the presence, use or calling of a vehicle more than 2 tonnes tare weight, and does not include provision for the fuelling, repair or maintenance of motor vehicles; and

(g) does not involve the use of an essential service of greater capacity than normally required in the zone;

“home office” means a home occupation limited to a business carried out solely within a dwelling by a resident of the dwelling but which does not—

(a) entail clients or customers travelling to and from the dwelling;

(b) involve any advertising signs on the premises; or

(c) require any external change to the appearance of the dwelling;

“occasional use” means use of any land or building on an occasional basis for the purpose of recreation, entertainment, community or other similar activity which does not in the opinion of the local government prejudice the orderly and proper planning or the preservation of the amenity of the locality in which the land or building is situated. The term includes a swap-meet, market, fair, sausage sizzle, cake stall or artistic performance;

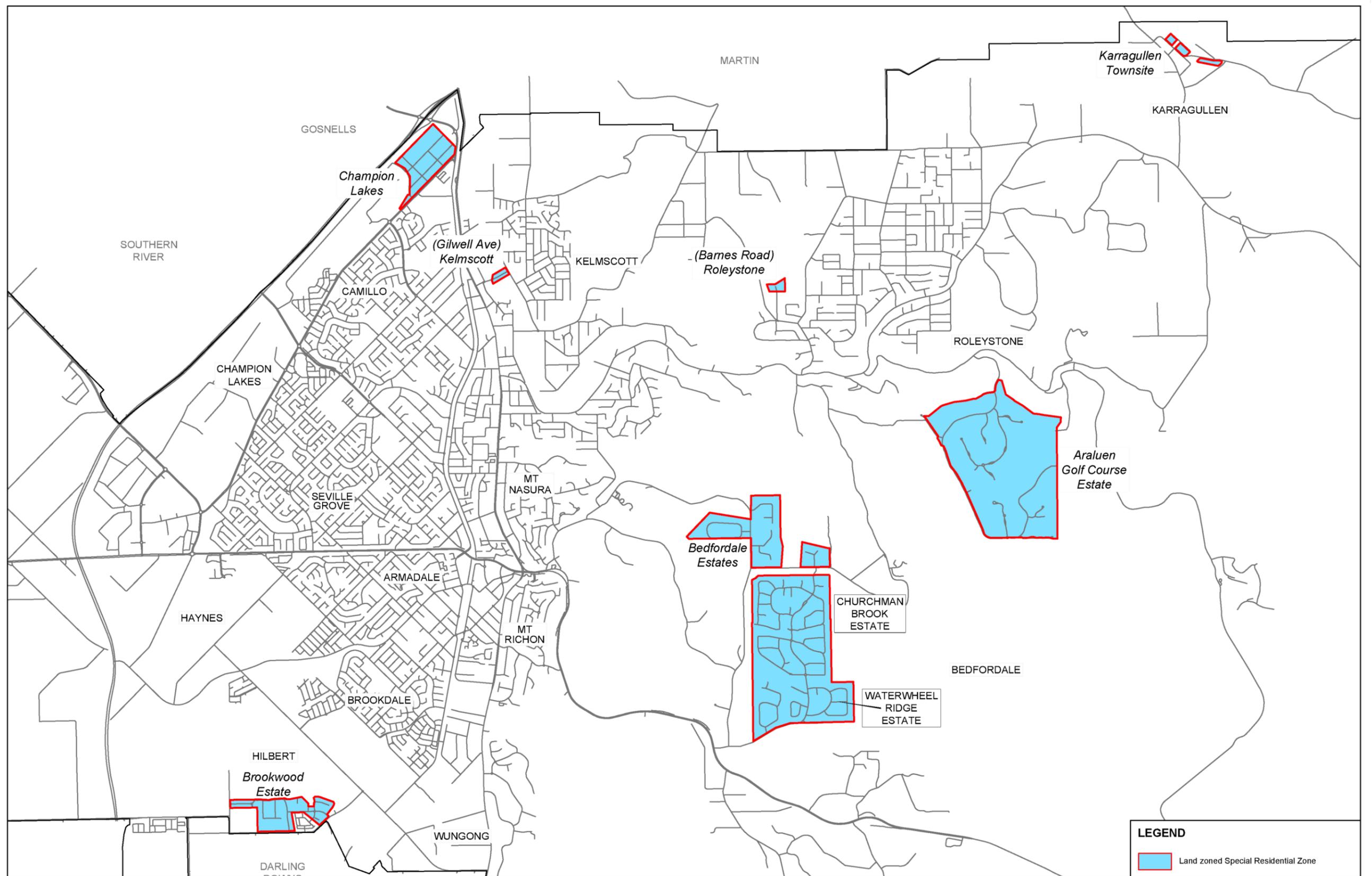
“recreation - domestic” means part of premises used for indoor or outdoor leisure, recreation or sport which are ancillary to the residential use of the premises;

“recreation - private” means premises used for indoor or outdoor leisure, recreation or sport which are not usually open to the public without charge;

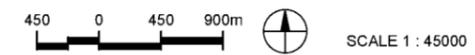
“recreation - public” means premises used for indoor or outdoor leisure, recreation or sport which are usually open to the public without charge;

“residential building” has the same meaning as in the R-Codes;

“single house” has the same meaning as in the R-Codes;



Location Plan
Town Planning Scheme Amendment 94
Special Residential

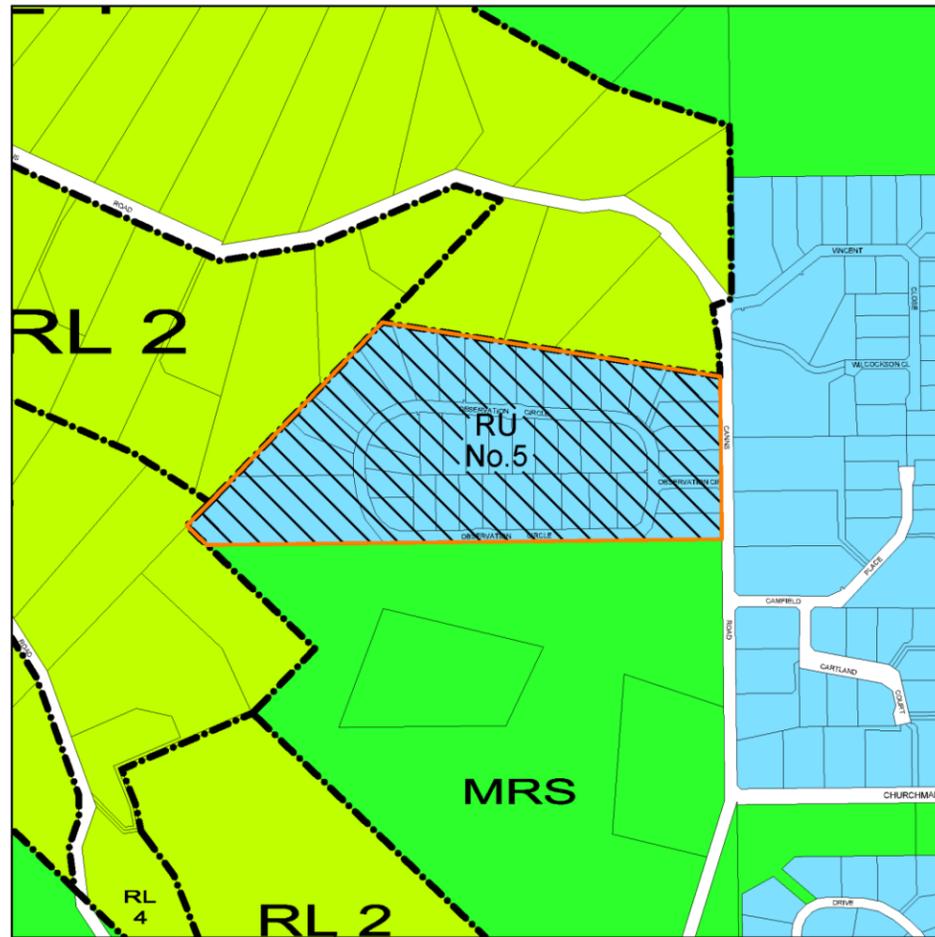


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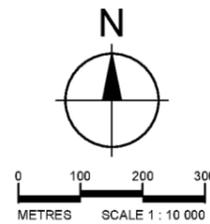
Based on information provided by and with the permission of the
Western Australian Land Information Authority trading as Landgate (2012).
Aerial photograph supplied by Landgate, Photomaps by NewMap.



