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**Minutes**

**Council Committee Meeting**

**10 August 2021**

**ATTENTION**

This is a Committee which has only made recommendations to Council. No action should be taken on any recommendation contained in these Minutes. The Council resolution pertaining to an item will be made at the next Ordinary Meeting of Council following this meeting.

**Table of Contents**

[Declaration of Opening 4](#_Toc80218036)

[Present and Apologies and Leave of Absence (Previously Approved) 4](#_Toc80218037)

[1. Public Question Time 5](#_Toc80218038)

[2. Addresses By Members of the Public (only for items listed on the agenda) 5](#_Toc80218039)

[3. Disclosures of Financial and/or Proximity Interest 6](#_Toc80218040)

[3.1 Councillor Bennett – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands 6](#_Toc80218041)

[4. Disclosures of Interests Affecting Impartiality 6](#_Toc80218042)

[4.1 Councillor Smyth – 9.2 - Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands 6](#_Toc80218043)

[4.2 Councillor Smyth – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands 6](#_Toc80218044)

[4.3 Councillor Coghlan – 9.2 - Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands 7](#_Toc80218045)

[4.4 Councillor Coghlan – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands 7](#_Toc80218046)

[5. Declarations by Council Members That They Have Not Given Due Consideration to Papers 7](#_Toc80218047)

[6. Confirmation of Minutes 8](#_Toc80218048)

[6.1 Committee Meeting 13 July 2021 8](#_Toc80218049)

[7. Matters for Which the Meeting May Be Closed 8](#_Toc80218050)

[8. Divisional Reports 8](#_Toc80218051)

[8.1 Planning & Development Report No PD27.21 9](#_Toc80218052)

PD27.21 [Reconsideration of Planning Application – No. 37 Strickland Street, Mount Claremont – Holiday House (Short Term Accommodation) 9](#_Toc80218054)

[8.2 Community Services & Development Report No CSD08.21 13](#_Toc80218055)

[CSD08.21CSRFF Applications: Nedlands Tennis Club & Claremont Junior Football Club 13](#_Toc80218056)

[9. Reports by the Chief Executive Officer 15](#_Toc80218057)

[9.1 Review of Assignment of House Numbers Council Policy and Graffiti Management Council Policy 15](#_Toc80218058)

[9.2 Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands 18](#_Toc80218059)

[9.3 Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands 24](#_Toc80218060)

[10. Urgent Business Approved By the Presiding Member or By Decision 34](#_Toc80218061)

[11. Confidential Items 34](#_Toc80218062)

[Declaration of Closure 34](#_Toc80218063)

**City of Nedlands**

**Minutes of a meeting of the Council Committee held in the Council Chambers, 71 Stirling Highway, Nedlands and livestreamed on Tuesday 10 August 2021 at 7 pm.**

# Declaration of Opening

The Presiding Member declared the meeting open at 7 pm and drew attention to the disclaimer below.

# Present and Apologies and Leave of Absence (Previously Approved)

**Councillors** Her Worship Mayor F Argyle (Presiding Member)

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor B G Hodsdon Hollywood Ward

Vacant Hollywood Ward

Councillor J D Wetherall Hollywood Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor B Tyson Melvista Ward

Councillor N B J Horley Coastal Districts Ward

Councillor L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

**Staff** Mr W R Parker Chief Executive Officer

Mr E K Herne Director Corporate & Strategy

Mr T G Free Director Planning & Development

Mr A D Melville Acting Technical Services

Ms M E Granich Executive Manager Community

Mrs N M Ceric Executive Officer

**Public** There were 9 members of the public present and 0 online.

**Press** The Post Newspaper representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Nil.

**Disclaimer**

Members of the public who attend Council meetings should not act immediately on anything they hear at the meetings, without first seeking clarification of Council’s position. For example, by reference to the confirmed Minutes of Council meeting. Members of the public are also advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

Any plans or documents in agendas and minutes may be subject to copyright. The express permission of the copyright owner must be obtained before copying any copyright material.

# Public Question Time

A member of the public wishing to ask a question should register that interest by notification in writing to the CEO in advance, setting out the text or substance of the question.

The order in which the CEO receives registrations of interest shall determine the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

Nil.

# Addresses By Members of the Public (only for items listed on the agenda)

Addresses by members of the public who have completed Public Address Session Forms will be invited to be made as each item relating to their address is discussed by the Committee.

Mr Steve Kerr, Strickland Street, Mount Claremont PD27.21

(spoke in support of the recommendation)

Mr Mark Vonic, 82 Stanley Street, Nedlands CSD08.21

(spoke in opposition to the recommendation)

Ms Michelle Lawrence, Agnew Way, Subiaco Item 9.2

(spoke in support of the development)

# Disclosures of Financial and/or Proximity Interest

The Presiding Member reminded Council Members and Employees of the requirements of Section 5.65 of the *Local Government Act* to disclose any interest during the meeting when the matter is discussed.

