
1	SUBJECT:	Proposed Amendment No. 5 to Local Planning Scheme 12
	DIRECTOR:	Business Services
	MEETING:	Planning and Community Consultation
	MEETING DATE:	20 November 2023

Summary

Council is requested to adopt a proposed amendment to the City of Mandurah Local Planning Scheme 12 (Scheme 12). The purpose of the amendment is to correct an administrative error that occurred in 2005, where a condition of subdivision was cleared prior to the execution of a Deed of Agreement which ensured the parking constructed on Lot 1302 Port Quays remained at the benefit of the commercial tenancies on the adjacent Mix Use development on Lot 1301 Port Quays.

The amendment seeks to amend Scheme 12 so that Lot 1302 is included in the Specific Site Requirements Table 1 in Schedule 1 of Scheme 12 with the development conditions requiring the provision of a minimum of 24 parking bays to the benefit of Lot 1301 (20 for the existing commercial tenancies and 4 for the apartments approved on Strata Lot 5 of Lot 1301).

This report will demonstrate and discuss that the subject property was always intended to serve as a parking facility for Lot 1301. It is noted the proposed amendment would still allow for development to occur on Lot 1302.

It is recommended Council adopt the proposed amendment and progress to consultation.

Disclosure of Interest

Nil

Location



Property Details

Owner:	NEOM Australia PTY LTD Mahmoud Abdel Razak Elhribawy Hussein Hassan Hadi Al-Shammri
Scheme No 12 Zoning:	Local Centre
Peel Region Scheme Zoning:	Urban Development
Lot Size:	1445m ²
Topography:	Flat
Land Use:	Currently developed as a car park.

Previous Relevant Documentation

- G.22/6/20 23 June 2020 Council resolved to proceed Scheme 12 to final approval by the Western Australian Planning Commission and the Minister for Planning.
- G.18/4/19 30 April 2019 Council adopted a modified Scheme 12 and Local Planning Strategy which incorporated changes suggested by the Environmental Protection Authority.
- G.6/01/17 24 January 2017 Council adopted draft Local Planning Scheme and Strategy for forwarding to the Western Australian Planning Commission and the Environmental Protection Authority for consent to advertise the draft Scheme.
- G.22/8/16 9 August 2016 Council granted conditional approval for a Tavern at Strata Lot 5, (No 4) Port Quays. This approval was granted subsequent to the securing of Lot 1302 Port Quays for parking.
- G.30/8/01 21 August 2001 Council adopted the Northport Outline Development Plan and Design Guidelines subject to conditions.

Background

The subject property is within the 'Northport Outline Development Plan' (ODP) (*refer Attachment 1*) which was approved in 2001 and Northport Village ODP (*refer Attachment 2*). The subject property is identified as 'Retail Precinct' and indicatively showed the development, including the built form and parking area. A small portion of the area developed as parking is shown on the ODP as 'Possible Future Retail' including a note that suggests ground floor shops fronting Port Quays with residential use above the ground floor.

In December 2002, the City granted development approval for a mixed-use development, comprising of commercial tenancies and apartments on Lot 1288 Port Quays (*refer Attachment 3*). The parking relating to the residential component of the development was contained on the southern portions within the area accommodating the built form (now Lot 1301), with the parking for the commercial tenancies developed in the northern portion of the Lot (now Lot 1302) which included 45 parking bays.

In 2003, the Western Australian Planning Commission (WAPC) granted a subdivision approval separating Lot 1288 into Lots 1301 (mixed-use development and residential parking) and Lot 1302 (commercial parking). The approved subdivision included the following condition (3) requiring a legal agreement to be entered with the City of Mandurah:

"The applicant entering into an agreement with the City of Mandurah to ensure reciprocal rights are established for proposed Lot 1301 to utilise proposed Lot 1302 for car parking to the satisfaction of the Western Australian Planning Commission."

Further to condition 3 above, there was the following advice note:

"In respect to condition 3, the Reciprocal Rights agreement should also allow redevelopment over Lot 1302, provided the same number of parking bays remain available to Lot 1301."