CITY OF ARMADALE TOWN PLANNING SCHEME No. 4 AMENDMENT No. 94



EXISTING ZONING

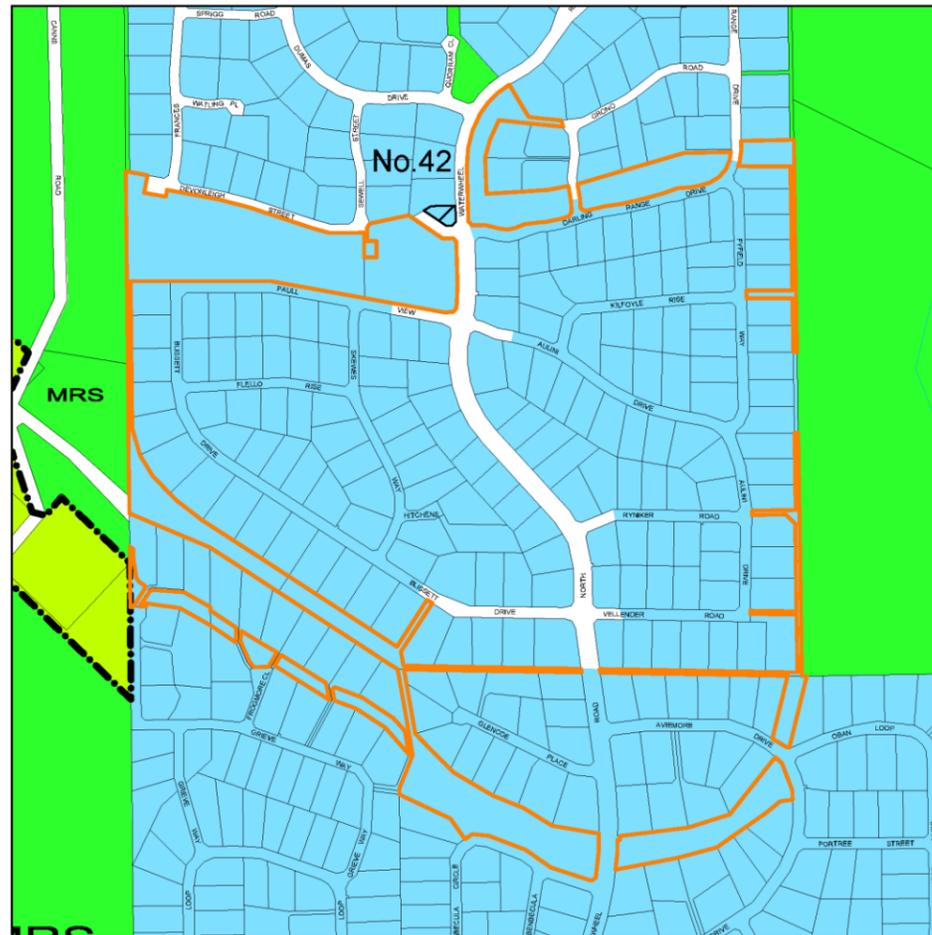


PROPOSED ZONING

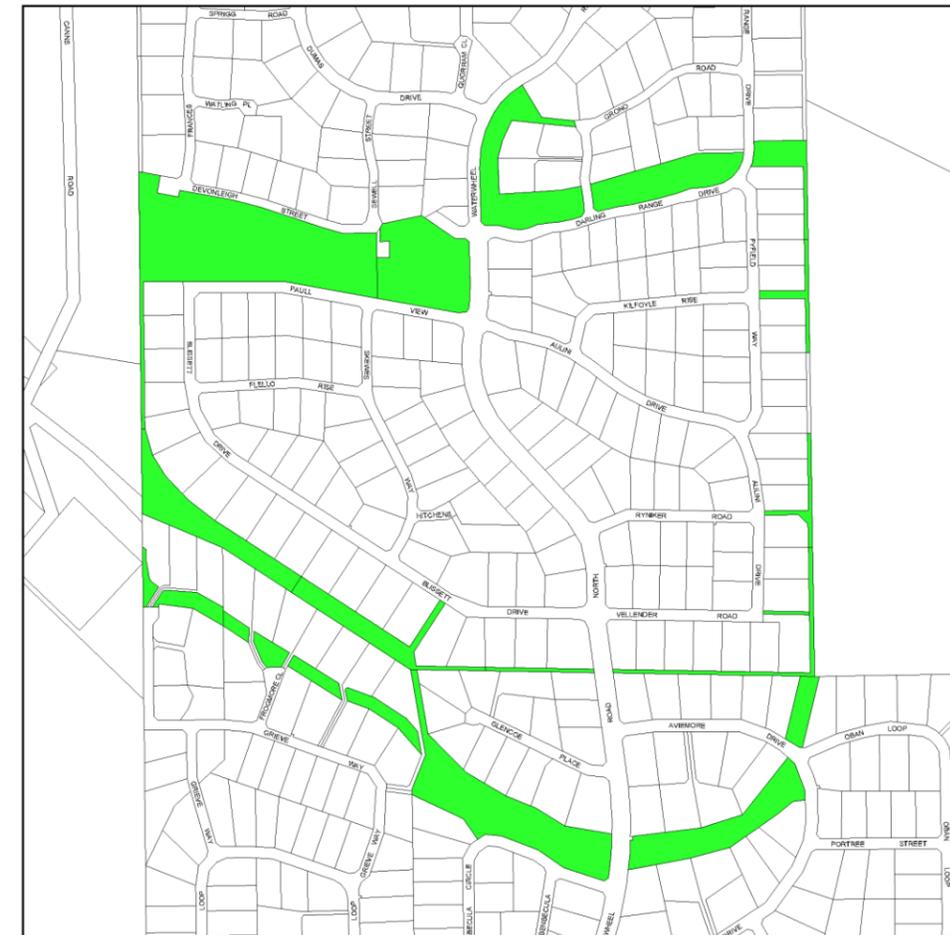
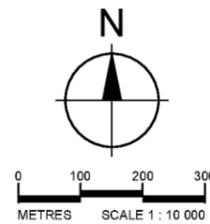
ZONES			RESERVATIONS		
RESIDENTIAL Including Residential Planning Density Codes	LOCAL CENTRE	SPECIAL USE No.1	PARKS & RECREATION (Region)	PRIMARY REGIONAL ROADS	PUBLIC PURPOSE (Region) Denoted as Follows
URBAN DEVELOPMENT ZONE	DISTRICT CENTRE	ADDITIONAL USE No.7	PARKS & RECREATION (Local)	OTHER REGIONAL ROADS	
RURAL LIVING - 1,2,4,10,20,X	STRATEGIC REGIONAL CENTRE	RESTRICTED USE RU No.4	RAILWAYS	PUBLIC PURPOSE (Region)	CG Commonwealth Government
GENERAL RURAL	GENERAL INDUSTRY	DENSITY CODE BOUNDARY	STATE FOREST	PUBLIC PURPOSE (Local)	TS Technical School
SPECIAL RESIDENTIAL	INDUSTRIAL BUSINESS	SCHEME BOUNDARY	WATERWAYS		HS High School
MIXED BUSINESS / RESIDENTIAL	INDUSTRIAL DEVELOPMENT		WATER CATCHMENTS		PS Primary School
					H Hospital
					WSD Water Authority of WA
					SU Special Use
					SEC State Energy Commission
					T Telstra

NOTE: The reservations are shown diagrammatically and do not purport to represent the road reservations shown in the Metropolitan Region Scheme and information in respect to road widening requirements for these roads should be obtained from the Department of Planning

CITY OF ARMADALE TOWN PLANNING SCHEME No. 4 AMENDMENT No. 94



EXISTING ZONING



PROPOSED ZONING

ZONES			RESERVATIONS		
RESIDENTIAL Including Residential Planning Density Codes	LOCAL CENTRE	SPECIAL USE No.1	PARKS & RECREATION (Region)	PRIMARY REGIONAL ROADS	PUBLIC PURPOSE (Region) Denoted as Follows
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					WSD Water Authority of WA
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					SEC State Energy Commission
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NOTE: The reservations are shown diagrammatically and do not purport to represent the road reservations shown in the Metropolitan Region Scheme and information in respect to road widening requirements for these roads should be obtained from the Department of Planning



Outcomes of Consultation

Third Party Appeal Rights in Planning



Contents

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1.0 In Brief

At its September 2017 meeting, State Council noted that there is increased support for the introduction of some form of Third Party Appeal Rights in Planning in Western Australia. State Council requested that:

1. Further consultation with members be undertaken on the various concerns and suggestions which were raised in response to WALGA's *Third Party Appeal Rights in Planning Discussion Paper* ([link](#)); and
2. A review of the various forms of third party appeal rights which were proposed by members to develop a preferred model.

