

12.2 Local Development Plan - 384 Berwick Street, East Victoria Park

Location	East Victoria Park
Reporting officer	Senior Planning Officer
Responsible officer	Manager Development Services
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none"> 1. Attachment 1 - Local Development Plan - 384 Berwick Street [12.2.1 - 1 page] 2. Attachment 2 - Applicant's Cover Letter - 384 Berwick Street [12.2.2 - 6 pages] 3. Attachment 3 - Summary of Submissions - 384 Berwick Street [12.2.3 - 2 pages] 4. Attachment 4 - Response to Submissions - 384 Berwick Street [12.2.4 - 2 pages]

Landowner	Berwick EVP Pty Ltd
Applicant	Rowe Group Pty Ltd
Application date	27 July 2021
DA/BA or WAPC reference	5.2021.384.1
MRS zoning	Urban
TPS zoning	Residential
R-Code density	Residential R60
TPS precinct	Precinct 12 – East Victoria Park
Use class	Grouped Dwellings and Multiple Dwellings
Use permissibility	'P' (permitted) use
Lot area	11,027 square metres
Right-of-way (ROW)	Not applicable
Municipal heritage inventory	Not applicable
Residential character study area/weatherboard precinct	Not applicable

Surrounding development

Hillview Bushland to south-east; Edward Millen House and Park including associated buildings to the north-east; Carson Street School to the north-west. The residential development on the opposite side of Berwick Street is zoned Residential R20.

Recommendation

That Council:

1. Approves the Local Development Plan submitted by Rowe Group Pty Ltd (DA Ref: 5.2021.384.1) at No. 384 (Lot 3) Berwick Street, East Victoria Park, pursuant to Schedule 2, Part 6, clause 52(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Publish the adopted Local Development Plan on the Town's website in accordance with Schedule 2, Part 6, clause 55 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
3. Those persons who lodged a submission regarding the application be advised of Council's decision.

Purpose

The application is referred to Council for determination, as no delegation exists for the Council's officers to determine a Local Development Plan.

In brief

- The Minister for Planning approved Scheme Amendment No. 78 to the Town's Town Planning Scheme No. 1 on 12 December 2019, which rezoned the land at No. 384 Berwick Street, East Victoria Park from Residential R30 to Residential R60. It is a requirement of the Scheme that a Local Development Plan be approved prior to development of the site.
- The purpose of the Local Development Plan is to coordinate development on the lots to ensure good built form outcomes.
- Approval was granted by the Western Australian Planning Commission (WAPC) on 21 July 2020 and 9 October 2020 for the creation of 40 survey-strata lots, subject to conditions. Condition 5 requires the preparation of a Local Development Plan which addresses streetscape matters, design elements, setbacks, open space, visitor parking locations, pedestrian access and tree planting. It is the responsibility of the Town to clear this condition.
- The Joint Development Assessment Panel on 17 May 2021 granted development approval for the construction of 39 Grouped Dwellings and 32 Multiple Dwellings on the subject site. The development approval coordinates development across the site assuming all lots are developed as per the development approval.
- While it is anticipated that development of the site will be undertaken in accordance with the development approval of 17 May 2021, there is no obligation for the landowner to do so. Accordingly, there is a risk that the site may not be developed in a coordinated manner as per the development approval, and the lots may instead be created, sold and developed independently from one another. To address this possibility, it is necessary for the Local Development Plan to be approved to co-ordinate future development of the lots.