This legal agreement was drafted; however, the clearance of the condition was issued to the applicant in 2005 prior to the agreement having been executed.

In 2016, a proposed Tavern was approved by Council for Strata Lot 5 in Lot 1301 Port Quays. While this approved development did not ultimately progress, it is important to note the proposal was not considered until the consent of the owner of Lot 1302 (at the time) for the provision of parking to the benefit of Lot 1301 was obtained. This was received and a condition requiring the formalisation of the parking agreement between Lot 1301 and Lot 1302 was added. This further demonstrates the intent for parking to be provided on Lot 1302.

The owner of Lot 1302 also owns Strata Lot 5 of Lot 1301, the City granted a change of use approval for the development of two apartments. This approval included a condition requiring the residential parking and storeroom to be provided on Lot 1302. The conditions of approval require this parking provision to be secured through a legal deed. This ground floor tenancy has had numerous applications over the past two decades, including cafes / restaurant and tavern, however, there has not been an occupancy of this tenancy. The calculation of 24 bays is based on the current commercial use parking requirements and approved residential use of Strata Lot 5 of Lot 1301.

Comment

Scheme 12 zones the subject property as Local Centre and as such, the City could receive applications to develop Lot 1302. Without the legal agreement in place, the City's ability to ensure parking provided to benefit Lot 1301 is not secured. It is considered the proposed amendment to Scheme 12 will provide greater security to the commercial tenants on Lot 1301 that access to parking will remain available.

It is considered the proposed amendment is consistent with what was intended on the site from when it was originally developed. This position is evidenced by the following:

- The approved ODP shows the subject site being developed as parking, with the possibility to develop a portion of the site;
- The original development approval shows the provision of the parking on the subject site; and
- The conditions of subdivision required a legal agreement to ensure the reciprocal access to parking to the benefit of Lot 1301 and further advised that any development should provide the same number of lots for that purpose.

The issue of the clearance of conditions was done in good faith based on the agreement having been drafted, but in retrospect should have not been issued until the agreement had been formally executed giving it full effect, and allowing a caveat to be lodged.

Parking Requirement

Local Planning Scheme 12 provides the required parking ratios for commercial land uses, with the most parking required for uses like 'shop' in a local centre being a ratio of 4.5 bays for every 100m² nett lettable area (NLA). The tenancies within the precinct that are currently used for a commercial purpose have an aggregate NLA of 437m², which results in a parking requirement of 20 bays. As mentioned, the apartment component on Strata Lot 5 of Lot 1301 requires an additional 4 bays to be provided in Lot 1302.

It is noted if Strata Lot 5 of Lot 1301 (currently approved as two apartments) were to be developed as a café or other Permitted (P) use, the Planning and Development (Local Planning Schemes) Regulations 2015 would not require a change of use or development approval limiting the City's ability to seek additional parking.

Based on the absence of any commercial development taking up the space over the previous 20 years, it could be argued that requiring the additional bays on Lot 1302 (to provide 35 bays) is not reasonable and expected parking should be based on the current approved use.

While the current approved use for Strata Lot 5 of Lot 1301 is apartments and the current owner of this strata lot and Lot 1302 being the same entity, the securing of parking for that particular tenancy, triggered by way of its development, is somewhat simplified. That is, the requirement for the deed of agreement to be drafted is a condition of the lot being developed in accordance with the development approval and while

the ownership remains the same, the drafting of the deed of agreement is logical and simple. If it came to pass that the owner of the strata lot was different to the owner of Lot 1302, the provision of the four bays could be complicated in the absence of legally binding agreements being in place.

As this agreement requires the realisation of the development approval to become a requirement, there is a risk that either of the lots are sold prior to development of the strata lot and as such, it is considered appropriate to add the additional four bays to service the strata lot to the 20 bays required for the commercial tenancies. This will mean that if there is a redevelopment of the strata lot at any point, there will be a minimum of four bays that can be utilised by the strata lot regardless of the owner or the use.