Two workshops were held on 1 November 2017, and a webinar held on 9 November 2017. This paper will discuss the outcomes of the consultation.

2.0 Background

In December 2016, WALGA State Council resolved to undertake research on third party appeals around Australia and further consult with members regarding the current policy position. The Association prepared a discussion paper which provided background on the development of WALGA's current policy position and a review of the arguments both for and against third party appeals which was circulated to the Local Government sector for comment and feedback.

The feedback received from members was presented to State Council at its 8 September 2017 meeting, where it was resolved that (92.9/2017) -

1. *State Council notes that there is increased support for the introduction of some form of Third Party Appeal rights.*
2. *WALGA undertakes further consultation with members on Third Party Appeal Rights, including Elected Member workshops, discuss the various concerns and suggestions raised in response to the discussion paper, the form and scope of any such appeal right should include the appropriate jurisdiction including JDAPS, SAT and WAPC to determine a preferred model.*
3. *The findings to be distributed for comment and the Item then be reconsidered by State Council.*
4. *WALGA continue to advocate that an independent review of decision making within the WA planning system is required, including the roles and responsibilities of State and Local Government and other decision making agencies, Development Assessment Panels and the State Administrative Tribunal appeal process.*

3.0 Consultation

The submissions received on the discussion paper were closely divided between support for some form of Third Party Appeals and opposition to their introduction. Further, amongst the submissions in favour of Third Party Appeals, the level of support varied from limiting its application to specific circumstances, such as DAP decisions, to broad appeal rights similar to the Victorian system. The range of options and ideas presented were incredibly varied, and there was no clear consensus on the form and/or scope any such rights should take.



This feedback was collated into four options which broadly capture the range of responses in support of Third Party Appeals. These four options were then used to guide workshop discussions. The options discussed, from narrowest to most broad, are as follows:

- 1. Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels:** Under this system, third party appeals would be broadly similar to the New South Wales system ([link](#)) whereby appeal rights are limited to uses such as major developments where the development is high impact and possibly of state significance. This would include the ability to appeal amendments to an existing approval.
- 2. Support the introduction of Third Party Appeal Rights for decisions where discretion has been exercised under the R-Codes, Local Planning Policies and Local Planning Schemes:** Under this system, third party appeals would be broadly similar to the Tasmanian system ([link](#)) whereby third party appeals are limited to development applications where discretion has been exercised. This would include the ability to appeal an amendment to an existing approval.
- 3. Support the introduction of Third Party Appeal Right against development approvals:** Including all development application approvals made by Local Governments, JDAPs and the Perth DAP, MRA or WAPC. This would include appeal rights for affected neighbours and community groups for applications and the ability to appeal amendments to an existing approval.
- 4. Support the introduction of Third Party Appeal Rights against development approvals and/or the conditions or absence of conditions of an approval:** Under this system, third party appeals would be broadly similar to the Victorian system ([link](#)) whereby the provision of third party appeal rights cover most development applications and the use of, or lack of, any conditions being imposed. This would include the ability to appeal an amendment to an existing approval.
- 5. Other** – as a range of options were provided by members, any alternate versions to the above, or combination of the above could be proposed, including maintaining WALGA's current policy position of not supporting Third Party Appeal Rights.

It should be noted that any form of Third Party Appeals which could be introduced into the Western Australian planning system would need to include criteria that:

- Ensures that appeals are only made on valid planning grounds and are not made for commercial or vexatious reasons.
- Limits Third Party Appeals Rights to those parties which previously made a submission on that development application during the advertising period.
- Require a short window in which to appeal (for example 14 days).

The exact details of such criteria would need to be established before any system of Third Party Appeals in Planning is implemented, however the focus of the workshops was to discuss the possible scope and form any such appeal rights should take in order to determine a preferred model.



The workshops followed a 'market place' format, whereby each of the options had its own table and facilitator to guide discussion. Workshop participants circulated between tables so that they could discuss the strengths and weaknesses of each option. There was also an opportunity for participants to provide a 'fifth option' if they had a preferred model which was not captured by the four options provided. Webinar participants were presented and provided an opportunity to discuss each option, and were given the opportunity to present their own preferred models.

During the workshops, there was a general consensus on the benefits that the introduction of Third Party Appeal Rights would provide. These included:

- Greater accountability of decision-makers, including Local Government, Development Assessment Panels and the State;
- Greater transparency in the planning decision-making process;
- Improved consultation by applicants;
- Increased community confidence in the planning system and planning decisions; and
- More equity between applicants and appellants.

There was also general agreement on areas of concern should some form of Third Party Appeals be introduced. These included:

- Increased costs, in terms of both staff resources and financial requirements;
- More time required for a development to receive a planning approval in order to allow for third party appeals;
- Introduction of Third Party Appeal Rights would be counter to current efforts to streamline the planning process;
- Introduction of Third Party Appeal Rights would create uncertainty for the development industry;
- Removal of decision making power from Local Government;
- Raises community expectations which may not be met in practice;
- Creates an adversarial/litigious environment around planning decisions; and
- Introduction of Third Party Appeals does not address most of the underlying concerns regarding the current planning system.

It was also clear from the discussions that any system of Third Party Appeals would need to be carefully constructed and provide clear guidance on several issues, including:

- When and how a third party can lodge an appeal, and the types of appeals that would be supported;
- Ensuring appeals are only lodged for proper planning grounds, and not for vexatious or competitive purposes;
- Whether 'deemed-to-comply' decisions would be appealable; and
- Would third party appellants be provided some form of 'legal aid' to assist in lodging appeals, to keep the process from being cost prohibitive?

A complete list of comments for each option, as well as possible modifications and suggested 'Fifth Options' is included in **Attachment 1**.

After reviewing all of the options and discussing the advantages and disadvantages of each, participants were asked to vote for their preferred model. Voting was via secret ballot for workshop attendees and via confidential messaging for webinar participants. Participants were also asked to indicate whether they were Elected Members or Officers, so that the results could be captured separately.



3.1 Voting and Preferred Model

In total, 30 votes were cast by participants, 27 by officers and three by Elected Members.

A breakdown of the votes are as follows:

- **Option 1** = 9 votes
- **Option 2** = 6 votes
- **Option 3** = 3 votes (includes 2 Elected Member votes)
- **Option 4** = 1 vote (includes 1 Elected Member vote)
- **Option 5** = 11 votes

It must be noted that although Option 5 received the most votes, this option allowed members to provide their own Third Party Appeal Rights model. Subsequently, of the 11 votes for Option 5, six of these votes were in support of no Third Party Appeal Rights of any kind, while the remaining five votes were each for differing versions of Third Party Appeal rights which those participants supported.

As such, the option which received the greatest level of clear support was Option 1 in support of the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels. A summary of the most common remarks, both for and against, is provided below (for a complete list see Attachment 1).

Option 1: Third Party Appeal Rights for decisions made by Development Assessment Panels

For	Against
Local Government would be able to appeal a DAP decision and defend the merits of their policies and enforceability of their conditions.	Will still require increased staff and resources.
Addresses community concerns that decisions are being made 'removed' from the local community, leading to improved community confidence in the system.	Possibility that the minister could remove Elected Members from DAPs if Local Government can appeal anyway. Possible conflict of interest for Elected Member panellists.
More transparent process with more accountable DAP members, in both decision making and condition setting.	Elected Members may be pressured to initiate an appeal, rather than the community initiating an appeal.
Could allow for appeal on conditions that may have been removed from a RAR.	Reduces certainty in the decision making process.
A good first stage approach for the introduction of Third Party Appeal Rights - could be expanded later.	Possibility for more than one person to want to appeal - how to manage multiple appeals/appellants, and determine degree of impact?
Limits appeal rights to larger, more complex applications and would filter out 'smaller' impact applications which could potentially overburden system.	Only applies to DAP determinations, does not include applications for \$2-\$10 million that are determined by Council. If applicant does not opt in to DAPs then they avoid Third Party Appeal Rights.



May rarely be used in rural areas, is almost the status quo.	Could undermine the reason for DAPs being set up originally.
Likely that more applications will be decided by Council.	Adds another layer to an already complex system.