Background

1. The Minister for Planning approved Scheme Amendment No. 78 to the Town's Town Planning Scheme No. 1 on 12 December 2019 to:
 - 1.1 *Modify the Town Planning Scheme No. 1 Precinct Plan P12 'East Victoria Park' by recoding the property at No. 384 (Lot 3) Berwick Street, East Victoria Park from R30 to R60.*
 - 1.2 *Modify Town Planning Scheme No. 1 Precinct Plan 12 'East Victoria Park' by inserting the following development standards for development of the property at No. 384 (Lot 3) Berwick Street, East Victoria Park –*
In relation to the land at No. 384 (Lot 3) Berwick Street, East Victoria Park, the following provisions apply to the development of land –
 - (a) A Local Development Plan is to be prepared and approved prior to the commencement of any development on the site.*
 - (b) Vehicle and/or pedestrian access to be provided to/from Berwick Street, Bailie Avenue and/or Carson Street, and to be supported by a Traffic Impact and Road Safety Assessment report.*
2. The Town received a subdivision referral in April 2020 from the WAPC for the creation of 41 lots serviced by one common property lot (lot 41). 39 lots were proposed to be developed for grouped dwellings with lots ranging in size from 114m² to 171m². Lot 9 was proposed as a freehold lot to be developed for multiple dwellings with a lot size of 1,682m². Subdivision approval was granted on 21 July 2020 subject to a number of conditions and advice notes.
3. The Town received a subsequent subdivision referral from the WAPC in July 2020 for the creation of two lots, one lot being for the grouped dwellings (lot 1) and the other lot being for the multiple dwellings (lot 2). Approval was granted on 9 October 2020 subject to several conditions and advice notes.
4. Condition 5 of the conditional subdivision approval for the creation of 41 lots requires a Local Development Plan (LDP) to be prepared and approved, and reads as follows:
"A Local Development Plan being submitted and approved for lots 1-41 that addresses, but is not limited to, the following:
 - (i) streetscape matters including street setbacks, fencing, garage locations, primary frontages;*
 - (ii) design elements including roof pitch and building height;*
 - (iii) setbacks to boundaries and public spaces;*
 - (iv) open space;*
 - (v) visitor parking locations, pedestrian access, and tree planting; and*
 - (vi) design and overall height of proposed Lots 10 to 19 that minimises impact on views from the formal approach to State Registered Place 2176 Edward Millen Home (fmr);*
to the specification of the Town of Victoria Park and satisfaction of the Western Australian Planning Commission".
5. The Joint Development Assessment Panel on 17 May 2021 approved the construction of 39 Grouped Dwellings and 32 Multiple Dwellings on the subject site. The approved development is consistent with the proposed Local Development Plan.
6. The old National Archives Building was demolished in September 2020.
7. The Council at the 21 September 2021 Ordinary Council Meeting resolved to approve an application for retrospective approval of a temporary sales office, signage, and landscaping on the site.

Application summary

8. A Local Development Plan (LDP) is a mechanism to coordinate and assist in achieving better built form outcomes by linking lot design to future development. Decision makers are to give 'due regard' to an approved LDP when making decisions in respect to the development of land. Once approved, a LDP is valid for a duration of 10 years.
9. LDPs are used in limited situations to guide the design and development of small or constrained lots or to achieve design outcomes. In this case, the requirement to prepare a LDP was a condition of both the Scheme Amendment No. 78 and the subdivision approval.
10. The LDP submitted (see Attachment 1) addresses the following development matters:
 - Dwelling orientation;
 - Setbacks on ground and first floors to each common accessway and other boundaries;
 - Building height;
 - Fencing;
 - Pedestrian access;
 - Vehicle access and garage locations;
 - Outdoor living area locations;
 - Retention of established trees; and
 - Visitor bay locations.

Applicants submission

11. In correspondence dated 2 June 2021, the applicant provides an overview of the proposal (see below and attachment 2 for relevant content). The applicant has advised the following:

"On 17 May 2021 the Metro Inner South Joint Development Assessment Panel ('JDAP') issued development approval for multiple and grouped dwellings at the subject site ('Approved Development'). We now submit this amended LDP for the Town's consideration, which has been slightly updated to reflect the Approved Development.

Given a development has already been approved at the subject site, we understand the intention of the LDP is to 'future-proof' the subject site for any future development. Notwithstanding our Client's intention is to implement the Approved Development in full as expeditiously as possible, the LDP will ensure the subject site continues to operate functionally and holistically, and that the design of the built form is consistent across the subject site.

Proposed Local Development Plan

The subject site (proposed LDP) is zoned 'Residential' under the provisions of LPS1 and assigned a density coding of R60. The proposed LDP is consistent with this density and facilitates the residential development of the subject site.

The following provides a brief overview of the provisions included in the proposed LDP.

- Dwelling Orientation

The LDP prescribes dwelling orientation toward Berwick Street, Edward Millen Reserve and the 12m common accessways. Dwelling on lots addressing the reserve are required to have their outdoor living area adjacent to the reserve.

This ensures Berwick Street is activated by affording Lots 1 – 8 direct pedestrian access from the street. It also allows for an attractive outlook to Edward Millen Reserve which enables passive surveillance and fosters social interaction.

- Street Setbacks

The LDP outlines a minimum primary setback of 3.0 metres to Berwick Street, and a range of minimum ground floor primary setbacks from nil to 2.0 metres to the common accessways. The street setback provisions are consistent with the Approved Development.