Development Potential

As mentioned above, the ODP which guided the original development indicates that a portion of the area occupied by Lot 1302 could be developed, which is also reflected in the advice note provided by the WAPC at the time Lot 1302 was created. The WAPC advice suggested the redevelopment could occur subject to the same number of bays being provided (45). Acknowledging the proposed amendment seeks to only require enough parking to suit the current commercial tenants (20 bays) and apartments (4 bays), based on the currently developed parking area and leaving 24 bays as constructed, it is estimated a development footprint of approximately 500m² remains. This amount of footprint could allow for the development of two or three storeys of mixed-use commercial / residential development.

MEAG Comment

This item does not have any impact on the natural environment and therefore has not been referred to Mandurah Environmental Advisory Group for comment.

Consultation

If adopted, the amendment will need to be referred to the Environmental Protection Authority (EPA) for consideration for whether an environmental assessment is required to be assessed. If the EPA confirm that an environmental assessment is not required, public advertising as outlined in the Regulations will be required.

Advertising will be undertaken via the following methods:

- directly letter / email notification to surrounding landowners;
- sign on-site;
- notification on the City's website; and
- notification in the local newspaper.

The period for making submissions on the proposed modification is 60 days after the day proposal is first advertised.

Statutory Environment

The proposed amendment is undertaken in accordance with the *Planning and Development Act 2005* and the *Planning and Development (Local Planning Schemes) Regulations 2015*

The proposed amendment is considered to be a standard amendment based on;

- (a) the amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;*
- (b) the amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
- (c) an amendment to the scheme so that it is consistent with the region planning scheme that applies to the scheme area;*

- (d) *the amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;*
- (e) *the amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and*
- (f) *is not an amendment that is a complex or basic amendment.*

In accordance with section 81 of the *Planning and Development Act 2005*, when a local government resolves to prepare or adopt a local planning scheme, or an amendment to a local planning scheme the local government is to forthwith refer the proposed local planning scheme or amendment to the Environmental Protection Authority (EPA) by giving to the EPA —

- (a) *written notice of that resolution; and*
- (b) *such written information about the local planning scheme or amendment as is sufficient to enable the EPA to comply with section 48A of the Environmental Protection Act in relation to the local planning scheme or amendment.*

Regulation 20 of the Planning and Development (Local Planning Schemes) Regulations 2015 provides:

Notification of resolution

(1) A local government must, as soon as is reasonably practicable after passing a resolution to prepare or adopt a local planning scheme, advertise the resolution as follows —

- a) publish a notice in a form approved by the Commission in accordance with regulation 76A; (b)
- b) provide a copy of the published notice to the following persons or bodies for recommendations
 - (i) the local government of each district that adjoins the local government district.
 - (ii) each licensee under the Water Services Act 2012 likely to be affected by the scheme;
 - (iii) the chief executive officer of the department of the Public Service principally assisting in the administration of the Conservation and Land Management Act 1984; (iv) each other public authority likely to be affected by the scheme.

Policy Implications

Nil

Financial Implications

While the proposed amendment will not have any direct financial implications for the City, the landowner may investigate compensation avenues if he feels aggrieved.

Risk Analysis

While the proposed amendment is considered to have a positive impact on the existing commercial business in the area through the provision of some certainty for the provision of parking, the current landowner may object to the proposed amendment.

Strategic Implications

The following strategies from the City of Mandurah Strategic Community Plan 2020 – 2040 are relevant to this report:

Economic:

- Actively partner and engage with business and industry to support Mandurah's entrepreneurial capacity and capability.
- Establish and leverage opportunities with key stakeholders to achieve sustainable economic outcomes with due consideration to environmental impacts.

Organisational Excellence:

- Demonstrate regional leadership and advocate for the needs of our community.
- Provide professional customer service and engage our community in the decision-making process.

Conclusion

The proposed amendment to Scheme 12 is considered appropriate given it reflects the original intended use for the subject property. Based on calculations of parking requirements within Scheme 12, the minimum provision of 24 bays on Lot 1301 will still allow for meaningful development to occur on Lot 1302 while providing certainty that the commercial businesses have access to sufficient parking in the area. It is recommended Council adopt the proposed amendment and progress to consultation.