As can be seen, Option 1 generated strong arguments both for and against the introduction of Third Party Appeal Rights, even in limited scope.

4.0 Feedback Sought and Next Steps

As noted, the purpose of the consultation was not to develop the full details and criteria by which any system of Third Party Appeal Rights in Planning would operate, but to determine a preferred model for any proposed rights.

As such, the Association is requesting that members consider the following as the preferred model for Third Party Appeal Rights in Planning in Western Australia:

Support the introduction of Third Party Appeal Rights for decisions made by Development Assessment Panels

Members are requested to advise their support or otherwise of this model of Third Party Appeal Rights by Council Resolution, to be returned to the Association no later than **15 March 2018**.

Upon receipt of the resolutions, the outcome will be reported back to State Council.

Council resolutions can be sent to the Planning and Development Team via email at planning@walga.asn.au or by mail to WALGA directly at PO Box 1544, West Perth WA 6872, Attention Planning and Development Team.

Any questions or comments can be sent to the above email or call on 9213 2000 to discussion with a member of the Team.



5.0 Attachment 1: Third Party Appeals Workshops and Webinar collected comments

Workshops attendance: 40 Attendees, 35 Local Government Officers, and 5 Elected Members, from 25 Local Government areas including:

- City of Stirling
- City of Wanneroo
- City of Vincent
- City of Subiaco
- City of Fremantle
- City of Kalamunda
- City of Cockburn
- City of Belmont
- City of Bayswater
- City of South Perth
- City of Rockingham
- City of Mandurah
- City of Joondalup
- Town of Mosman Park
- Town of Cambridge
- Town of East Fremantle
- Town of Cottesloe
- Shire Wyndham East Kimberley
- Shire of Wongan
- Shire of Beverley
- Shire of Toodyay
- Shire of Serpentine Jarrahdale
- Shire of Peppermint Grove
- Shire of Albany
- Shire of Kalgoorlie-Boulder

Option 1 Comments

Pros

- Local Government would be able to appeal a JDAP decision + can defend the merits of their policies created (developed under construction) - and enforceability of the conditions.
- Could address community concerns that decisions are made 'removed' from the local community – more influence in the process.
- Confidence in the decision making process - reinstate community confidence in the decision making process - different at each Local Government depending on the make-up/location.
- More transparent process + more accountable JDAP members, in decision making + condition setting.
- Community members can appeal decisions.
- Form 2's included in the process - ability to appeal the amendment + the conditions setting.
- More applications will come back to council.
- Legal nexus between Local Government /State policies + decision making -> TPAR would give this.
- Spread the costs between the applicants/developers/appellants/third parties.
- Could appeal on conditions that may have been removed from a RAR - (i.e. cash-in-lieu conditions removed from RAR).
- Submissions of more compliant applications /outcomes of better developments -> possible costs and time savings for developers.
- 1st stage approach for TPAR - could be expanded later.
- Community satisfaction that JDAPs' can be appealable - feeling of loss of inclusion in the process.
- Community can appeal to JDAP to enable better transparency of decisions.



- Local Government can appeal a decision (particularly when RAR is overturned + conditions).
- JDAPs - can appeal any decisions that don't align with strategic vision.
- Being limited to those complex applications/complicated issues.
- Justify the argument against the development before an appeal can be lodged - direct impact needs to be shown.
- Direct impact needs to be shown.
- Good balance.
- Appellants would have to pay for their own costs.
- Takes out the decisions that are political.
- Applications could then just go to council in the \$2-\$10 range.
- Would filter out 'smaller' impact applications which could potentially overburden system.
- May be rarely used in rural areas - almost status quo – (is it even worth having?).
- Not supportive of Third Party Appeal Rights - BUT would reluctantly support this option.

Cons

- Only DAPs - not includes \$2-10 for council determinations.
- Political only fix.
- Form 2 process back into Local Government now - so decision could then be appealed? Even if Local Government originally didn't like it. Quantitative measure for whether it is then appealable.
- Resource hungry for all involved - particularly for Local Governments.
- Not all JDAP members would be brought to SAT - only Chair.
- If Local Government supports - but the item is appealed - Local Government would be dragged in.
- Lack of certainty in the decision making process.
- Possibility for more people to be attending an appeal - how to manage? Does it become a numbers game?
- Elected Members may be pressured to put in an appeal rather than the community initiating an Appeal.
- Possibility that the minister could remove Elected Members from JDAP if Local Government can appeal anyway.
- Conflict of interest for Elected Member who sits on the panel if the Local Government appeals it.
- Conditions - in or out?
- More applications will come back to council.
- Odd paradigm to be appeal a decision - Local Government appealing JDAP when they are making a decision on their behalf.
- Could undermine the whole reason for DAPs being set up in the beginning.
- Who would prepare the appeal? Independent? Or Local Government?
- What level of strategic oversight would be included - is it local or regional benefits.
- Multiple appeals? Degrees of appeal issues.
- State or regional policy provisions/what takes precedence?
- Connection to structure planning provisions within the system - 'due regard' less weight.
- Costs unknown.
- Uncertainty for development industry.



- Advertised applications only - would JDAP then have all applications as 'advertised'? Greenfield sites/deemed to comply.
- Resources of JDAP's - who submit the appeal and manages the process?
- Could undermine the purpose of DAPs.
- Could reduce the pool of quality DAP panel members.
- Another layer to add to the system.
- Don't get may DAP applications in smaller areas.
- If applicant does not opt in to DAPs then they avoid Third Party Appeal Rights.

Modifications

- Would have to review the \$ amount? - If they opt in then all should be considered for review.
- Change new Form 2 'amendment of conditions' changes to the Regulations would be needed.
- Clarify that it's back through SAT.
- All JDAP panellists would have to be part of the appeal.
- Removal of compulsory nature of all JDAP's.
- Clarify around 'petitions' versus 'individual' vs 'interest groups'.
- Modification to what JDAP actually looks at -> review of the criteria and \$ levels-> State/regional Significance.
- RAR's to council/RAR's to have a council input.
- RAR's to include departures from policy.
- Review of DAPS/Abolish DAPs.
- Structure planning regulations.
- Clarity around the levels/type of developments.
- Renew of JDAP \$\$ types -> what should be appealable.
- Criteria for the type of appellants & JDAP consideration of whether they can appeal – possible independent panel to review before it goes to an appeal.
- Joining of appeals (relates to above). Does it impact type of applicants?
- Only ones with discretion can be appealed, - this would need to be clarified/clearly defined. Is there a threshold of discretion significance?
- Danger of including optional thresholds would be a disincentive for applicants to go to DAPs.
- Possibly modify triggers for regional areas - either dollar value lowers or have size triggers such as XXX square metres.

Option 2

Pros

- Gives ability to challenge objectivity.
- Maximise compliant applications.
- May encourage early applicant engagement with neighbours.
- Limits number of appeals, compared to other models.
- Gives better understanding within council about their decisions.
- Holds councils accountable for their use of discretion.
- Reasonable balance between applicant cost and community involvement.
- Better discussion between neighbours.
- Improve the quality of decision making – accountability of decision makers.
- One step better than the Victorian system.
- Staged approach – 'dipping toe' in to Third Party Appeals.



- Improved criticisms/content of Policy.
- Provides the community with some assurance.
- If delegation is used less – people present to council – maybe reduce number of appeals.

Cons

- Lack of clarity on what is discretion.
- Does the nature of the planning system, with its broad discretion, make this model redundant?
- Poorly framed model - But could be improved if only utilised against discretion against state & local policy.
- It's undemocratic - lesser rights than an applicant.
- It's not the Victorian model.
- Doesn't foster orderly and proper planning.
- Resource intensive - cost, delays, certainty.
- Lack of clarity around what is a discretion.
- There is a large number of discretionary decisions.
- Resource issue for council/staff resources.
- Lack of clarity around who is an affected party.
- Undermines existing discretionary mechanisms.
- Doesn't allow for appeal against incorrect assessments – would still need to go to Supreme Court.
- Too open for abuse.
- Limit creativity – is deemed provisions always the best outcome?
- Flow-on effect to tighten up discretion, leading to more prescriptive outcomes.
- Not all discretionary decisions are advertised.
- Vexatious.
- Using a planning issue to hide the real reason for appeal – appeal for non-reason.
- Could lead to officers using their delegation less, give the responsibility back to council – 'unstreamlines' Planning/leads to more political bias.
- Doesn't apply to non-LG decision makers.
- Unless the application is advertised prior to the decision being made, it is unlikely that neighbours would even know to appeal.
- Local Governments use a lot of discretion - opens a lot of applications to Third Party Appeals.
- Discretion used to manage areas with difficult landscape (e.g. slope & overlooking) and areas such as beach from development - these are always contentious and TPAR will make them very difficult to deal with.
- Opens 'run of the mill' applications to Third Party Appeals, slows the process up.
- Cost of defending decisions to the Local Government will be large.

