



TOWN OF  
**MOSMAN PARK**

## SPECIAL COUNCIL MEETING

### Minutes

MONDAY 30 NOVEMBER 2020





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**1. DECLARATION OF OPENING**

The Presiding Member declared the meeting open at 6:00pm.

**2. RECORD OF ATTENDANCE**

**Members:**

Mayor	B. Pollock
Deputy Mayor	A. Maurice
Councillor	Z. Johnson
Councillor	P. Shaw
Councillor	A. Baird
Councillor	G. Carey

**Officers:**

Chief Executive Officer	C. Bywater
Director Planning and Operations	A. Nancarrow
Executive Officer	C. Markovic

**Apology**

**Leave of absence (Previously approved)**

Councillor	J. Ledgerwood
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**Observers:**

**Press:**

David Hudleston	Post Newspaper
John Bassett	Western Suburbs Weekly

**MOTION TO CHANGE ORDER OF BUSINESS:**

Councillor Baird moved a Motion to change the order of business and insert, at item 5.2, a Notice of Motion to direct the CEO to implement and communicate immediately the decision made by Council in respect of item 5.1.

**COUNCIL RESOLUTION**

**SCM-005-2020**

<b>Moved</b>	COUNCILLOR A BAIRD
<b>Seconded</b>	COUNCILLOR G CAREY

That Council:

Pursuant to clause 5.2 of the Meeting Procedures Local Law 2010, the order of business of council is to change to insert at item 5.2 a Notice of Motion to direct the CEO to implement and communicate immediately the decision made by Council in respect of item 5.1.

**Reason**

The Meeting Procedures Local Law 2010 requires that decisions of Council are implemented and communicated at noon the following day after a Council meeting. The Town wishes to communicate the decision in relation to Item 5.1 immediately after tonight's meeting concludes.

**CARRIED 6/0**

**3. PUBLIC QUESTION TIME / DEPUTATIONS**

Brendan Foley, level 27, 2 the Esplanade, Perth

- Notwithstanding the fact that the Town has taken legal advice on this matter, it appears from the drafting of the officer's recommended reasons for refusing the LDP that there remains a fundamental misunderstanding of the legal status of what is proposed and how the LDP is to be properly considered.
- In particular, the officer's report appears to confuse the assessment process and consideration of the LDP with that required for an application for development approval under Schedule 2 (Deemed Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015 (LPS Regulations). The LDP does not contemplate any "development" for approval.
- As a result, reason (a) of the officer's recommendation must be deleted. Clause 67 of the Deemed Provisions sets out matters that a decision maker is to have due regard to when considering an application for development approval. As the LDP does not contemplate any "development" for approval, clause 67 is an irrelevant consideration in respect of the assessment and consideration of the LDP. The process for the assessment and consideration of the LDP is separately dealt with under the relevant provisions of the Deemed Provisions and LPS Regulations and clause 67 is an inapplicable (and irrelevant) provision to that assessment and consideration.
- Similarly, reason (b) of the officer's recommendation should be deleted because the LDP is not an application for development approval. Further, the wording of this reason is directly inconsistent with reason (c) which notes that in the officer's view there is insufficient information to complete a full assessment of the LDP against the primary controls of the R-Codes.
- Further, and again, it should be noted that the Element Objectives of the R-Codes are directed towards the assessment of actual development. The LDP provides for potential future building envelopes – it does not mandate that development must be at the full extent of all proposed envelopes in all areas, or that development within any envelope must be approved. Any actual future development application which seeks to exceed the standards and requirements set out in Table 6 of the Town's 'Local Planning Scheme No 3' will need to be assessed

against clause 34 of the Scheme; and that would be the case regardless of whether an LDP is approved or not.

Fraser Barrie, 21 Jimbell Street, Mosman Park

- The Mosman Heights Action Group strongly supports the officer recommendation that Council refuse the proposed Local Development Plan for the Wellington Street Neighbourhood Centre.
- The community does not want this development. 485 of the 571 submissions received by the Town were in opposition and a petition containing 478 signatures was tabled at the last Council meeting. We commend the Town on their thorough and objective analysis of the proposed LDP, the consideration they have given to community concerns and the preparation of a comprehensive report.
- We strongly urge Council to refuse the proposed Local Development Plan in-line with the officer recommendation.

**4. DECLARATION OF INTEREST**

<b>Councillor</b>	<b>Item number</b>	<b>Disclosure of interest</b>	<b>Reason of interest</b>
<b>Deputy Mayor A Maurice</b>	PROPOSED LOCAL DEVELOPMENT PLAN FOR THE WELLINGTON STREET NEIGHBOURHOOD CENTRE –	Impartiality	Deputy Mayor Maurice lives at 19 Samson Street which adjoins the Wellington Street Centre.

It was recorded that Deputy Mayor Maurice declared an interest in this matter and left the meeting at 6:16pm. Deputy Mayor Maurice did not return to the meeting.

**5. REPORTS OF OFFICERS**

<b>5.1</b>	<b>PROPOSED LOCAL DEVELOPMENT PLAN FOR THE WELLINGTON STREET NEIGHBOURHOOD CENTRE – LOTS 9, 10, 11, 20, 21, 50 AND 411-412 MANNING STREET AND LOTS 2, 3, 570, 571, 572, 573, 574, 575 AND 576 WELLINGTON STREET, MOSMAN PARK</b>
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**File No.:** 1206.4

**Responsible Executive/  
Manager:** AMY NANCARROW  
DIRECTOR PLANNING AND OPERATIONS

**Author:** AMY NANCARROW  
DIRECTOR PLANNING AND OPERATIONS

**Author Disclosure of Interest:** Yes<sup>1</sup>

**Attachments provided under separate cover:**

1. LOCATION PLAN
2. PROPOSED LDP
3. SUMMARY OF SUBMISSIONS FROM THE COMMUNITY
4. DESIGN REVIEW PANEL MINUTES
5. DESIGN REVIEW PANEL STATEMENT OF DESIGN ADVICE
6. LEGAL ADVICE - *CONFIDENTIAL*
7. TRAFFIC AND TRANSPORT PEER REVIEW COMMENTS

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**Authority/Discretion**

- |  |   |
|--|---|
| <input type="checkbox"/> Advocacy                  | When Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.  |
| <input type="checkbox"/> Executive                 | The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.                |
| <input type="checkbox"/> Legislative               | Includes adopting local laws, town planning schemes and policies. It is also when Council reviews decisions made by Officers.   |
| <input checked="" type="checkbox"/> Quasi-Judicial | When Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural |

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<sup>1</sup> The author has previously worked for employers who have engaged consultants involved in this proposal and the review of this proposal. This may give rise to a perceived conflict of interest. Therefore pursuant to the Town of Mosman Park Code of Conduct, the author discloses an impartiality interest.

justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (e.g. under *Public Health Act 2016*, *Dog Act 1976* or local laws) and other decisions that may be appealable to the State Administrative Tribunal.