The Berwick Street setback is consistent with the R60 primary street setback under State Planning Policy 7.3 Residential Design Codes Volume 1 ('R-Codes Volume 1'), in order to maintain consistency with the emerging streetscape of the locality. The setbacks to the common accessways represent a minor variation to R-Codes Volume 1 provisions.

The widths of the common accessways, approved through the Subdivision Approval, provide adequate space for pedestrian access, visitor bays, landscaping, bin collection and servicing, therefore accommodating and appropriate for reduced street setbacks.

- Lot Boundary Setbacks

The LDP proposes a minimum 3.0 metre setback to Edward Millen Reserve on the ground floor. This setback provides space for outdoor living areas with an aspect over Edward Millen Reserve.

The LDP provides for nil setbacks to the Hillview Community Bushland for the multiple dwellings, and a minimum 1.0 metre setback for the grouped dwellings. For all other lot boundaries, the LDP provides for nil side setbacks behind the street setback lines.

The nil lot boundary setbacks allow for greater efficiency in dwelling design, as well as to maximise the private open space area at the rear of the grouped dwellings. The nil setbacks for future Lot 9 are permitted provided that windows and articulation of the built form are incorporated into the façade.

The lot boundary setback provisions are consistent with the Approved Development.

- Building Height

The LDP proposes a variation to the building height provisions set out in LPS 1 P12 Precinct. A maximum building height of 12 metres (3 storeys) for grouped dwellings and 15 metres (4 storeys) for multiple dwellings is proposed. in lieu of 8.6 metres. The building height provisions are consistent with the building height of the Approved Development.

The proposed height variation for grouped dwellings is consistent with the provisions of the R-Codes Volume 1. We have been advised by the Department of Planning, Lands and Heritage ('DPLH1 that a provision allowing for 12-metre building height was removed from Amendment 78 prior to Ministerial approval. as it was mistakenly considered "unnecessary" and a "duplication" of the R-Codes Volume 1 provision.

Previous discussions with both the DPLH and the Town confirm that a 12 metre /3 storey building height at the subject site is contemplated by and the intention of both authorities. We therefore consider the proposed height variation for grouped dwellings to be acceptable.

The proposed height variation for multiple dwellings is designed to accommodate the significant difference in levels across the subject site.

- Additional Provisions

The LDP also includes provisions which address the following matters:

- Streetscape provisions to ensure dwellings suitably address street frontages and public open space through high quality architectural design;
- Location of retained established trees;
- The construction of uniform fencing adjacent to public open space by developers; and
- Minimum building height provisions to maintain visually cohesive streetscapes and ensure two-storey boundary walls are built abutting one-another."

12. The applicant's submission is contained in full within Attachment 2.

Relevant planning framework

Legislation	<ul style="list-style-type: none"> • Planning and Development Act 2005 • Planning and Development (Local Planning Schemes) Regulations 2015 • Town Planning Scheme No. 1 • TPS1 Precinct Plan 12 – 'East Victoria Park Precinct'
State Government policies, bulletins or guidelines	<ul style="list-style-type: none"> • Framework for Local Development Plans • Residential Design Codes Volume 1 • Residential Design Codes Volume 2
Local planning policies	<ul style="list-style-type: none"> • Local Planning Policy No. 25 – Streetscape • Local Planning Policy No. 39 – Tree Planting and Retention
Other	Not applicable.

General matters to be considered

TPS precinct plan statements	<p>The following statements of intent contained within the precinct plan are relevant to consideration of the application.</p> <p><i>"Redevelopment shall be consistent with existing style, character and scale of dwellings throughout the precinct.</i></p> <p><i>New buildings shall be set back from all boundaries although variations reflecting existing character of development will be permitted. Buildings shall be set in landscaped surrounds and mature trees shall be preserved. Design guidelines will apply throughout the precinct and specific controls will be progressively introduced for pockets of identifiable character housing.</i></p>
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	<p><i>While the effect of traffic should be minimised through appropriate design measures, all development shall face the street in the traditional manner.</i></p> <p><i>Priority will be given to ensuring new development, particularly infill and development at higher densities, does not result in the undue loss of privacy or amenity for existing residents."</i></p>
Local planning policy objectives	<p>The following objectives of Local Planning Policy No. 25 – Streetscape are relevant in determining the application.</p> <ul style="list-style-type: none"> • <i>"To preserve or enhance streetscape character, by ensuring that development is sensitive to the streetscape and in keeping with the established and desired character of the locality.</i> • <i>Development should reinforce desired built form characteristics for the locality and should ensure that the appearance of development is of high quality and contributes positively to the streetscape.</i> • <i>Sustainable designs and innovative designs are encouraged, however regard is still to be given to maintaining design compatibility with the existing and desired streetscape character.</i> • <i>All development is to promote safety and security for occupants and the community by having regard to Crime Prevention Through Environmental Design (CPTED) principles."</i>
Deemed clause 67 of the Planning and Development (Local Planning Schemes) Regulations 2015	Not applicable.
Urban forest strategy	Not applicable.