Modifications

- A clearer framework on where it applies (advertised, in policy, LDP).
- Excludes ability to appeal on amendment.
- Application of costs - to reduce vexatious appeals.
- Limited to applications that are advertised – appeals then limited to those who were advertised to.
- Appeal limited to people who are directly affected.



- Party lodging the appeal must demonstrate that they are adversely affected – decided by SAT.
- Applicant has to defend the proposal – council can opt out?
- Independent assessment body to determine if an appeal is valid.
- Defining what a significant variation is – this is a whole other topic of discussion.
- Categories? Thresholds?
- Scope needs to be constrained – SAT should only assess the matter of discretion.

Option 3

Pros

- MRA + WAPC inclusion -> (Local Government would have some involvement) in State planning decisions with some access to decision making process.
- Community opportunity to be involved with/on WAPC/State Gov decisions.
- Limits the number of vexatious issues (compared with Option 4).
- Encourage JDAPs to give greater consideration to community value/local planning policies.
- Foster orderly and proper planning.
- Faster compliant applications (reduce time for staff) and costs.
- Local Governments made more accountable.
- MRA + WAPC and JDAP - decision makers more accountable.
- Consistent approach to "accountability". -> Both State and Local.
- Clear to the community as to what can be appealed -> every decision made rather than limited value/size?
- Should improve quality of applications
- Should improve planning processes - consultation etc., - clear strategic direction, - education of community.

Cons

- Broad in scale and range. No understanding of what the impact may be.
- Resourcing the system.
- The inclusion of amendments makes the model more complicated.
- Would require robust assessment process for determining who has Third Party Appeal Rights. Who has rights (directly affected/adjacent to?) to make submission? [formal system to determine who has third party appeal rights]
- Wonder about costs? Could have a profound impact on Local Government -> additional costs on planning + development. All costs -> substantial!
- Overlap with Building Act?
- What is the point of appealing deemed to comply?
- Not Victorian model.
- Not 'equal rights' between applicants and 3rd parties, same access to the system.
- On 'planning grounds'.
- Development uncertainty.
- Everything could go to SAT.
- Costs of going to appeal for third party
- Equity of access.



Modifications

- Deemed to comply out.
- Clear criteria - applicable/clearly understood -> 'grounds and rights'.
- Clearer system for determining appeal rights (right to appeal decisions...).
- SAT -> would need someone to assess 'rights'/leave to appeal, - 3 member panel review?
- What about the costs? Who pays? Should you award cost against? Need to consider nature of Third party appellant.
- Education on what is 'valid planning grounds'.
- Advocacy 'legal aid'.
- Modest fee, 'to be determined'.
- Accessible/understandable/affordable - [shouldn't be free].
- Seek advice 'practitioner' [independent bureau to provide advice to appellant].
- Multiple third parties -> who takes precedence? -> how do you determine priority of appellants?
- Should be some criteria on what 'value' of development could be (rather than everything).

OPTION 4

Pros

- Gives community absolute + complete community engagement.
- *Will/'Might' get better outcome if issues surface that weren't previously considered.
- *Will' (above) improve the whole process (more considered) - circumvent approvals that shouldn't be given.
- That may go beyond those who have already made a decision.
- Considers community values & 'buy-in' to ultimate decision.
- Enables community to engage with the planning system at a level they can relate to.
- Makes developer more accountable about what is presented.
- It will hold the decision makers accountable.
- Could address the disillusionment of the community - those that don't feel they have a 'say' – not aware of process until decision has been made.
- Allows community the option to engage where comfortable.
- Assessment process will improve.
- Didactic role with the community - (they) gain understanding of process and are involved.
- Brings the 'local' into the current JDAP system. Makes JDAP accountable to the community.
- Would be positive to have a system that allows appellant to be 'heard'.
- Councillors (EM) would become better informed - be a part of the planning process (proper justification).
- Acknowledge community involvement in planning and policy development.
- Only legal nexus available to the individual (third party).
- Disengaged in the development process.
- Makes the system accountable/transparent.
- Costs = initial spike for 2 years, then it flattens out so only 'early' costs - will get more and consistent compliant DA applications.
- Leave provisions would 'weed' out the vexatious claims. Third Party Appeal Rights allows there to be equally between applicants and appellants.
- Appeal is the tail end of the process - community should be at the start.



- Provides 'balance' as some approvals are made as can't resource going to SAT.
- No confusion about what can be appealed.
- Applicant will pay more attention to application.
- Makes developer more accountable at the start with community.
- Make a decision making body more careful of their process - i.e. not risk their reputation.
- Lawyers/expert witnesses will do well.
- Merit in someone appealing when new information comes forth.
- Benefits to the community - can appeal anything - currently seen as silent.
- Allowing the community to have their say on issues for the greater good even if not overly affected.
- Encourage planners, JDAPs etc., to be more transparent - i.e. an appellant would be more aware of what to appeal.
- Bringing it in as Victorian model gets through the pain of strain - however equitable.
- Should be able to appeal against amendments (e.g. form 2) - minor amendments.

Cons

- Resources required to appeal a decision particularly conditions - would require extra staff/people.
- Has potential to frustrate 'all' development.
- Has potential to delay decisions.
- Adds cost to development.
- Planning system is already guided by community.
- Potentially flawed as only those who have already had an opportunity to contribute can appeal.
- Becomes a neighbourhood dispute or forum for stakeholder to 'vent' and address 'other' issues rather than 'planning'.
- Conditions - becomes very subjective about what is a valid or invalid appeal (justification) e.g. amenity, e.g. not to do with the structure more about the use of the structure.
- So many conditions are 'standard'.
- No option for a 'deemed to comply' examples shouldn't be able to be appealed.
- No certainty for a developer.
- Could allow appellants more 'creative' in their appeals.
- Takes power away from Local Government.
- Decisions that are made in good faith are challenged.
- Could act as a 'policing' option - a pressure to act differently - don't always have the threat of appeal hanging over head.
- Admission that the current system is flawed - more people saying that they are voiceless. Does that mean policies currently developed don't reflect?
- Higher level planning is currently strong and represents communities views - have due regard to Community.
- Application against the DA.
- All decisions would be advertised.
- Why another level of appeal for decisions - timing/costs/etc.?
- Logistics of how community would engage in the DA process.
- Additional costs to SAT as well as LG + community - What are the resources going to be needed?
- Large developers lodging appeals to edge out smaller developers - availability to \$.



- Developers likely to pass on any potential costs to the end user/quality of products/unexpected Consequences.
- Generally goes against the whole streamlining of the planning process.
- Concerns around raising expectations of community that they can change something they can't.
- If you place this much pressure at the end, does it detract from the strategic planning at the start?
- Takes away the applicants rights in some instances.
- Creates a litigious environment.
- Community is represented by council - therefore decisions by councils should not be included.
- What about non-discretionary decisions? Goes against broader strategic aims.
- Considering non-planning issues to satisfy community.
- Implications of costs/efficiencies - massive cost to the system.
- Implications of third parties appealing after the fact who haven't objected already - do they actually have a valid reason for appeal?
- How long is the review period going to be? Longer?
- Loss of certainty for applicants - approval doesn't always mean approval with appeals.
- Inequitable - e.g. affluent areas may have more \$\$ ability to initiate appeals.
- May attract the attention of large community groups. (Community involvement vs. activism).
- Reactive to the 'short term' rather than taking a positive approach early in the strategic process.
- Unrealistically raising community expectations to fully change a decision.
- What about multiple third parties?
- Who is directly affect? Direct impact?
- The case by case nature of 'carte blanche' approach.
- Concern around third parties coming up with conditions - e.g. non-planning basis.
- Contradictory to moves towards streamlining planning processes.
- From nothing to fully appealable is a stretch - massive shift.
- Elongated process currently don't support satisfaction with outcomes, i.e. tokenistic.
- Not a problem with the system, it's the perception of the system.
- Developers 'may' put up 'best of' hoping something will slip through.
- Local Government becoming too conservative.
- End up with a lot of 'deemed to comply' - doesn't always result in good planning outcomes.
- To open to abuse.
- Could stifle innovation in design.
- Creates an atmosphere of distrust in decision makers.
- Puts into question the whole consultation process.