Information Purposes Includes items provided to Council for information purposes

## COUNCIL RESOLUTION

### SCM-005-2020

**Moved:** COUNCILLOR P SHAW  
**Seconded:** COUNCILLOR Z JOHNSON

That Council:

1. **REFUSE** the Local Development Plan for the Wellington Street Neighbourhood Centre at **Attachment 2** in accordance with Clause 52 of Schedule 2 of *the Planning and Development (Local Planning Schemes) Regulations 2015* (Deemed Provisions) and the provisions of the Town of Mosman Park Local Planning Scheme No.3 (LPS No.3), for the following reasons:

#### Reasons

- (a) The development contemplated by the Local Development Plan would be inconsistent with Clause 67 (m) of the Deemed Provisions and the aims and objectives of LPS No.3 and would be detrimental to the amenity of the area by virtue of the proposed height, bulk and scale of the development, and its incompatibility with the scale of the surrounding residential area.
- (b) The development contemplated by the Local Development Plan would be inconsistent with the Element Objectives O 2.2.1 and O 2.5.1 of Part 2 of State Planning Policy 7.3 – Residential Design Codes (Volume 2), as the bulk and scale of the development would not respond to the scale and character of the existing streetscape and surrounding residential area, which is unlikely to change.
- (c) In circumstances where the Local Development Plan proposes development of a greater magnitude than what is currently contemplated by LPS No.3, there is insufficient information in the Local Development Plan to complete a full assessment of the Local Development Plan against the primary controls for the site in accordance with the Element Objectives of Part 2 of State Planning Policy 7.3 – Residential Design Codes (Volume 2).

2. **ADVISE** the applicant that:

- (a) Any proposed departures from the primary controls for the R60 density code that apply to the site should be submitted for consideration as part of a development application, having regard for the matters set out in Clause 34 of LPS No.3 and demonstrating that the development:
  - (i) satisfies the Element Objectives of State Planning Policy 7.3 – Residential Design Codes (Volume 2).
  - (ii) Is consistent with the aims and objectives of LPS No.3.
  - (iii) Does not conflict with the principles of orderly and proper planning and would not prejudice the overall development potential in the area.
- (b) Any proposed concession in car parking requirements should be submitted for consideration as part of a development application, having regard for the matters set out in Clause 34 and Item 5(g) in Table 6 of Clause 32(1) of LPS No.3.
- (c) The comments and advice in **Attachment 7** regarding traffic management and car parking provision at the site should be addressed as part of any future development application for the site.
- (d) Prior to the lodgement of a development application, an acoustic study should be undertaken, in accordance with a methodology agreed to by the Town, to measure and assess the level of noise impacts (if any) on the surrounding residential area, and recommend if any building or road pavement design treatments are required to mitigate any impacts.
- (e) Prior to the lodgement of a development application, a site investigation and assessment should be undertaken to determine the extent (if any) of residual contamination at the site and remediation required to ensure there is no risk to human health and that the site is fit for its intended use.

**CARRIED 5/0**

**VOTING REQUIREMENTS**

Simple majority.

**PREVIOUSLY BEFORE COUNCIL**

Nil.

**PURPOSE OF REPORT**

This report provides a recommendation to Council for the determination of the proposed LDP (proposed LDP) for the Wellington Street Neighbourhood Centre.



## EXECUTIVE SUMMARY

It is recommended that the proposed LDP be refused primarily on the grounds that the height, bulk and scale of the proposed development is not compatible with the scale and character of the surrounding residential area. Furthermore, the proposed LDP should not be approved, because it contains insufficient information to complete a full assessment of the LDP against the primary controls for the site in accordance with the Element Objectives of Part 2 of State Planning Policy 7.3 – Residential Design Codes (Volume 2).

It is further recommended that the applicant be advised that any proposed departures from the primary controls for the R60 density code or car parking requirements that apply to the site should be submitted for consideration as part of a development application.

Any future development application should also address the comments and advice from the peer review of the traffic and transport reports, and be preceded by a site investigation to determine the extent (if any) of any potential contamination at the site and any remediation required to ensure it is fit for its intended purpose.

<b>Landowner:</b>	ADC Wellington Pty Ltd
<b>Applicant:</b>	Hatch Roberts Day (formerly Roberts Day)

## Principal Statutory Provisions

<b>Zoning:</b>	Metropolitan Region Scheme (MRS): Urban Local Planning Scheme No. 3 (LPS No.3): Centre - Residential R60
<b>Existing Land Use:</b>	Retail and commercial centre
<b>Lot Area:</b>	7,326m <sup>2</sup>
<b>Laneway:</b>	Yes
<b>Heritage List:</b>	No

## BACKGROUND

The Town has received a proposed LDP for the Wellington Street Neighbourhood Centre in Mosman Park (subject site). The site is bounded by Wellington Street to the north, Manning Street to the east, Samson Street to the south and existing residential properties to the west. Turnbull Way runs through the centre of the site and provides vehicle access at two points on Wellington Street. A location plan for the subject site is at **Attachment 1** and a copy of the proposed LDP is at **Attachment 2**.

Located on the site is an existing retail and commercial shopping centre that is zoned Centre under the Town's Local Planning Scheme No.3 (LPS No.3). Lots 9, 10, 11, 20, 21 50 and 411-412 Manning Street within the centre are owned by ADC Wellington Pty Ltd and the remaining lots (Lots 2, 3, 570, 571, 572, 573, 574, 575 and 576 Wellington Street) are all individual tenancies under different ownership.

ADC Wellington Pty Ltd is proposing to redevelop Lots 9, 10, 11, 20, 21 50 and 411-412 Manning Street as a multi-storey, mixed use development, incorporating a range of retail and commercial uses and landscaped public spaces at ground floor level and approximately 90 to 100 residential dwellings within buildings ranging from 2 to 7 storeys in height, plus two levels of basement car parking.

Clause 32(1) of LPS No.3 contemplates the preparation and approval of an LDP prior to the submission of a development application for land that is zoned Centre. Part 6 of the Deemed Provisions in the Planning and Development Regulations (*Local Planning Schemes*) 2015 (Deemed Provisions) sets out the statutory requirements for the preparation, advertising and determination of LDPs. Clause 48(3)(a) in Part 6 of the Deemed Provisions provides that an LDP may be prepared by a person who is the owner of any or all of the land in the area to which the plan relates.

Once an LDP has been accepted by a local government, it is required to be publicly advertised for a minimum of 14 days. The proposed LDP for the Wellington Street Neighbourhood Centre was advertised for six weeks from 11 September to 23 October 2020.

Clause 51 in Part 6 of the Deemed Provisions requires that once the public advertising period for an LDP has closed, the Town must consider all submissions that are received from the community and clause 52 requires the Town to then make a decision in respect of the LDP. The Town must either:

- (a) Approve the LDP; or
- (b) Require the person who prepared the LDP to —
  - (i) modify the plan in the manner specified by the local government; and
  - (ii) resubmit the modified plan to the local government for approval; or
- (c) Refuse the plan.

This report provides a recommendation to Council for the determination of the proposed LDP in accordance with the Deemed Provisions.

#### Community Consultation

The proposed LDP was advertised for a period of six weeks, from 11 September 2020 to 23 September 2020. The advertising period was initially intended to run for three weeks, however it was extended twice in response to the high level of interest that was received from the community. The proposed LDP and various supporting documents submitted by the applicant were made available on the Town's Your Say webpage for review.