NOTE:

- Refer **Attachment 1.1 Northport Outline Development Plan**
Attachment 2.2 Northport Village Outline Development Plan
Attachment 3.3 Copy of original Development Approval

Officer Recommendation

That the Planning and Community Consultation Committee recommend to Council:

1. In accordance with Section 75 of the *Planning and Development Act 2005*, resolves to adopt Amendment No. 5 of the City of Mandurah Local Planning Scheme No 12 as follows:

“PLANNING AND DEVELOPMENT ACT 2005

RESOLUTION DECIDING TO AMEND A TOWN PLANNING SCHEME

CITY OF MANDURAH LOCAL PLANNING SCHEME NO 12

AMENDMENT NO 5

Resolved that the Council, in pursuance of Section 75 of the Planning and Development Act 2005, amends Local Planning Scheme No 12 by:

- (a) Modifying the Specific Site Requirements Table in Local Planning Scheme Schedule 1 to add the following:*

No	Description of Land	Requirement
8.	Lot 1302 Port Quays Wannanup	A minimum of 20 parking bays to be provided for the use of the commercial tenancies at Lot 1301 Port Quays and a minimum of 4 parking bays for the use of Strata Lot 5 of Lot 1301 Port Quays. A deed of agreement shall be entered into as a condition of any development.

- (b) Amending the Scheme Maps accordingly.*

Dated this 28th Day of November 2023
Chief Executive Officer "

2. In accordance with Regulation 35(2) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, determines that Amendment No. 2 of the City of Mandurah Local Planning Scheme No. 12 is a standard amendment for the following reasons:
 - (a) *the amendment relates to a zone that is consistent with the objectives identified in the scheme for that zone;*
 - (b) *the amendment is consistent with a local planning strategy for the scheme that has been endorsed by the Commission;*
 - (c) *an amendment to the scheme so that it is consistent with the region planning scheme that applies to the scheme area;*
 - (d) *the amendment that would have minimal impact on land in the scheme area that is not the subject of the amendment;*
 - (e) *the amendment that does not result in any significant environmental, social, economic or governance impacts on land in the scheme area; and*
 - (f) *is not an amendment that is a complex or basic amendment.;*
3. Authorises the Chief Executive Officer (through the Coordinator Planning and Lands) to prepare the necessary Scheme Amendment documentation for Amendment No 5 to the City of Mandurah Local Planning Scheme No 12.

Committee Recommendation

That the Planning and Community Consultation Committee recommend to Council:

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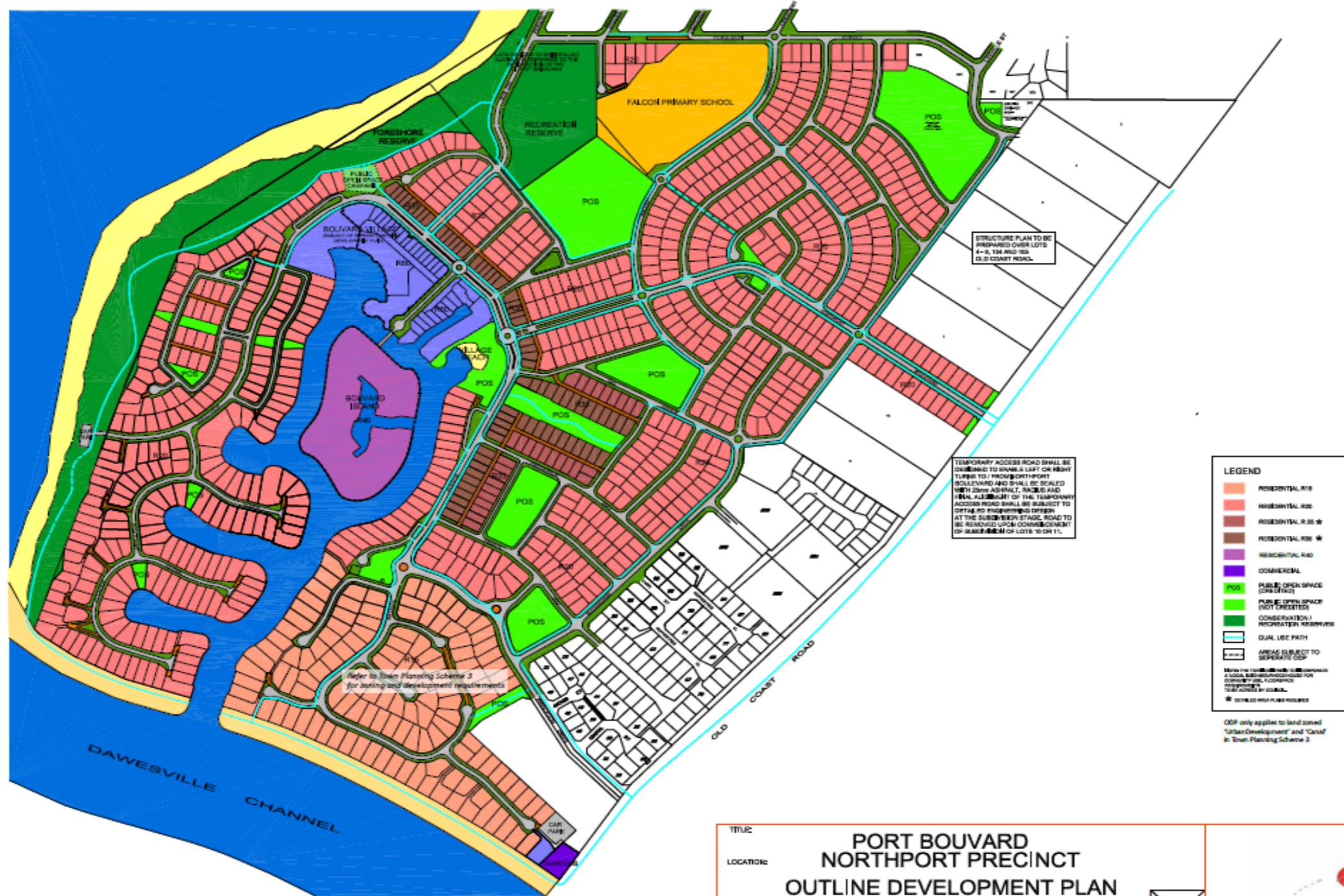
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Refer to Town Planning Scheme 3 for zoning and development requirements

LEGEND

- RESIDENTIAL R18
- RESIDENTIAL R20
- RESIDENTIAL R30
- RESIDENTIAL R35
- COMMERCIAL
- PUBLIC OPEN SPACE (CREATED)
- PUBLIC OPEN SPACE (NOT CREATED)
- CONSERVATION / RECREATION RESERVES
- DUAL USE PATH
- AREAS SUBJECT TO SEPARATE ODP

Note: The scale of this drawing is not intended to be used for construction purposes. For construction purposes, the floorplans and site plans should be used. All dimensions shall be as shown on the site plans.

ODP only applies to land zoned "Urban Development" and "Central" in Town Planning Scheme 3.

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 ALL AREAS AND DIMENSIONS ARE SUBJECT TO SURVEY

TITLE: **PORT BOUVARD NORTHPORT PRECINCT OUTLINE DEVELOPMENT PLAN**

LOCATION: [Blank]