Modifications

- Winding back - e.g. not including conditions in the appealable rights - i.e. standard planning conditions that protect amenity e.g. 'stormwater condition'.
- Require a balance between cost & community's right to appeal - this option goes too far.
- Requires the ability to award cost.
- The paper base (document trail) would remain the key.



- Local Government gets to appeal against WAPC decisions on sub-divisions that affect the locality/finances/budget.
- Any third party appellant may do so in their own right (i.e. without lawyers).
- Perhaps a combination of experts & community/individual.
- More decisions to be published to keep community more informed & transparent.
- Third part appeal parameters as long as better planning outcomes.
- Where there is a decision made? Connect the appellant & applicant with the decision maker stepping back.
- Mediation rather than appeal.
- [Triangle diagram with decision maker/applicant/appellant as points] :-
 - When decision is made in the affirmative, do not defend the decision, the applicant has to defend.
 - If successful costs are borne by the decision maker.
 - Leads to correct decisions being made in the first instance (sound).
- Decision maker needs to be able to set the parameters.
- Should be able to appeal against amendments.
- Creates even greater uncertainty, especially at the strategic level.
- Don't know how people will use TPAR - the cost/time associated are unknown - So fear of unknown and broadening scope increases uncertainty.

OPTION 5

- No Third Party Appeals but improve the existing decision making process. E.g. (below):
 - Compulsory training for decision makers in planning;
 - Better policy basis - should be included;
 - scheme provisions consistency;
 - community education in planning;
 - transport planning at State level to establish planning framework;
 - upfront consultation or draft of scheme + LP Strategies -(scheme as a community document);
 - Scheme amendments - what will it look like - honest representation.
- New Options (below)
 - Option 2 + Conditions + all agencies (decision makers).
 - Option 2 + all other planning decisions including subdivision, rezoning, structure plans, LDPs WITH the following features (below):
 - 21 days to submit to SAT appeal;
 - SAT refers to decision making to applicant, decision maker and consultation agencies;
 - 21 days to respond;
 - appeal on the papers only;
 - total time is set as per original approval;
 - SAT fresh decision.
- Option- for decisions made under delegation by council. - SAT consider reconsider by council. - Also could apply to private certifiers' discussion in the future (not 1-4).
- Option 1 + SAT decisions - Minister (bodies not elevated by community).
- Option 2 - Discretion however third party needs to demonstrate that they directly impacted and how the use of discretion impacted on the appellant.
- Improved consultation will address a lot of community concerns.



-
- Status Quo OR Option 1 with modified triggers for country areas.
 - Would Option 1 really matter for country areas?
 - SAT members would require better training on planning matters.

Parked Items

- Give LSP the force and effect of the Scheme in Development zones.
- Planning Ombudsman -> for small scale objections.
- Review of the planning system (independent).
- More education of decision makers on their role in the planning decision making process.
- Define what 'due regard' is.
- Give reasons how an alternative achieves the policy outcomes.
- Link between strategic directions (objectives) and decisions.



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WEDNESDAY 9 MAY

WEDNESDAY 9 MAY						
	FULL DAY	FULL DAY	FULL DAY	HALF DAY	HALF DAY	RAC Intellibus
830						
900	Study Tour 1 – City of Swan – The Good, The Bad and The Ugly 0900 - 1630	Study Tour 2 – Stadiums and Sporting Precincts 0900 - 1630	Tour 3 – From Canals to TODs – Land Use Innovations 0900 - 1630	Tour 5 – City to Surf – New Communities 0900 - 1630	Masterclass with Copenhagenize – Bicycle Urbanism 0900 - 1600	0900 - 1500 Offsite - 9am - 3pm shuttle bus departs from PCEC at regular intervals
930						
1000						
1030						
1100						
1130						
1200						
1230						
1300						
1330						
1400						
1430						
1500						
1530						
1600						
1630						
1800	National Awards for Planning Excellence and Welcome Function – Optus Stadium, Roger Mackay Drive, Burswood					



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THURSDAY 10 MAY

THURSDAY 10 MAY					
0830 - 1030	Opening Plenary Day 1				
0830 - 0840	Master of Ceremonies – Welcome – Karen Tighe				
0840 - 0855	Welcome to Country – Ingrid Cumming				
0855 - 0915	Brendan Nelson RPIA – National President and Phoebe Harrison MPIA – National YP Board Director Opening Address				
0915 - 0935	Hon. Paul Fletcher MP – Minister for Urban Infrastructure and Cities (<i>invited</i>)				
0935 - 1030	Plenary Session – Panel Moving around our future city: <i>The Opportunity of Disruption – the intervention of driverless vehicles is fast approaching. It's not about 'if', but 'what and when'. How do we harness the opportunities for the future design and planning of our cities and regions? What are the potential pitfalls and can these be mitigated? Which Australian cities will become a first mover for innovation in sustainable transport? Is it all a matter of safety?</i> Panellists: Margie Tannock (Squire Patton Boggs), Steve Cooke (Lease Equity), Reece Hendry (Planning Solutions), Brian Haratsis MPIA (Fellow) (Macroplan Dimasi), Anne Still (RAC)				
1030 - 1100	MORNING TEA				
1100 - 1230	Concurrent One	Concurrent Two	Concurrent Three	Concurrent Four	Concurrent Five
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	Offsite
1100 - 1118	Digital Frontiers – Rise of AI <i>Driving future industries and growth through employment and innovation centres</i> Tim O'Loan , AECOM	Shift: Movement, People, Places <i>Not all heroes wear capes – The rise of the Not-for-profit developer</i> Michael McKeown (MPIA), Jensen Plus	1100 – 1145 <i>One Planet Living Leadership – Bioregional Australia Foundation in association with LandCorp</i> Panel Facilitator: Suzette Jackson , Executive Director, Bioregional Australia Foundation	Planning for Resilience and Community Recovery: Stories from across the US and Australia Session Facilitator: Stephen Dredge (MPIA), Meridan Urban	Stepping Out: Heart Foundation HABD Interactive Walkshop in the Perth CBD Maximum limit of 25 people Jo Appleby , Heart Foundation Tim Greenhill (MPIA), Urbis Claire Franklin MPIA (Fellow), Franklin Planning
1118 - 1136	The potential impact of Artificial Intelligence on Town and Regional Planners – are we due for a career change? Stephanus Cecil Barnard , (MPIA), Western Downs Regional Council	Transforming Melbourne: Next generation of 20-minute neighbourhoods Alexandrea Malishev , Victorian Planning Authority			



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THURSDAY 10 MAY
Continued

1100 - 1230	Concurrent One continued	Concurrent Two continued	Concurrent Three continued	Concurrent Four continued	Concurrent Five continued
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	Offsite
1136 - 1154	Beyond BaU: Democratising Data Kevin Johnson , Geografia Pty Ltd	The Brisbane River – Unlocking River-based Tourism and Recreation Rebecca Arnaud , Brisbane City Council	11:45am – 12:30pm Designing for our minds – the new planning frontier Robina Crook , MPIA, Associate HASSELL Jason Burton , Alzheimer's Australia		
1154 - 1212	A New Place for Planning: the Curtin University HIVE Visualisation Lab Sam McLeod , PIA Assoc. YP Connect Speaker	Light rail infill development scenario modelling using Unitywater's growth and development forecasting tool Chris Teitzel , Unitywater			
1212 - 1230	RAC AV Trial – The journey to public trials: Safety aspects of trialling new technology including infrastructure and planning challenges – Lessons from the AV Public Trial	Changing centres of gravity Sue Haertsch , Transport for NSW (Sydney Metro)			
1230 - 1330	LUNCH				
1330 - 1500	Concurrent One	Concurrent Two	Concurrent Three	Concurrent Four	Concurrent Five
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	Meeting Room 9
1330 - 1348	Engagement: To the Fore Strategic planning: why developers should be influential Sally Lewis , (RPIA), Walker Corporation	Future of Cities Creativity and innovation: the essential ingredients in the city of the future Margie McKay (MPIA), City of Melbourne Learning from the Netherlands: creating a framework for architecturally and socially diverse urban renewal Katherine Sundermann , MGS Architects	SHoTS – 45 mins 1330 – 1415 Global city strategies for adapting to disruptive technology: a view from the inside Phoebe Hollins , GTA Consultants Will Fooks , GTA Consultants	90 Minute Interactive Diversify your Suburb (AKA Pimp your Suburb): A participatory urban design workshop to collectively envisage the future of Australian greyfields suburbs Anthony Duckworth-Smith Australian Urban Design Research Centre/University of Western Australia	LG+ – an mb+ initiative -mb+ – Moreton Bay Regional Council, is proud to host LG+, an interactive roundtable, to demonstrate and showcase Local government across Australia Kate Isles , (MPIA), Moreton Bay Council Stewart Pentland (MPIA), Moreton Bay Council
1348 - 1406	New frontiers: public participation in planning Joe Algeri , MPIA, Altus Planning				