The community was invited to attend a Neighbourhood Nights event held by the proponent to learn about the proposed LDP. The Town's officers were also in attendance at the event to answer questions from the community. The Town received feedback from the community that they felt the event was not an adequate means of consultation and they requested an opportunity to ask questions of the Town in a public forum. In response to this feedback, the

## Special Council Meeting

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Town held two separate community information forums on Wednesday, 14 October 2020 and Thursday, 15 October 2020. At these forums, members of the community were provided with the opportunity to ask questions of the Town and to provide comment in regard to the proposed LDP.

During the public advertising period for the proposed LDP, the Town received a number of questions during 'Public Question Time' at the September and October 2020 Ordinary Council Meetings. Answers to the questions were published in the minutes of the meetings. Deputations on the proposed LDP were also made at the September 2020 Ordinary Council Meeting – this meeting was particularly well attended by members of the community who wished to make their opposition to the proposed LDP known to Council.

A community action group, known as the Mosman Heights Action Group Inc (MHAG), was formed in opposition to the proposed LDP. MHAG's website encouraged the community to make submissions to the Town on the proposed LDP and offered a range of pro-forma submissions, of varying lengths, that could be used as a basis for submissions.

Following the closure of the public advertising period on 23 October 2020, the Town did not remove the information on the proposed LDP from its website. Six submissions, including petitions, were received after the closing date, which the Town has accepted. Clause 51(b) of Part 6 of the Deemed Provisions provides that the Town may consider any submissions received after the public advertising period has closed.

Overall the Town received a total of 571 submissions from the community on the proposed LDP. The breakdown of submissions received was:

- 485 submissions of general opposition.
- 80 submissions of general support.
- 6 neutral submissions.

Of the 571 submissions received, 100 of the submissions utilised the pro-formas on the MHAG website. Four submissions were petitions – three of the submissions contained a total of four signatures, and a fourth petition containing 478 signatures was tabled at the Ordinary Council Meeting on 24 November 2020. The remaining 467 submissions were unique submissions.

A table containing a detailed summary of the key issues raised in the submissions received from the community is at **Attachment 3**. The table is not intended to provide an exhaustive list of every comment raised in all 571 submissions. The comments included in the table against each issue have been provided to capture the general feeling and intent of the most common points raised. Copies of the 571 submissions received from the community can be made available to Councillors upon request. The key issues raised by the community fall under eight main themes, as set out in the table below:

SUMISSION THEMES	IN SUPPORT	OBJECTION
Proposed building height, bulk and scale	3	421

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Traffic and car parking	1	331
Proposed community benefits	44	168
Residential density/proposed dwelling yield and mix	27	254
Visual privacy impacts	-	150
Overshadowing impacts	-	127
Community amenity impacts	205	56
Other	104 submissions raised other various comments	

Consideration has been given to the submissions received, as required by clause 51 of the Deemed Provisions. The Town's consideration of the submissions is provided below in the Assessment section of this report.

### Design Review

The proposed LDP was initially submitted to the Town in late 2019. From February to July 2020, it underwent three design review sessions with the Town's Design Review Panel (DRP), in accordance with Local Planning Policy No.17 – Design Review Panel (LPP17). The minutes from the third DRP session are at **Attachment 4**. These minutes contain a summary of the advice provided by the DRP at all three sessions.

The DRP provided some positive commentary at the third design review session in July 2020 that improvements had been made since the second session, but the DRP still noted that the proposed development remains substantially different to its surrounds. The DRP also noted that a number of design elements could not be fully considered or resolved until the time a development application is lodged.

The advice provided by the DRP at the third design review meeting responded to presentation material of the proposed development design, (including architectural sketches, plans and renders), but not the proposed overarching LDP document itself. Therefore it was agreed between the Town and the DRP members that their further advice would be sought on the updated LDP document once it had been lodged.

An updated LDP document was submitted by the applicant in August 2020 and was circulated to the three DRP members for their comments. The DRP members provided written comments on the proposed LDP document, which are summarised in the *Statement of Design Advice* at **Attachment 5**. The DRP's written comments on the proposed LDP were forwarded to the applicant, who in turn made a number of amendments to the LDP document to address the comments received. However, no amendments were made in response to the DRP's comments regarding the height, scale and massing of the proposed buildings – these comments remained unresolved at this time. The Town agreed to progress with advertising the proposed LDP and gauge the community's response.

During the public advertising period for the proposed LDP, the Town went back to the DRP members to seek further clarification on the unresolved design issues. The DRP members collectively agreed to provide the following advice:

*“The panel has over the past seven months consistently raised concern at the proposed building height and massing envelopes. Recognised is the proposed heights are well beyond what is provided for in the current Local Planning Framework the panel have consistently sought demonstration of community benefit and what is considered the trade off and adequate design considerations for the increased heights. This in part recognises the site is surrounded by single residential that is unlikely to change in the foreseeable future and the resulting impact on traffic generation in a low scale neighbourhood setting. The panel has also prioritised comments that raise concern of the design implications for the proposed heights in terms for both urban design/precinct level outcomes and also the future residents in terms of building separation, overlooking and amenity – some of these details have not yet been demonstrated.*

*Concepts developed during the CRG phase of the proposal and presentations made to the first DRP depicted an imaginative, highly sustainable, publicly accessible development in the order of 6 storeys. It depicted three, appropriately separated, medium rise buildings on top of a set back podium. The list of public benefits that were to be provided in support of variations to the Scheme’s provision was more comprehensive than what we see today. Much of the intent of those elements have been diluted. These include for example the pedestrian and event focused laneway (now conflicting with traffic needs and is car focused) and the removal of a meaningful community space. These remain the outstanding overarching comments from the Panel relating to the overall proposal.”*

#### Legal Advice

The Town has sought legal advice to assist Council in its consideration of the proposed LDP against the relevant legislative and policy framework. A copy of this legal advice is provided under confidential cover at **Attachment 6**.

#### **ASSESSMENT**

As outlined above, Clause 51 of Part 6 of the Deemed Provisions provides that the Town is to consider all submissions received in respect of an LDP. It also provides that the Town is to have due regard to the matters set out in Clause 67 of the Deemed Provisions to the extent that, in the opinion of the Town, those matters are relevant.

The matters in Clause 67 of the Deemed Provisions that are considered relevant to the proposed LDP include the following:

- 1) The aims and zone objectives of LPS No.3.
- 2) The additional site and development requirements in Table 6 in Clause 32 of LPS No.3 for land zoned Centre and for the provision of car parking.
- 3) State Planning Policy 7.0 – Design of the Built Environment.

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- 4) State Planning Policy 7.3 – Residential Design Codes Volume 2 (Residential Design Codes).
- 5) State Planning Policy 4.2 – Activity Centres.
- 6) Liveable Neighbourhoods (a WAPC operational policy).
- 7) The 571 submissions received from the community.
- 8) The following general matters set out in Clause 67 of the Deemed Provisions:

b)	The requirements of orderly and proper planning including any proposed local planning scheme or amendment
m)	The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development
n)	The amenity of the locality including the following — (i) environmental impacts of the development (ii) the character of the locality (iii) social impacts of the development
r)	The suitability of the land for the development taking into account the possible risk to human health or safety
s)	The adequacy of — (i) the proposed means of access to and egress from the site (ii) arrangements for the loading, unloading, manoeuvring and parking of vehicles
t)	The amount of traffic likely to be generated by the development, particularly in relation to the capacity of the road system in the locality and the probable effect on traffic flow and safety
x)	The impact of the development on the community as a whole notwithstanding the impact of the development on particular individuals
zb)	Any other planning considerations the local government considers appropriate. In this case the advice of the Town’s DRP is considered relevant

Having regard for the matters listed above, the following considerations have emerged as being central to the determination of the proposed LDP:

- The limitations to contemplating amended primary controls in an LDP.
- The height, bulk and scale of the proposed development.
- Potential traffic and car parking impacts of the development.
- Impact of the proposed development on the community as whole.
- Planning for activity centres in metropolitan Perth.
- Investigation of any potential contamination caused by former uses on the site.