## Councillor Bennett – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands

Councillor Bennett disclosed a financial interest in Item 9.3 – Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands, his interest being that he is an owner/occupier of the adjoining property at 133 Broadway Nedlands. Councillor Bennett declared that he would leave the room during discussion on this item.

# Disclosures of Interests Affecting Impartiality

The Presiding Member reminded Council Members and Employees of the requirements of Council’s Code of Conduct in accordance with Section 5.103 of the *Local Government Act*.

## Councillor Smyth – 9.2 - Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands

Councillor Smyth disclosed an impartiality interest in Item 9.2 - Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands. Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 20 August 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised she will not stay in the room and debate the item or vote on the matter. Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

## Councillor Smyth – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands

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## Councillor Coghlan – 9.2 - Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands

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## Councillor Coghlan – 9.3 - Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands

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# Declarations by Council Members That They Have Not Given Due Consideration to Papers

Nil.

# Confirmation of Minutes

## Committee Meeting 13 July 2021

Moved – Councillor Tyson

Seconded – Councillor Wetherall

**The Minutes of the Council Committee held 13 July 2021 be confirmed.**

**CARRIED UNANIMOUSLY 12/-**

# Matters for Which the Meeting May Be Closed

In accordance with Standing Orders and for the convenience of the public, the Committee is to identify any matter which is to be discussed behind closed doors at this meeting and that matter is to be deferred for consideration as the last item of this meeting.

Nil.

# Divisional Reports

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

## Planning & Development Report No PD27.21

Planning & Development Report No PD27.21 to be dealt with at this point (copy attached yellow cover sheet).

|  |  |
| --- | --- |
| **PD27.21** | **Reconsideration of Planning Application – No. 37 Strickland Street, Mount Claremont – Holiday House (Short Term Accommodation)** |
|  | |
| **Committee** | 10 August 2021 |
| **Council** | 24 August 2021 |
| **Applicant** | David Joseph |
| **Landowner** | D Joseph and C Joseph |
| **Director** | Tony Free – Director Planning & Development |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter.  There is no financial or personal relationship between City staff and the proponents or their consultants.  Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia |
| **Report Type**  Quasi-Judicial | When Council determines an application/matter that directly affects a person’s right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications and other decisions that may be appealable to the State Administrative Tribunal. |
| **Reference** | DA20-48595 |
| **Previous Item** | Nil |
| **Delegation** | In accordance with the City’s Instrument of Delegation, Council is required to determine the application due to objections being received. |
| **Attachments** | 1. Extract of 23 March 2021 OCM – Agenda containing report with recommendation to Council 2. Extract of 23 March 2021 OCM – Minutes |
| **Confidential Attachments** | 1. Plans 2. Updated Management Plan |

Moved – Councillor Smyth

Seconded – Councillor Horley

That the Recommendation to Committee be adopted.

(Printed below for ease of reference)

LOST on the Casting Vote 6/6

(Against: Mayor Argyle Crs. McManus Hodsdon

Wetherall Senathirajah & Tyson)

**Regulation 11(da) - The Council considered that as the proposal was consistent with the State Planning Policy and the City’s Local Planning Policy, that the proposal ought to be approved as defending a refusal at a State Administrative Tribunal appeal successfully is likely to be difficult. A more appropriate approach is considered to be a six month approval to allow for the impact of the use to be more carefully considered by all parties.**

Moved – Councillor McManus

Seconded – Mayor Argyle

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the development application received on 27 May 2020 for a Holiday House at Lot 96 (No. 37) Strickland Street, Mount Claremont, subject to the following conditions:**

1. **This approval is for a Holiday House. Development shall be in accordance with the land use as defined within Local Planning Scheme No. 3, the approved plan(s), any other supporting information and conditions of approval. It does not relate to any other development on the lot.**
2. **The approval period for the Holiday House will expire 12 months from the date of this approval.**
3. **The Management Plan date stamped 9 July 2021 forms part of this approval and is to be complied with at all times to the City’s satisfaction.**
4. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
5. **The proposed use complying with the Holiday House definition stipulated under the City’s Local Planning Scheme No. 3.**
6. **A maximum of six (6) guests are permitted on the reside at the Holiday House at any one time.**
7. **Each booking for the Holiday House must be for a minimum stay of 2 consecutive nights.**
8. **A maximum of two (2) guest vehicles for guests of the Holiday House are permitted on the premises at any one time.**

Amendment

Moved - Councillor Youngman

Seconded - Councillor Tyson

**That in clause 2 the words “12 months” be amended to “6 months”.**

**The AMENDMENT was PUT and was**

**CARRIED 10/2**

**(Against: Crs. McManus & Wetherall)**

Put Motion

Moved - Councillor Hodsdon

Seconded - Councillor Wetherall

That the Motion be put.