REV.	DATE	DESCRIPTION	DRAWN	CHECK

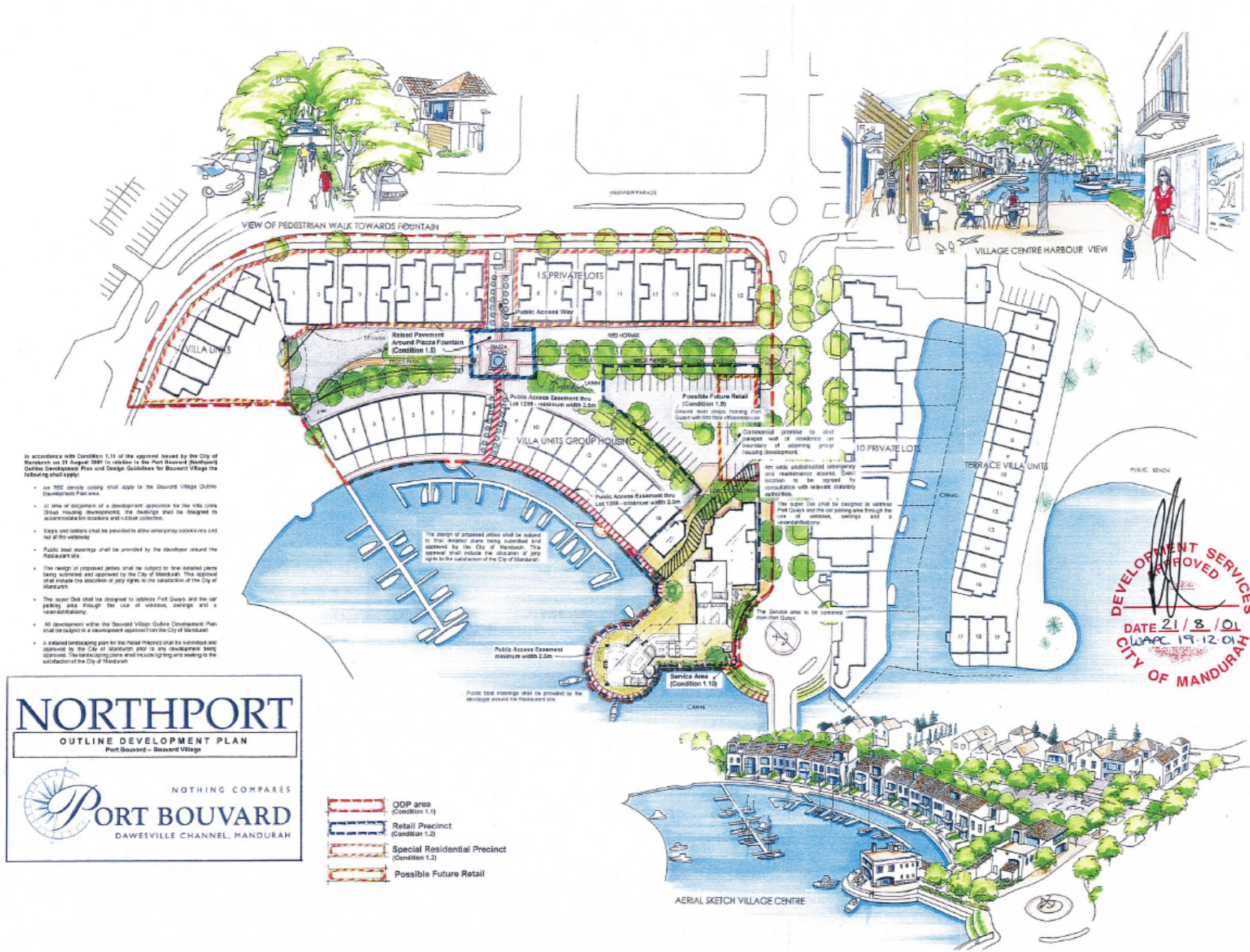
REVISIONS

Designer	JSTRAMAN
Drawn	LSPINCKH
Checked	JSTRAMAN
Date	21/02
Scale	1:500 @ A2
Cell LVL	MSORAM0501126
Drawing	31124-05014-ODP