### Limitations to the Contemplation of Amended Primary Controls in an LDP

Various planning instruments, including regional and local planning schemes, state and local planning policies, structure plans, activity centre plans and local development plans, are used in the determination of development proposals in Western Australia and they sit within a hierarchy of legislation and policy. *The Planning and Development Act 2005* (Act) is the overarching piece of legislation under which all planning instruments sit.

Regional and local planning schemes are gazetted pursuant to the Act and they have considerable weight in the determination of development proposals by virtue of their statutory force. Comparatively, state and local planning policies carry less weight than planning schemes, as they do not have statutory force, and therefore decision makers are only required to have due regard for them in the determination of development proposals. The exception to this is the Residential Design Codes, which is a state planning policy that has been elevated to having statutory force, by virtue of Clause 25(1) of LPS No.3, which provides that it is to be read as part of the Scheme.

The primary statutory controls that govern the built form at the subject site are set out in:

- The provisions in Item 3 of Table 6 in Clause 32(1) of LPS No.3 for land zoned Centre.
- The provisions of the Residential Design Codes (Vol 2) relating to the R60 density code.

Volume 2 of the Residential Design Codes is a performance based planning instrument. It has a degree of flexibility that can be departed from in appropriate circumstances. It contains a range of primary controls (building height, plot ratio, setbacks, building depth and building separation) as well as numerous design elements (for example, visual privacy, solar access, natural ventilation and facade design) that need to be taken into consideration in the design of apartment buildings. 'Element Objectives' and 'Acceptable Outcomes' are provided for each individual primary control or design element. The Residential Design Codes provide that local planning instruments, including local planning policies and LDPs, can amend the 'Acceptable Outcomes' for primary controls and design elements, but in doing so, they must still be consistent with the relevant 'Element Objectives' that apply.

The proposed LDP seeks to amend some of the 'Acceptable Outcomes' for primary controls of the R60 density code as they relate to the site. The proposed amendments are as follows:

	<b>Acceptable Outcomes</b>		<b>Proposed Amendment to Acceptable Outcomes</b>	
Building Height	3 storeys		5 - 7 storeys	
Plot Ratio	0.8 : 1		2.5 : 1	
Setbacks	Minimum setback from all boundaries	4m	Ground floor setback to Manning Street	3m
			Setback from Turnbull Way	1m

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Building Separation Requirements	For buildings within site boundaries	6m - 18m	Separation between buildings within the site	10m
	To adjoining properties	9m	Separation between the Manning Street building and adjoining Wellington Street shops	5m - 8.5m

For the Town to contemplate the proposed amendments to the 'Acceptable Outcomes' for building height, plot ratio, setbacks and building separation, the proposed LDP would need to demonstrate that the 'Element Objectives' for each of these primary controls have been met. However, it is not possible to complete a full assessment against all of the relevant 'Element Objectives', and to confirm that the proposed development would still satisfy these 'Element Objectives', based on the level of information and design detail currently provided in the proposed LDP.

For example, the location of habitable and non-habitable rooms and the location and design of balconies and privacy screening is needed to assess whether the reduced building separation requirements satisfy the relevant Element Objectives. Similarly, the location and design of balconies and privacy screening for apartments facing Turnbull Way is needed to assess the reduced setbacks in this location against the Element Objectives. This information and level of design detail does not form part of an LDP and only comes with the detailed architectural drawings, floor plans and elevations contained in a development application.

It therefore follows that, because the LDP is proposing a development magnitude greater than what LPS No.3 currently contemplates, a full assessment of the proposed primary controls against the Element Objectives of the Residential Design Codes can only realistically be undertaken at development application stage. Accordingly, from a procedural perspective, some of the amended primary controls that are proposed in the LDP cannot be supported, on the grounds of insufficient information to determine their appropriateness.

Furthermore, the primary controls for building height, plot ratio and setbacks on the site are embedded in Table 6 of Clause 32(1) in LPS No.3. Clause 32(2) of LPS No.3 further provides that *"to the extent that a requirement referred to in subclause (1) is inconsistent with a requirement in the R-Codes, an activity centre plan, a local development plan or a state or local planning policy, the requirement referred to in subclause (1) prevails."* This would mean that in effect, the amended building height, plot ratio and setback requirements in the proposed LDP are voided and the requirements embedded in LPS No.3 for these controls would continue to apply and would prevail. Any amendments to these Scheme requirements can only be contemplated in the assessment of a development application pursuant to the process set out in Clause 34 of LPS No.3.

### Proposed Height, Bulk and Scale

Whilst the proposed LDP contains insufficient detail to complete a full assessment of all of the amended primary controls against the Element Objectives of the Residential Design Codes, it



does however contain sufficient information to complete a partial assessment against certain Element Objectives relating to the height, bulk and scale of the proposed development.

The height, bulk and scale of the proposed development can be determined by the massing diagrams and the various measurements in metres for building height and setbacks, provided in the proposed LDP. Further architectural design detail that will come at the development application stage is not needed to determine the appropriateness of the proposed building height, bulk and scale because:

- Building height is a simple mathematical measurement between the ground level of a site and the top of a building. There is sufficient information available in the LDP to calculate the maximum allowable building heights in storeys and metres.
- Building bulk is determined with reference to the proposed height, site coverage, plot ratio, open space, setbacks, location and shape of buildings in a proposed development. All of this information is shown in the massing diagrams and plans in the proposed LDP.
- Building scale is a measurement of the size of a building relative to the size of other surrounding buildings and structures. Scale is determined with reference to the height and massing of a proposed development in comparison to the height and massing of the existing built form within the surrounding area. This comparison can be made based on the information available in the proposed LDP.

The LDP proposes two new building envelopes for Lots 9, 10, 11, 20, 21, 50 and 411-412 Manning Street, which are five storeys and seven storeys in height. The two building envelopes are proposed to have high site coverage and a plot ratio of 2.5. Plot ratio is the ratio of the floor area of a building expressed relative to its site area and it establishes the overall massing and volume of a development.

The proposed 5-7 storey building envelopes are bounded by a laneway (Turnbull Way) and the existing commercial and retail tenancies on Wellington Street to the rear. Along all other site boundaries, the proposed 5-7 storey building envelopes adjoin a largely homogenous, single residential neighbourhood characterised by detached single storey homes, set within mature gardens on lots of an average size of 700m<sup>2</sup>. This existing built form and character of the surrounding area is not expected to change by virtue of its density coding of R17.5 to R20 in LPS No.3.