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THURSDAY 10 MAY
Continued

1330 - 1500	Concurrent One continued	Concurrent Two continued	Concurrent Three continued	Concurrent Four continued	Concurrent Five continued
Room	River View Room 5	Meeting Room 7	Meeting Room 8	Meeting Room 9	
1406 - 1424	<p>When you Apply the Pub Test to Planning, do we Pass? Natalie Rayment, (RPIA), Wolter Consulting Group & Yimby Qld</p>	<p>Rescoping the opportunity: when community drives investment logic and local strategic planning Nick Byrne, Remplan</p>			
1424 - 1442	<p>Walking the walk: Early citizen engagement in changing neighbourhoods Nicholas Temov, (MPIA), Jane's Walk Perth</p>	<p>1415 - 1500 The electric vehicle revolution is coming: planning and delivering the charging infrastructure Michael Kane, Economic Development Queensland</p>			
1442 - 1500	<p>Effective Place Based Community Feedback via Online Mapping Cat Gilbert, GHD</p>	<p>Getting to 85 percent: the challenge of the 30-Year Plan's infill target Michael Davis, (MPIA), AECOM</p>			
1500 - 1530	<p>Living it up? The policy and practice of designing healthy, equitable higher density Sarah Foster, Research Fellow, RMIT University</p>				
AFTERNOON TEA					
1530 - 1615	<p>Plenary Session Young Planners present – Power of the Future – Citizen Utilities: Disruptive innovation of distributed solar and storage</p>				
1715 - 1725	<p>Panelists: James Eggleston (Power Ledger), Warren Phillips (LandCorp), Josh Byrne (Josh Byrne and Associates) Facilitator: Stacey Mills MPIA – SAYP Convenor</p>				
1800 - late	<p>Keynote Session Bicycle Urbanism by Design James Thoem, (Copenhagen), Copenhagenize Design Co. Michael Wexler (Montreal), Copenhagenize Design Co. Day One – Wrap-Up Master of Ceremonies Social Event – Rigby's Forrest Reception Centre – Rear 221 St Georges Terrace</p>				



PLANNING CONGRESS
Frontiers of Planning
9 - 11th May 2018, Perth



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9 - 11th May 2018, Perth



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FRIDAY 11 MAY
Continued

FRIDAY 11 MAY					
0830 - 1030	Opening Plenary Day 2				
0830 - 0835	Master of Ceremonies – Welcome Day 2 – Karen Tighe				
0835 - 0900	Hon. Rita Saffioti MLA – Minister for Transport; Planning; Heritage; Lands				
0900 - 0925	Anthony Albanese MP – Shadow Minister for Infrastructure, Transport, Cities and Regional Development (<i>invited</i>)				
0925 - 1030	Keynote Speaker – Leyla Acaroglu – Design disruptor, creative boundary pusher, and cultural provocateur				
1030 - 1100	MORNING TEA				
1100 - 1230	Concurrent One	Concurrent Two	Concurrent Three	Concurrent Four	Concurrent Six
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	Meeting Room 9
	Gen – F(uture)	Regions on the Frontier	SHoTS – 45 mins	90 Minute Interactive	90 Minute Interactive
1100 - 1118	<p>What does 'Drone Disruption' mean for planning?</p> <p>Kathryn Doyle, PIA (Assoc.), Qualifications in Architecture and Urban and Regional Planning Curtin University</p> <p>YP Connect Speaker</p>	<p>Open Space Planning in a Regional Context: 8000 square kilometres, 400 Reserves, 220 kilometres of Riverfront, 68 toilet blocks and 2 Development Assessment planners!</p> <p>Joel Taggart (MPIA), Mid Murray Council, SA</p>	<p>1100 – 1145 Making plans that work – Practicing the forgotten arts of planning</p> <p>Mike Fisher MPIA (international), Urbantacticians</p>	<p>Main Street Motivator</p> <p>Michael McKeown (MPIA), Jensen Plus</p>	<p>Tips and practical tools for undertaking effective community engagement on a shoestring budget</p> <p>Jo Cannington, PIA (Assoc.), Social Fabric Planning</p>
1118 - 1136	<p>Keeping Austin Weird: The crossroad between existing culture and a growing city</p> <p>Chris O'Connor, (MPIA International), Masterplan, Texas USA</p>	<p>Fire on the Front Range: A comparative study of fire exposed communities in Colorado and Queensland</p> <p>Laura Gannon, (MPIA), Principal, Meridan Urban</p>			



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FRIDAY 11 MAY
Continued

Room	Concurrent One continued	Concurrent Two continued	Concurrent Three continued	Concurrent Four continued	Concurrent Six continued
1100 - 1230	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	Meeting Room 9
1136 - 1154	The @insta.city Tiffany Lacey, San Francisco Shipyard	Live Work Letrobe Julia Miller-Randle, (MPIA), Ethos Urban	1145 - 1230 Application of a Health Impact Planning Support System to assist in the design, planning and creation of healthy liveable communities		
1154 - 1212	How can urban design create a viable and liveable off-world city? A city on Mars Cassie Barrow, PIA (Assoc.), Urbis	Planning Australia's most liveable regional city Ryan Hall (MPIA), City of Karratha			
1212 - 1230	YP Connect Speaker Families and apartments - ingredients for success Samantha Reece, PropertyESP	Planning in Paradise: Planning Issues and Reform in Mauritius Belinda Moharich, MPIA, Moharich & More	Paula Hooper, University of Western Australia Claire Boulange, RMIT University		
1230 - 1330	Amanda Shipton, MPIA, Department of Communities LUNCH				
1330 - 1500	Concurrent One	Concurrent Two	Concurrent Three	Concurrent Four	
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8	
1330 - 1348	New Frontiers for Fairness Changing the Rules...Housing Affordability for Seniors...New Perspectives on an Aging Problem John Morwood, (MPIA), Bennett + Bennett	Great Places - Pushing Frontiers Planning First: Land Use is Shaping Adelaide's Future Light Rail Network Brad McCormack (MPIA), Infraplan SA YP Connect Speaker	SHOTS - 45 mins 1330 - 1415 Complete Streets: Beyond the Plan Sam George, Sama Design	90 Minute Interactive Transparent Planning Workshop: An Approach to Delivering Real Community Outcomes Lee Einsweiler, Code Studio Texas USA	
1348 - 1406	Planning and Islam: When two 'ideologies' collide Colleen Peterson, (MPIA), Ratio Consultants	Applying Design-led Planning to Cultural Precinct Development Geoff Warn, Office of the Government Architect WA			