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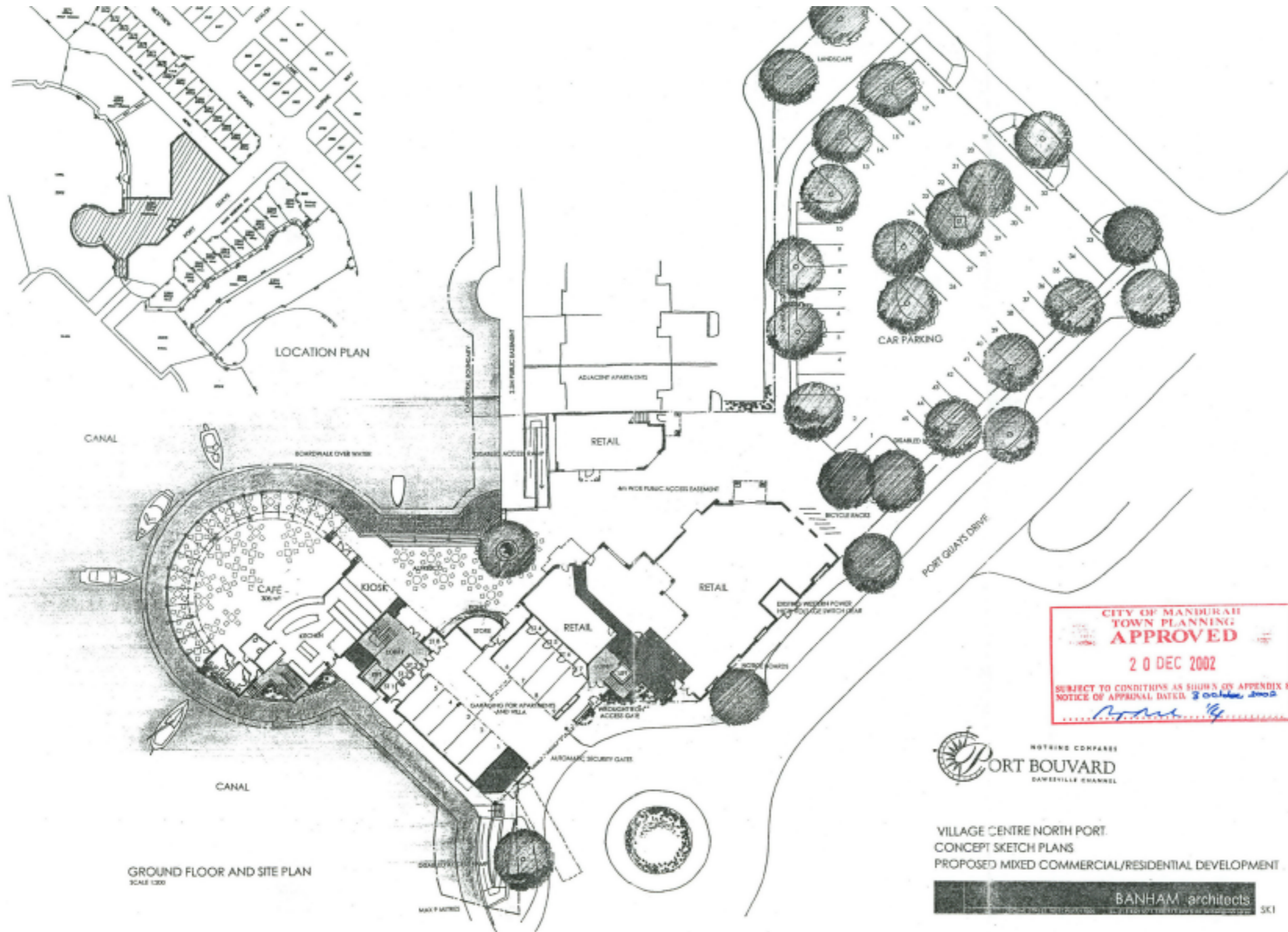


NORTHPORT
 OUTLINE DEVELOPMENT PLAN
 Port Bourard - Bourard Village

NOTHING COMPARES

PORT BOUVARD
 DAWESVILLE CHANNEL, MANDURAH

- ODP area (Condition 1.1)
- Retail Precinct (Condition 1.2)
- Special Residential Precinct (Condition 1.2)
- Possible Future Retail



Original Development Approval