The density coding for the subject site is R60 and therefore the 'Acceptable Outcomes' for height and plot ratio that apply to it in the Residential Design Codes are three storeys and 0.8 respectively. The proposed heights of 5-7 storeys are approximately double the 'Acceptable Outcome' for height and the proposed plot ratio of 2.5 is three times greater than the 'Acceptable Outcome' for plot ratio. As outlined above, the Residential Design Codes is a performance based planning instrument and it provides flexibility for development proposals to depart from the 'Acceptable Outcomes' for primary controls, including height and plot ratio, provided that the development is appropriately designed and satisfies the Element Objectives for the primary controls that are being departed from.

Two of the Element Objectives for building height and plot ratio require consideration of the proposed height, bulk and scale of a development and its relationship to the surrounding area and context. These two Element Objectives are:

**O 2.2.1** *The height of development responds to the desired future scale and character of the street and local area, including existing buildings that are unlikely to change.*

**O 2.5.1** *The overall bulk and scale of development is appropriate for the existing or planned character of the area.*

These Element Objectives align with item (m) in Clause 67 of the Deemed Provisions, which decision makers are required to have regard for in the determination of LDPs, being:

*“The compatibility of the development with its setting including the relationship of the development to development on adjoining land or on other land in the locality including, but not limited to, the likely effect of the height, bulk, scale, orientation and appearance of the development.”*

State Planning Policy 7.0 – Design of the Built Environment (SPP7.0) advises that new development should integrate into its townscape setting, reinforcing local distinctiveness and responding sympathetically to local building forms and patterns of development. It advises that good design delivers places of a scale that responds to landform characteristics and existing built form in a considered manner, and that the scale, massing and height of new development should respond positively to that of adjoining buildings, the general pattern of heights, and the topography, views, vistas and landmarks of the place, reinforcing a coherent local identity.

At the crux of this policy advice is consideration of the existing local setting, and ensuring that new development integrates comfortably, compatibly and coherently within it. It calls for a sympathetic and positive response to existing built form and the general pattern of heights within an area.

Against this overarching policy setting in SPP7.0, Appendix 2 of the Residential Design Codes provides practical guidance on what is typically considered to be appropriate urban form for neighbourhood centres in the context of metropolitan Perth. It identifies that neighbourhood centres are typically set in low to medium rise residential areas and therefore calls for a ‘compact and cohesive urban form that complements the surrounding residential character in scale and style’, as depicted below:

**Neighbourhood centre**

**Context:** A local or neighbourhood centre within a low – medium rise residential area. Neighbourhood centres should be located within a short walk of transport and other amenities and include built form and uses that activate the **street**. Land uses within a neighbourhood centre may include residential, community facilities, local shopping and commercial activities.

**Character:** Neighbourhood centres have a compact and cohesive urban form that complements the surrounding residential character in scale and style. New **development** should contribute to the public realm by enhancing and activating the **streetscape** and contributing to creating a distinct and appealing character for the centre.

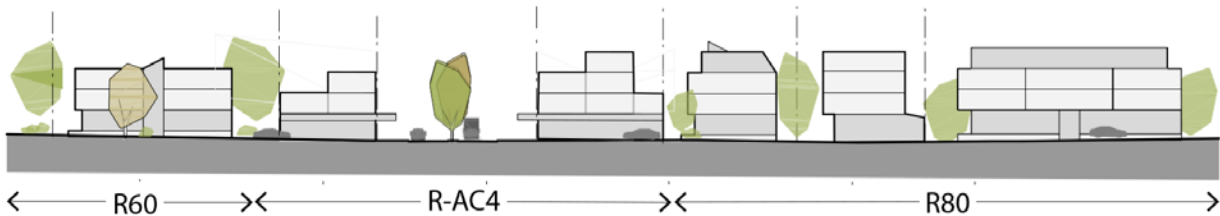


Figure 1: Extract from Appendix 2 of SPP7.3 – Residential Design Codes (Vol 2)

It can be reasonably concluded that the 5-7 storey building envelopes proposed in the LDP do not exhibit a compact and cohesive urban form, as contemplated for neighbourhood centres by the Residential Design Codes. The 5-7 storey building envelopes proposed in the LDP are more akin to the urban form that the Residential Design Codes contemplate for mid-rise and high density urban activity centres, coded R-AC3 and R-AC2.

Therefore, in this instance, Liveable Neighbourhoods is a useful WAPC planning policy to refer to, as it contains guidance and principles for the planning of urban activity centres. It promotes the widely accepted planning principle that the urban form surrounding mid-rise and high density urban centres should ‘transition’ or ‘step down’ to the existing single residential neighbourhoods that they are typically surrounded by in metropolitan Perth. This approach is depicted in the transect diagram below. It shows a gradual reduction in height and scale of the urban form through the transition area, thereby enabling a sympathetic and positive response to the low rise height and scale of the surrounding existing residential neighbourhood, at the point at which they meet.



Figure 6: Typical urban morphology transect incorporating an activity corridor

Figure 2: Extract from Liveable Neighbourhoods, Western Australian Planning Commission (Draft 2015)

The transition does not necessarily have to take place within a discrete ‘transition area’ and can also be achieved within the built form on a single site, through the gradual stepping back of storeys and an overall height and scale limit that sits comfortably within its surrounds.

The proposed LDP has gone some way towards achieving this transitional edge through the inclusion of two-storey townhouses along the Samson Street frontage, however it is not considered that a successful transition in height and scale has been achieved for the site overall. This is particularly the case for the Manning Street and Wellington Street frontages, where a 7-storey building is proposed to interface with an existing single storey residential neighbourhood that is not earmarked for change. The stepping back of the 7th storey is not considered a sufficient design response to address the sudden transition in height and scale that is proposed at this interface. The scale of the proposed building in this location is significant not just by virtue of its height, but also its length – the building is proposed to span almost the full length of the Manning Street frontage, for an approximate length of 80m.

The proposed height and scale of the Manning Street and Wellington Street frontages also needs to be considered in the context of the high site coverage that is proposed. The result of this combination is significant building bulk and limited open space within the site at ground level, which cannot be considered a sympathetic response to the surrounding single storey residential buildings in garden settings. The Manning Street frontage has been articulated so that it does not present as one continuous frontage, and whilst this does break up the building bulk to some extent, this treatment alone is not considered sufficient to reduce the collective impacts of the height, bulk and scale of the Manning Street and Wellington Street frontages on the surrounding single residential area.

Therefore with reference back to Element Objectives O 2.2.1 and O 2.5.1 relating to building height and plot ratio, it is not considered that the height, bulk and scale of the proposed building envelopes in the LDP respond to the desired scale and character of the surrounding streets and local area, which have been designated within LPS No.3 to remain a low-rise residential area.

### Planning for Activity Centres

One of the objectives for the ‘Centre’ zone in LPS No.3 is to provide a basis for future planning for centres, including the subject site, in accordance with State Planning Policy 4.2 – Activity Centres for Perth and Peel (SPP4.2). This policy applies an activity centres hierarchy to the long term planning for Perth and Peel, ranging from the Perth CBD at the top of the hierarchy through to neighbourhood and local centres at the bottom. The function, role and level of retail floorspace provision for each centre type is tailored to its position within the hierarchy.

SPP4.2 describes the role of neighbourhood and local centres as being:

*“Important local community focal points that help to provide for the main daily to weekly household shopping and community needs. They are also a focus for medium density housing. Neighbourhood and local centres play an important role in providing walkable access to services and facilities for communities.”*

Whilst the proposed LDP does not stipulate the proposed retail floorspace area for the centre, it is understood that provision for around 2,500sqm of Gross Leasable Area (GLA) is proposed. This sits comfortably within what SPP4.2 contemplates as an appropriate level of retail floorspace for a neighbourhood centre.