LOST 3/9

(Against: Mayor Argyle Crs. Horley McManus Smyth Bennett Mangano Youngman Coghlan Tyson)

**The Substantive Motion was PUT and was**

**CARRIED ON CASTING VOTE 6/6**

**(Against: Crs. Horley Smyth Bennett Mangano Youngman & Coghlan)**

**Committee Recommendation**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, Council approves the development application received on 27 May 2020 for a Holiday House at Lot 96 (No. 37) Strickland Street, Mount Claremont, subject to the following conditions:**

1. **This approval is for a Holiday House. Development shall be in accordance with the land use as defined within Local Planning Scheme No. 3, the approved plan(s), any other supporting information and conditions of approval. It does not relate to any other development on the lot.**
2. **The approval period for the Holiday House will expire 6 months from the date of this approval.**
3. **The Management Plan date stamped 9 July 2021 forms part of this approval and is to be complied with at all times to the City’s satisfaction.**
4. **The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.**
5. **The proposed use complying with the Holiday House definition stipulated under the City’s Local Planning Scheme No. 3.**
6. **A maximum of six (6) guests are permitted on the reside at the Holiday House at any one time.**
7. **Each booking for the Holiday House must be for a minimum stay of 2 consecutive nights.**
8. **A maximum of two (2) guest vehicles for guests of the Holiday House are permitted on the premises at any one time.**

Recommendation to Committee

Council in accordance with Clause 68 (2) of the Planning & Development (Local Planning Schemes) Regulations 2015 resolves to refuse the development application dated 27 May 2020 for a Short Term Accommodation at Lot 96 (No. 37) Strickland Street, Mount Claremont for the following reasons:

1. The proposal is not compatible or complimentary with the adjoining residential development and is contrary to an objective of the Residential zone under the Scheme;
2. The proposal does not comply with Clause 67(2)(n)(iii) of Schedule 2 of the Planning and Development (Local Planning Schemes) Regulations 2015 as the development is not in keeping with the amenity of the locality, including the social impacts of the development and
3. The proposal would have a detrimental impact on the existing residential amenity and character of the immediate low density residential area.

## Community Services Development Report No CSD08.21

Community Services & Development Report No CSD08.21 to be dealt with at this point (copy attached orange cover sheet).

|  |
| --- |
| **CSD08.21 CSRFF Applications: Nedlands Tennis Club & Claremont Junior Football Club** |

|  |  |
| --- | --- |
| **Committee** | 10 August 2021 |
| **Council** | 24 August 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 of the *Local Government Act 1995*** | Nil |
| **Director** | Marion Granich - Executive Manager Community |
| **Attachments** | Nil |
| **Confidential Attachments** | Nil |

**Regulation 11(da) – Council wished to show its support for both sporting clubs.**

Moved – Councillor Bennett

Seconded – Councillor Tyson

**Committee Recommendation**

**Council:**

1. **advises the Department of Local Government, Sport and Cultural Industries that it has ranked and rated the applications to the current Community Sport and Recreation Facilities Fund Small Grant Round as follows:**
   1. **Nedlands Tennis Club - Upgrade Synthetic Grass Courts to Hard Surface & Upgrade Lighting to LED: Well Planned and Needed by Applicant (B Rating); and**
   2. **Claremont Junior Football Club - Equipment Storage Shed: Well Planned and Needed by Applicant (B Rating);**
2. **endorses the Nedlands Tennis Club application and the Claremont Junior Football Club application to Department of Local Government, Sport and Cultural Industries, conditional on:**
   1. **all necessary statutory approvals are obtained by the applicants; and**
   2. **the projects receive DLGSC funding;**
3. **approves a grant of $59,534 (ex GST) to the Nedlands Tennis Club for its Upgrade of 2 Grass Courts to Hard Surface and Lighting Upgrade to LED project;**
4. **approves a grant of $6,000 (ex GST) to the Claremont Junior Football Club for its storage shed project.**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

Recommendation to Committee

Council:

1. advises the Department of Local Government, Sport and Cultural Industries that it has ranked and rated the applications to the current Community Sport and Recreation Facilities Fund Small Grant Round as follows:
2. Nedlands Tennis Club - Upgrade Synthetic Grass Courts to Hard Surface & Upgrade Lighting to LED: Well Planned and Needed by Applicant (B Rating); and
3. Claremont Junior Football Club - Equipment Storage Shed: Not Recommended (F Rating);
4. endorses the Nedlands Tennis Club application to Department of Local Government, Sport and Cultural Industries, conditional on:
   1. all necessary statutory approvals are obtained by the applicant; and
   2. the project receives DLGSC funding; and
5. approves a grant of $59,534 (ex GST) to the Nedlands Tennis Club for its Upgrade of 2 Grass Courts to Hard Surface and Lighting Upgrade to LED project.