Compliance assessment

13. Schedule 2, Part 6 of the *Planning and Development (Local Planning Schemes) Regulations 2015* details the process for assessing and determining an LDP, including the following:

"51. Consideration of submissions –

The local government –

must consider all submissions in relation to a local development plan made to the local government within the period specified in a notice advertising a proposed local development plan; and

may consider submissions in relation to a local development plan made to the local government after that time; and

is to have due regard to the matters set out in clause 67(2) to the extent that, in the opinion of the local government, those matters are relevant to the development to which the plan relates.

52. Decision of local government

(1) Following consideration of a proposed local development plan, including any amendments made to the plan to address matters raised in submissions, the local government must –

(a) approve the local development plan; or

(b) require the person who prepared the local development plan 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 to approve the plan.

(1A) The local government must not approve a local development plan under subclause (1) if –

(a) the local development plan amends or replaces a deemed-to-comply provision of the R-Codes; and

(b) under the R-Codes, the Commission's approval is required for the local development plan; and

(c) the Commission has not approved the local development plan.

(2) The local government is to be taken to have refused to approve a local development plan if the local government has not made a decision under subclause (1) –

(a) if the plan was advertised – within the period of 60 days after the last day for making submissions specified in accordance with clause 50(5) or a longer period agreed between the local government and a person other than the local government who prepared the plan.

(b) if the plan was not advertised – within the period of 60 days after the resolution not to advertise the plan was made by the local government or a longer period agreed between the local government and a person other than the local government who prepared the plan.

54. Review

A person who prepared a local development plan may apply to the State Administrative Tribunal for a review, in accordance with the Planning and Development Act 2005 Part 14, of a decision by the local government not to approve the local development plan."

14. As per the Residential Design Codes of WA (R-Codes), the development of land for residential purposes is to be in accordance with the requirements of the R-Codes. The R-Codes do, however, permit a Local Development Plan to amend or replace certain deemed-to-comply requirements of the R-Codes. Those deemed-to-comply requirements of the R-Codes proposed to be amended through the Local Development Plan are detailed below.

Strategic alignment

Civic Leadership	
Strategic outcome	Intended public value outcome or impact
CL02 - A community that is authentically engaged and informed in a timely manner.	Community consultation was undertaken on the Local Development Plan to provide the community with the opportunity to make comments.

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The Local Development Plan allows for different housing options and provides guidance regarding urban design outcomes.

Engagement

External engagement	
Stakeholders	Owners and occupiers within a 200 metre radius of the site.
Period of engagement	12 August 2021 to 26 August 2021 (14 days), as per Local Planning Policy No. 37 – Community Consultation on Planning Proposals.
Level of engagement	2. Consult
Methods of engagement	<ul style="list-style-type: none"> Letters to owners and occupiers within a 200 metre radius of the site; Sign on site; Southern Gazette Newspaper Notice.
Advertising	As above.
Submission summary	Two submissions were received which provided general comments.
Key findings	A summary of the submissions received during the community consultation period can be found in Attachment 3. The applicant's response to submissions can be found in Attachment 4.

Risk management considerations

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Not applicable.					
Environmental	Not applicable.					
Health and safety	Not applicable.					
Infrastructure / ICT systems/ utilities	Not applicable.					

Legislative compliance	The proponent has the right of review to the State Administrative Tribunal against Councils decision.	Moderate	Unlikely	Medium	Low	Accept
Reputation	Negative public perception towards the Town dependent upon the decision.	Moderate	Likely	Medium	Low	Accept
Service delivery	Not applicable.					

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	Not applicable.