SPP4.2 also provides policy guidance on the urban form and movement networks within centres and it includes a number of objectives and strategies aimed at increasing employment opportunities within centres, as well as increasing the density and diversity of housing within centres to improve land efficiency, housing variety and support centre facilities.

To support the development of sustainable centres, SPP4.2 advises that local governments should allow a flexible approach to their planning to foster innovation in market response to centre development. It suggests that options to allow plot ratio, density or height variations in exchange for greater use, mix or enhanced amenity should be explored. In principle, this policy directive is supported by the Town and it is acknowledged that the performance based nature of the Residential Design Codes provides the flexibility that is called for in this instance. However, the objective of providing flexibility to facilitate the development of activity centres cannot be considered in isolation and to the detriment of other statutory requirements. With respect to the subject site, any potential development bonuses or incentives that are sought in support of delivering a vibrant retail and commercial centre must also be consistent with the Element Objectives of the Residential Design Codes.

### Potential Traffic Impacts

Items (s) and (t) of Clause 67 of the Deemed Provisions provide that the Town may have regard for any potential traffic impacts resulting from the proposed LDP. Specifically, item (s) provides the Town may give consideration to the adequacy of the proposed arrangements for vehicles to enter and exit the site, for the loading and unloading of goods and provision for the manoeuvring and parking of vehicles. Item (t) provides that consideration may be given to any increase in traffic resulting from the proposed LDP, and any impacts this may have with respect to the capacity and safety of the surrounding road network.

The applicant submitted three traffic and transport reports with the proposed LDP to assist the Town in its consideration of the above matters. The reports were completed by a traffic and transport planning consultancy, Flyt Pty Ltd. The Town commissioned an independent peer review of these reports by its own appointed traffic and transport planning consultant, Transcore, to assist in the review of the reports. Transcore provided comments and advice in a series of emails, which are summarised in **Attachment 7** for ease of reference.

The peer review has recommended that additional information, modelling and analysis be provided to support some of the traffic arrangements proposed and to assess the extent of any impacts on the surrounding area. The key recommendations of the peer review are:

- Traffic counts for Wellington Street, Manning Street and Samson Street should be taken, to establish the available capacity of the surrounding road network and quantify any traffic impacts of the proposed LDP on these roads.

- The estimated vehicles numbers on Turnbull Way appear to have been underestimated, by virtue of an underestimation of the trip generation numbers for the retail and commercial component. It is thought that vehicle numbers on Turnbull Way could be in the order of 2,000 to 3,000 vehicles per day. Further traffic modelling is recommended to address this item.
- In the event that vehicle numbers on Turnbull Way are in the order of 2,000 to 3,000 vehicles per day, a 7m wide road pavement is recommended.
- It is considered that Turnbull Way can operate as a shared space between vehicles and pedestrians, provided that it is widened to 7m and service vehicles are scheduled to access the site outside of peak pedestrian times.
- Further information is requested to assess the suitability and safety of the proposed 90 degree car parking bays on Manning Street. It would need to be established that Manning Street is a relatively low speed and low traffic environment, and that the proposed 90 degree parking satisfies the requirements of AS2890.5 in order for there to be no safety concerns.
- Consultation with the Public Transport Authority and Transperth is recommended to confirm support for the proposed on-street bus bay.

The Town has not required the applicant to address the advice provided by Transcore at this point in time. Depending on the outcome of Council's determination of the proposed LDP, and in the event that the applicant is required to revise the development proposal for the site to address the impacts of height, bulk and scale, then this will likely reduce the dwelling yield for the site, which in turn will reduce the number of vehicle movements. Therefore it would be premature to undertake the additional modelling and analysis requested by Transcore until such time that the Council's determination of the LDP is known.

Further to the above, and in light of the feedback received in the peer review that the number of vehicles on Turnbull Way could be in the order of 2,000 to 3,000 vehicles per day, it is recommended that the potential impacts of vehicle noise on existing and future residential dwellings in the immediate vicinity should be considered.

It is unusual for a road carrying in the order of 2,000 to 3,000 vehicles per day to be situated directly adjacent to and within a few metres of residential dwellings. Laneways such as Turnbull Way usually only carry up to 300 vehicles per day<sup>2</sup>, so mitigation of vehicle noise impacts from laneways is not usually a planning consideration. However, in this instance the increase in traffic numbers on Turnbull Way warrants consideration of noise impacts to ensure existing and future residents can maintain a reasonably expected level of residential amenity.

It is therefore recommended that the applicant be advised to undertake an acoustic study, to measure and assess the level of noise impacts on the surrounding residential area, and advise if any building or road pavement design treatments are required to mitigate the impacts. The methodology for the study should be agreed to by the Town.

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<sup>2</sup> Liveable Neighbourhoods (Draft 2015, Western Australian Planning Commission)

### Car Parking Supply

Determining the car parking supply for the proposed development based on the anticipated actual demand for car parking is supported in principle by both the Town and Transcore. Clause 32(1) of LPS No.3 provides the statutory framework for car parking supply to be determined based on forecast actual demand, rather than the more generalised car parking requirements set out in Schedule 1 of LPS No.3.

This approach is consistent with a recently released draft '*Local Government Car Parking Guideline*' document issued by the Western Australian Local Government Association (August 2020). This guideline acknowledges that the conventional car parking rates in local planning schemes are not always optimal, as they are usually based on predicting peak parking demand and therein can cause a number of issues including underused parking bays in non-peak periods, more traffic, air and noise pollution and sub-optimal use of land and built form. The guideline encourages local governments to have regard for relevant considerations such as reciprocal parking arrangements and current and emerging trends that are influencing the demand for car parking when determining the appropriate level of car parking provision for new developments.

Notwithstanding this, Transcore's peer review of the proposed LDP advises that the proposed parking supply of 1 bay per 50sqm of gross floor area for the retail and commercial land uses may not be adequate. Further modelling and empirical evidence from comparable retail and commercial centres in Perth has been recommended to guide the level of car parking supply for the proposed development. Further analysis to support the proposed reciprocal use of car parking bays between residential visitors and the retail and commercial uses has also been recommended.

Item 5(g) in Table 6 of Clause 32(1) of LPS No.3 provides that concessions in the level of car parking supply based on actual demand are to be considered pursuant to Clause 34 of LPS No.3. This clause requires that any such concessions are to be considered in respect of a development application, and it does not contemplate that car parking concessions can be considered in an LDP. It is therefore recommended that consideration of any concessions sought in relation to the proposed level of car parking supply based on actual demand be deferred until development application stage.

### Assessment of Potential Contamination from Past Use of the Site

Item (r) of Clause 67 of the Deemed Provisions provides that the Town may consider the suitability of the land for the development, taking into account the possible risk to human health or safety, in its determination of the proposed LDP.

Submissions received during the public advertising period for the proposed LDP flagged that the site had previously been occupied by an Ampol service station and car repair workshop between circa 1960 and 1980. A review of aerial photography from this period indicates that this land use may have been present. It is therefore recommended that a site assessment be undertaken to determine the extent of any remnant underground infrastructure or residual hydrocarbon soil contamination from the former use of the site as a service station. In the event that any contamination is found, remediation may be required to ensure there is no risk to human health and that the site is fit for the uses proposed in the redevelopment.