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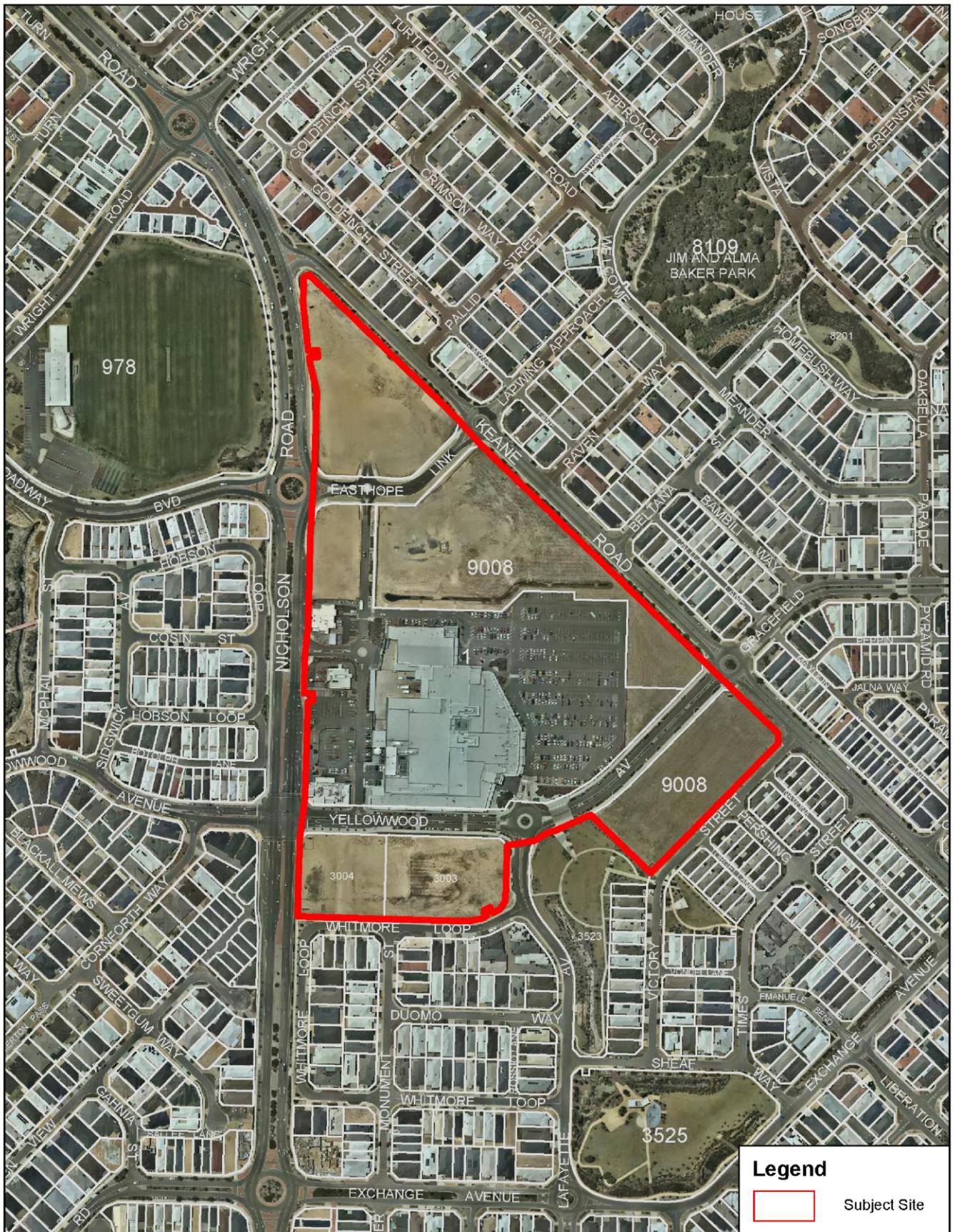
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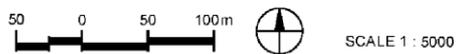



FRIDAY 11 MAY
Continued

1330 - 1500	Concurrent One continued	Concurrent Two continued	Concurrent Three continued	Concurrent Four continued
Room	Plenary (Riverside Theatre)	River View Room 5	Meeting Room 7	Meeting Room 8
1406 - 1424	<p>Gender and the City: Places for Everyone</p> <p>Rebecca Egan, PIA (Assoc.), Curtin University</p> <p>YP Connect Speaker</p>	<p>Integrating Intelligent Communities and Smart City approaches to building a strong community</p> <p>Cate Hart, MPIA (Fellow), City of Prospect</p>	<p>1415 - 1500</p> <p>How can we work today with residents in creating community consensus for change tomorrow... what is the sustainable NIMBY vaccine ?</p> <p>James Best, FuturePlexus</p>	
1424 - 1442	<p>Delivering housing diversity through local government housing strategies</p> <p>Michelle Mackenzie, Shelter WA</p>	<p>The West Melbourne Structure Plan - towards a design led approach</p> <p>Adam Mills, City of Melbourne</p> <p>Adelise Pearson, City of Melbourne</p>		
1442 - 1500	<p>A Fair City for All</p> <p>Greg Vann, MPIA (Director), Ethos Urban</p>	<p>A Little Place, For A Little While: A New Model For Early Delivery Of Community Infrastructure In Greenfields</p> <p>Bridie Ritchie, Sproat Ventures</p>		
1500 - 1530	AFTERNOON TEA			
1530 - 1645	Keynote Session			
1530 - 1630	Julian Coyne , Chair WA Council, Australian Information Industry Association and Managing Director Unified			
1630 - 1645	Announcement 2019 Congress David Williams , PIA CEO			
1645 - 1715	Congress Close - Master of Ceremonies			
1845 - 0000	Gala Dinner - Perth Convention and Exhibition Centre - Bellevue Ballroom			
0000 - 0200	Late Night Drinks			



AERIAL PLAN
Harrisdale Activity Centre



DATE 6 January 2015 - REVISION 1801
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Based on information provided by and with the permission of the
Western Australian Land Information Authority (Landscape 2012).
Aerial photographs supplied by Landgate, Photocopy by headmap.



LEGEND

- Activity Centre Boundary (11.72Ha)

PRECINCTS

- Retail Core Precinct (5.92Ha)
- Convenience/Service Commercial Precinct (1.44Ha)
- Mixed Use/Residential Precinct (1.89Ha)
- Main Street Commercial Precinct (1.18Ha)

LAND USE

- Indicative Commercial Areas (5.95Ha)
- Indicative Residential Areas (1.00Ha)
- Concentrated Car Parking Area (3.48Ha) (potential long term development opportunities)
- Primary Service Area
- R80 R-Code

OTHER

- Town Square
- Primary Building Emphasis
- Secondary Building Emphasis
- Primary Main Street
- Secondary Main Street
- Indicative Major Vehicle Access *
- Private Service Road
- Key Pedestrian Linkage
- Indicative Pedestrian Linkages

FRONTAGES

- Active Frontage
- Semi Active Frontage
- Attractive Frontage
- Movement Frontage
- Existing Consolidated Monolith Sign
- Potential Additional Monolith Sign

* All site access arrangements are subject to a Transport Impact Assessment at Development Application stage



ACTIVITY CENTRE PLAN MAP
HARRISDALE ACTIVITY CENTRE - NICHOLSON ROAD, HARRISDALE
Level 14, The Quadrant, 1 William Street | Perth WA 6000 Australia | +61 8 9348 0500 | URBIS Pty Ltd | ABRN 50 105 256 228

DATA SOURCE
SLIP/LANDGATE
PROJECTION
MGA94, ZONE 50

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CLIENT
STOCKLAND

PROJECT NO.
PA1310
DRAWING NO.
03
DATE
30.10.17
REVISION
C



NOT TO SCALE
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Harrisdale Activity Centre Plan
Concept Development Plan



- LEGEND:**
- ACTIVITY CENTRE BOUNDARY
 - - - FUTURE POTENTIAL DEVELOPMENT (BEYOND ACTIVITY CENTRE PLAN LIFESPAN)
 - ① EXISTING SHOPPING CENTRE
 - ② EXPANDED SHOPPING CENTRE INCLUSIVE OF DISJOINT DEPARTMENT STORE AND SPECIALITY RETAIL
 - ③ EXISTING CONVENIENCE AND FOOD AND BEVERAGE OFFERING
 - ④ FUTURE SERVICE, CONVENIENCE AND FOOD AND BEVERAGE OFFERINGS
 - ⑤ APPROVED CHILDCARE
 - ⑥ FUTURE COMMERCIAL OFFICES AND TAVERN
 - ⑦ YELLOWWOOD AVENUE MAIN STREET
 - ⑧ EXISTING TOWN SQUARE
 - ⑨ FUTURE MEDIUM DENSITY RESIDENTIAL (INDICATIVE LAYOUT. A PORTION OF THIS SITE IS LIKELY TO BE DEVELOPED WITH AN ACTIVITY CENTRE PLAN LIFESPAN)
 - ⑩ FUTURE MIXED USE / RESIDENTIAL DEVELOPMENT
 - ⑪ KEY PEDESTRIAN LINK BETWEEN YELLOWWOOD AVENUE AND EASTHOPE LINK

URBIS STOCKLAND HARRISDALE
PRELIMINARY ACTIVITY CENTRE CONCEPT PLAN

DATE: 10.10.2017
JOB NO: PA1310
DWG NO: ACP-SK01
REV: R

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DATE: 5 January 2018 - REVISED 11:21
Path: C:\projects\harrisdale\concept_development_plan\harrisdale_concept_development_plan.dwg