Analysis

15. Under the applicable planning framework, local governments may vary some of the deemed-to-comply provisions of the R-Codes via Local Planning Policies and/or Local Development Plans. The Town's Local Planning Policy – Streetscape, for example, increases the deemed-to-comply primary street setback requirement applicable under the R-Codes.
16. The LDP proposes a variation to the street setback requirement to those lots fronting Berwick Street (Lots 1 – 8) as follows:

Development Provision	R-Codes	LPP 25 - Streetscape	Proposed LDP
Primary Street Setback	2m minimum	3m minimum 6m average	3m minimum No average

17. With regards to the primary street setback, due to the nature of the land adjoining the subject site (bushland and school directly adjoining) no established street setback pattern exists to Berwick Street on this side of the street. The reduced setbacks are therefore not expected to have a detrimental impact on the streetscape character and the proposed setback is acceptable in this instance.

18. The variation proposed to the primary street setback is considered to be appropriate for the subject site and its context, and it is recommended that Council approves the proposed Local Development Plan.
19. The other development standards contained in the LDP are supported and will achieve better design outcomes than would be the case under the R-Codes.
20. It is noted that the standards in the LDP are consistent with the development plans approved by the JDAP ie. the provisions outlined in the LDP reflect the approved development.
21. Approval of the LDP will ensure the co-ordination of development of the lots, particularly if the lots are not to be developed simultaneously as per the JDAP's development approval. Accordingly, it is recommended that Council approve the LDP.

Further considerations

22. The provision of public art was taken into consideration with the JDAP approval, and in line with 'Council's Local Planning Policy 29 - Public Art Private Developer Contribution' is secured by way of a planning condition.

In accordance with [WAPC's Manner and Form Framework for Local Development Plans \(August 2015\)](#) public art is not a matter that is typically included in Local Development Plans.

23. Tree planting is considered at development approval stage and not typically included in Local Development Plans.
24. In relation to the JDAP approval, the provision of new tree plantings in association with the grouped dwellings, was assessed as compliant with Council's Local Planning Policy 39 – Tree Planting and Retention (LPP 39). The provision of tree planting and landscaping has been secured by way of a planning condition on the development approval.
25. LPP 39 requires the planting of 39 medium trees on the subject site. The development proposes the planting of 1 large tree, 25 medium trees and 31 small trees.
26. Two submissions received in relation to the development application mentioned the urban heat island effect. These (and other submissions) were included in the schedule of submissions attachment to the Responsible Authority Report, and subsequently would have been considered by JDAP in its determination. No detailed analysis of the urban heat island effect was included in the Responsible Authority Report however.
27. No internal referrals took place in relation to the Local Development Plan on account that these had already taken place as part of the Development Application. The internal referrals that took place as part of the Development Application included Environmental Health Officer(s), Building Officer(s), Parks Officer(s), Street Operations Engineer(s) and Place Planning Officer(s).

COUNCIL RESOLUTION (230/2021):**Moved:** Cr Brian Oliver**Seconded:** Cr Bronwyn Ife

That Council:

1. Approves the Local Development Plan submitted by Rowe Group Pty Ltd (DA Ref: 5.2021.384.1) at No. 384 (Lot 3) Berwick Street, East Victoria Park, pursuant to Schedule 2, Part 6, clause 52(1)(a) of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
2. Publish the adopted Local Development Plan on the Town's website in accordance with Schedule 2, Part 6, clause 55 of the *Planning and Development (Local Planning Schemes) Regulations 2015*.
3. Those persons who lodged a submission regarding the application be advised of Council's decision.

Lost (0 - 9)**For:** Nil**Against:** Mayor Karen Vernon, Cr Claire Anderson, Cr Vicki Potter, Cr Ronhhda Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife and Cr Jesvin Karimi*Cr Oliver raised an alternate motion.***COUNCIL RESOLUTION (231/2021):****Moved:** Cr Brian Oliver**Seconded:** Mayor Karen Vernon

That Council:

1. Rejects the Local Development Plan submitted by Rowe Group Pty Ltd (DA Ref: 5.2021.384.1) at No. 384 (Lot 3) Berwick Street, East Victoria Park, pursuant to Schedule 2, Part 6, clause 52(1)(a) of the Planning and Development (Local Planning Schemes) Regulations 2015 due to the impact of the nil setback on the adjacent bushland.
2. Advise those persons who lodged a submission regarding the application of Council's decision.

Carried (9 - 0)**For:** Mayor Karen Vernon, Cr Claire Anderson, Cr Vicki Potter, Cr Ronhhda Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife and Cr Jesvin Karimi**Against:** Nil**Reason:**

Due to the impact of the nil setback on the adjacent bushland.