Impacts on Local Amenity and the Community as a Whole

Items (n) and (m) of Clause 67 of the Deemed Provisions provide that the Town is to have due regard for the amenity of the locality and the impact of the development on the community as a whole, notwithstanding the impact on particular individuals, in its determination of the proposed LDP.

When considering the impacts of a proposed development on local amenity or the community as a whole, decision makers should be informed by any submissions received from the local community. The Western Australian State Administrative Tribunal (WASAT) has, over the years, helped shape the way amenity impacts are defined and assessed in planning practice. It has established that local communities have a central role to play in defining the amenity of their local area, as evidenced by the following conclusions drawn from WASAT cases:

*“Amenity can be defined as the sum of the expectations of the residents concerning the quality of their residential environment as determined by the character of the area, its appearance and the land uses.” (Cipriano and City of Perth WASAT 20 1979)*

*“In undertaking [the] objective inquiry [as to the character of the area that represents the state of amenity] a specialist planning tribunal is assisted not only by the expert opinions of town planners, but also by the views of residents. Indeed, residents of a locality are often well placed to identify the particular qualities and characteristics which contribute to their residential amenity.” Canning Mews Pty Ltd v City of South Perth [2005] WASAT 272; (2005)*

Equally WASAT has also established that an objective and evidence based approach must be taken by decision makers when considering any impacts identified by a community in relation to development proposals, as highlighted in the following cases:

*“[Decision makers] must distinguish between what people perceive as impacts and the reality of the impacts and they must be satisfied that there is a factual or realistic basis to fears about impacts on amenity.” (Woolworths and the City of Joondalup SAT 41 2009)*

*“...the determination of amenity must begin with evidence of the objective character of the neighbourhood and then only assess the views of the residents as factors that confirm or deny the objective assessment.” (Tempora Pty Ltd v Shire of Kalamunda (1994) 10SR (WA) 29)*

Therefore when considering the views of the local community, decision makers are required to make an objective judgement as to whether those views are reasonable, capable of rational justification (that is, likely to held by an ordinary person) and not born out of irrational fears or perceptions. The subjective views of a community are generally taken to be reasonable when they have been informed by expectations drawn from planning schemes and controls.

The submissions received from the community during the public advertising of the proposed LDP identified eight key areas of interest or concern, relating to impacts of the proposed LDP on local amenity and the community as a whole. Each of these areas is considered below in the



context of whether the issues raised are reasonable, with reference to the guidance from WASAT outlined above.

### 1. Proposed Building Height, Bulk and Scale

The submissions received from the community point towards a consensus that the height, bulk and scale of the proposed development is not responsive to the character and context of the surrounding residential area. Concerns were raised about negative visual amenity impacts and the inconsistency of the proposed height, bulk and scale of the development with the surrounding residential streetscape. Some submissions identified the need for the proposed built form to be 'graduated' or have additional setbacks above the height of the existing surrounding residential dwellings, to reduce bulk impacts and better integrate with the local context of the neighbourhood.

The concerns raised by the community in relation to building height, bulk and scale are consistent with the conclusions drawn in the Assessment section of this report that the height, bulk and scale of the proposed development does not respond to the desired scale and character of the surrounding local area. The concerns raised by the community are also based on reasonable expectations drawn from LPS No.3 and the Residential Design Codes. The vast number of submissions received on this matter would also indicate that the concerns are capable of rational justification, in that they are held by many people. The concerns raised by the community about building height, bulk and scale should therefore be afforded weight in the determination of the proposed LDP.

### 2. Traffic and Car Parking

The submissions received show there is significant concern in the community about increased traffic and road safety impacts, the capacity of the road network to take the increase in vehicles that will result from the proposed development and the inadequacy of the proposed level of car parking.

The Town commissioned an independent peer review of the traffic and transport reports submitted by the applicant with the proposed LDP, to assist in determining if the community concerns regarding traffic and car parking are real or perceived. The results of the peer review indicate that some of the concerns expressed by the community may be real, while others require further information and analysis to determine the extent of any impacts on the local area. This is discussed in more detail in the sections above regarding the potential traffic and car parking impacts of the proposed development.

The applicant has been provided with a copy of the advice from the peer review and (depending on how Council determines the proposed LDP) may be required to provide the additional information, modelling and analysis to further inform the Town's assessment of traffic management and car parking provision, to ensure that any negative impacts on the community from traffic and car parking are addressed in the development of the site.

### 3. Proposed Community Benefits

The submissions received from the community indicate that there are divergent views about the community benefits proposed in the LDP. 20% of the submitters that commented on the proposed community benefits are of the view that the proposed redevelopment of the site will

add vibrancy, amenity and an improved retail offering to the area. The other 80% of submitters do not support the community benefits proposed and believe they are disproportionate with the magnitude of development bonuses sought.

The extent to which the proposed community benefits should be accepted as part of a development proposal for the site will be guided by the Town's Local Planning Policy 15 (LPP15), which sets out a framework of 11 development incentives that should be provided in exchange for any development bonuses sought. The Residential Design Codes provides further guidance on this matter and states that development incentives should be weighted so that community outcomes are balanced with the benefit a developer achieves from the additional development allowed through varying the relevant development standards.

At this point in time there is insufficient detail contained in the proposed LDP to undertake a full assessment of the proposed community benefits against LPP15 and the principle of balancing the benefits to the community with the benefits gained by the developer. Further detail provided at the development application stage will be required to complete a full assessment. However, based on the level of information provided in the LDP and the information contained in this report, it can be reasonably concluded that two community benefits in LPP15 have not been met at this time – the first being the achievement of a positive endorsement from the Town's DRP and the second being the requirement for the development to exhibit a human scale when observed within its locality.

#### 4. Visual Privacy Impacts

Visual privacy is a valid consideration that needs to be taken into account when determining the impacts of a development on the amenity of a locality. A full assessment of visual privacy impacts from the proposed development on the surrounding locality cannot be completed based on the level of information provided in the proposed LDP. The location and orientation of balconies, communal open space areas and architectural treatments to provide privacy screening are needed in order to fully understand and assess any visual privacy impacts. This level of architectural detail is provided at development application stage. Accordingly the concerns of the community regarding the potential visual privacy impacts of the proposed development are duly noted and will be afforded proper consideration in the event that the proposed development progresses to development application stage.

#### 5. Overshadowing Impacts

Overshadowing is another valid consideration that needs to be taken into account when determining the impacts of a development on the amenity of a locality. A full assessment of overshadowing impacts from the proposed development on the surrounding locality cannot be completed with confidence based on the level of information in the proposed LDP. Any overshadowing impacts will be assessed at development application stage. Provision of adequate solar access to adjoining residential properties is one of the 'Element Objectives' in the Residential Design Codes, and the height of new development on the subject site will be required to demonstrate that it meets this 'Element Objective'.

*6. Proposed Density and Dwelling Mix*

There was some support for the diversity in housing options that the proposed development will bring the area, however the majority of submitters on this topic do not support the number and mix of new dwellings proposed.

A full assessment of the proposed number and mix of dwellings cannot be completed based on the level of information contained in the LDP, which only provides minimum targets for certain dwelling types. Whilst it is understood that the proponent of the LDP is proposing to add around 90 to 100 new dwellings to the subject site, this is not explicitly provided for in the proposed LDP and will only be confirmed at development application stage.

Notwithstanding this, the principle of improving housing diversity with a range of dwelling types and sizes that are underrepresented in the area is consistent with the directives of state planning and housing policies.

*7. Impact on Community Amenity*

Around 20% of the submitters who commented on this topic believe that the proposed development will have a positive influence on local amenity, by potentially becoming a community focal point and hub. The remaining 80% of submitters are of the view that the proposed development will have only negative impacts on local amenity.

It is considered that some of these negative impacts are perceived impacts that are based more on fear than fact. Examples include the perception that the proposed development will lead to increased crime rates and destroy the social fabric of the existing community. There is no empirical evidence that shows contemporary apartment developments have this impact on existing communities in Perth.

Other perceived impacts concerning noise and waste collection cannot be justified simply based on the level of information provided in the proposed LDP. However, impacts concerning these matters are valid considerations and will be considered at the development application stage through the assessment of acoustic and waste management plans.

Other impacts raised by the community about the size, location and suitability of the public spaces proposed in the LDP are noted. As the provision of public spaces is a community benefit that is required by LPP15 to be provided in exchange for any development bonuses sought, the Town will give consideration to this at the appropriate time, against the overarching principle that the benefits of any development bonuses provided should be balanced with the benefits of the development to the community.

With respect to the concerns expressed by the community about the increased pressure the proposed development may have on existing infrastructure, it should be noted that this is not a reason to refuse development. State and local government are required to make provision for infrastructure upgrades to support new development and financial contributions towards such upgrades can only be requested of developers where there is a clear need and nexus between the proposed development and the demand placed on infrastructure. State government infrastructure providers such as the Department of Education and the Water

Corporation have their own means of forecasting and prioritising infrastructure upgrades in developing communities.

#### 8. Other Comments

A range of other comments that sit outside of the above key areas were raised in the submissions received – these other comments are summarised in **Attachment 3**. The majority of these comments have been addressed either directly or indirectly in this report.

#### **COMMENT**

In forming a recommendation on the proposed LDP, the aims and zone objectives of LPS No.3 are an appropriate point of reference to remind the Town of what its planning intentions are. LPS No.3 provides the statutory blueprint for the future development of the Town, and it is reasonable for the community and developers alike to rely on LPS No.3 to form expectations about how the Town will develop, adapt and evolve over time.

With reference to the objectives for the Centres zone, it is clear that LPS No.3 intends to facilitate the development of vibrant mixed-use activity centres that provide employment opportunities and improve the urban amenity of the Town. It is acknowledged with reference to the Residential Design Codes, which form part of LPS No.3, as well as SPP4.2 concerning the development of activity centres, that the statutory and policy framework exists for the Town to take a flexible approach to the planning of activity centres, including consideration of potential development bonuses in exchange for the delivery of vibrant and sustainable retail centres.

However, against this backdrop of objectives for activity centres, the objectives for the Residential zone of LPS No.3 also require non-residential uses to be developed in a way that is compatible with and complementary to residential development. The zone objectives also require development to occur in sympathy with the established streetscape in residential precincts, taking into consideration the intended density and zoning for any locality, and they call for residential areas to be protected from any interaction between different intensities of use, which could be objectionable or detrimental to the desired amenity of a neighbourhood. These objectives for residential areas within the Town are further reinforced by the overarching aims of LPS No.3, which require the amenity of residential areas and streetscapes throughout the Town to be maintained and enhanced.

It therefore follows that a balance needs to be struck between facilitating the redevelopment of a vibrant and active neighbourhood centre at the subject site, whilst also ensuring that this is executed in a way that is sympathetic and responsive to the surrounding residential environment. The Town's assessment of the proposed LDP against certain 'Element Objectives' of the Residential Design Codes and the submissions that have been received from the community demonstrate that this balance has not been achieved. Specifically, the height, bulk and scale of the built form in the proposed LDP is not compatible with the surrounding residential area, as required by the aims and objectives of LPS No.3, the Residential Design Codes, SPP7.0 – Design of the Built Environment and the general principles of orderly and proper planning.

In light of the above, it is recommended the proposed LDP be refused and that the applicant be advised that any proposed departures from the primary controls for the R60 density code or car parking requirements that apply to the site should instead be submitted for consideration as part of a development application.

It is further recommended that the comments and advice from the peer review of the traffic and transport reports be addressed in any future development application and that a site investigation and assessment be undertaken to determine the extent (if any) of any potential contamination at the site and remediation required to ensure it is fit for its intended purpose.

### **DETAILS**

#### **Strategic Plan Alignment**

The recommendation of this report is consistent with “Enhancing our Town” key strategic objectives of the Town’s Strategic Community Plan 2013-2023.

#### **Statutory Implications**

Relevant legislation:

- *Planning and Development Act 2005.*
- *Planning and Development (Local Planning Schemes) Regulations 2015.*
- Town of Mosman Park Local Planning Scheme No.3.
- State Planning Policy 7.3 – Residential Design Codes (Volume 2).

If Council decides to either refuse or require modifications to the proposed LDP, the applicant will have the right to have that decision reviewed by the State Administrative Tribunal (SAT) in accordance with Clause 54 of Part 6 of the Deemed Provisions and Part 14 of the *Planning and Development Act 2005*.

#### **Policy Implications**

Relevant policy framework:

- State Planning Policy 7.0 – Design of the Built Environment.
- State Planning Policy 4.2 – Activity Centres.
- Liveable Neighbourhoods (a WAPC operational policy).
- Local Planning Policy No.15 – Development Standards for Multiple Dwellings, Mixed-Use Developments and Non-Residential Developments.
- Local Planning Policy No.17 – Design Review Panel.

#### **Financial Implications**

Nil.

#### **Community Engagement**

Public advertising of the proposed LDP was undertaken in accordance with Clause 50 of the Deemed Provisions.

## 5.2 MOTION

Councillor Baird moved a Motion to direct the CEO to take immediate action to implement and communicate the decision made by Council in respect of item 5.1 at this Special Council Meeting.

### COUNCIL RESOLUTION

#### SCM-006-2020

**Moved:** COUNCILLOR A BAIRD  
**Seconded:** COUNCILLOR G CAREY

That Council:

Pursuant to Clause 16.3 of the Town of Mosman Park Meeting Procedures 2020, directs the CEO to take immediate action to implement and communicate the Council decision made in respect of agenda item 5.1 from the 30 November 2020, Special Council Meeting agenda - Proposed *Local Development Plan for the Wellington Street Neighbour Centre – Lots 9, 10, 11, 20, 21, 50 and 411-412 Manning Street and Lots 2, 3, 570, 572, 573, 574, 575, and 576 Wellington Street, Mosman Park.*

#### Reason

The Town's Meeting Procedures Local Law 2020 provides at C.16.3(2) that unless Council resolves as suggested above (or if a revocation motion is received) *"a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made."*

Without a resolution of Council as suggested above, it will be necessary to wait until after lunchtime on Tuesday 1 November 2020, to advise the community of the decision – through the Town's website, socials or otherwise.

**CARRIED 5/0**

## 6. MEETING CLOSURE

The Presiding Member declared the meeting closed at 6.33pm