# Reports by the Chief Executive Officer

## Review of Assignment of House Numbers Council Policy and Graffiti Management Council Policy

|  |  |
| --- | --- |
| **Committee** | 10 August 2021 |
| **Council** | 24 August 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **CEO** | Bill Parker |
| **Attachments** | 1. Assignment of House Numbers 2. Graffiti Management |
| **Confidential Attachments** | Nil. |

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Smyth

Seconded – Councillor Wetherall

**That the Recommendation to Committee be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY 12/-**

**Committee Recommendation / Recommendation to Council**

**Council adopts the following Council Policies:**

1. **Assignment of House Numbers Council Policy (attachment 1); and**
2. **Graffiti Management Policy (attachment 2).**

**Executive Summary**

All Council policies are required to be reviewed regularly and approved by Council. This report contains policies that have been reviewed and require formal Council adoption.

**Discussion/Overview**

Council policies are reviewed periodically to ensure they reflect the strategic direction and responsibilities of Council and are kept up to date.

The procedure for policy reviews is as follows:

* Policies will be reviewed and updated by relevant staff with any amendments due to changes in any Legislation, Local Laws, Regulations etc. and recommendations made to the Executive Management Team;
* Staff recommendations are reviewed by the Executive Management Team and the CEO and amended as required and recommendations made to Council;
* Where there are major amendments to existing policies these policies are then presented at a Councillor Briefing for discussion prior to presentation to Council;
* Where a number of policies have common themes, these policies may be combined to establish a new policy. Redundant and old policies will be revoked where they are substantially changed, and a new replacement policy will be presented at a Councillor Briefing for discussion prior to presentation to Council; and
* Administration may at times recommend a policy be revoked with no Council Policy to replace it. This may occur when it has been identified that the policy is operational or covered under legislation and/or the responsibility of the Chief Executive Officer.

Policy statements should provide guidance for decision-making by Council and demonstrate the transparency of the decision-making process.

**Assignment of House Numbers Council Policy**

This policy has been reviewed by the relevant staff, Executive Management Team and the Chief Executive Officer and only two minor changes are recommended (as showed in track changes in attachment 1). The first change being the removal of the reference to KFA (Key Focus Areas) in the Strategic Community Plan as these are no longer listed in the City’s current Strategic Community Plan and also the removal of the remove of the Manager Building Services and replacing with Director Planning & Development.

**Graffiti Management Council Policy**

This policy has been reviewed by the relevant staff, Executive Management Team and the Chief Executive Officer and only two minor changes are recommended (as showed in track changes in attachment 2). The first change being the removal of the reference to KFA (Key Focus Areas) in the Strategic Community Plan as these are no longer listed in the City’s current Strategic Community Plan and other minor changes as tracked for clearer understanding of intent and what can be done under this policy.

**Key Relevant Previous Council Decisions:**

Nil.

**Consultation**

Council Policies with only minor changes are reviewed by relevant staff followed by the Executive Management Team and then referred to Council requesting feedback to ascertain whether a Council Member Workshop is required.

The Assignment of House Numbers Council Policy and Graffiti Management Council Policy was circulated to Council Members via email on the 26 June 2021 requesting feedback by Friday 2 July 2021.

As only a few minor questions were received from 2 council members it was concluded that a workshop was not required, and the policies could proceed to a Council Meeting for formal review and adoption.

**Budget/Financial Implications**

Nil.

**Conclusion**

The Council Policies listed in this report have been reviewed and are now presented to Council for formal review in accordance with the Review of Policies Council Policy and are recommended for adoption with minor changes.

## Consideration of Responsible Authority Report for 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands

|  |  |
| --- | --- |
| **Council** | 10 August 2021 – Committee Meeting |
| **Applicant** | Agave Developments |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia*.* |
| **Director** | Tony Free, Director Planning & Development |
| **Attachments** | 1. Responsible Authority Report and Attachments 2. Alternate Recommendation for Approval with Conditions |

Councillor McManus left the meeting at 9pm.

**Councillor Smyth – Impartiality Interest**

Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 20 August 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised she will not stay in the room and debate the item or vote on the matter. Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

**Councillor Coghlan – Impartiality Interest**

Councillor Coghlan disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 20 August 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Coghlan advised she will not stay in the room and debate the item or vote on the matter. Please Note that although not participating in the debate Councillor Coghlan intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

Councillor Smyth & Councillor Coghlan left the meeting at 9pm.

**Regulation 11(da) – Not Applicable – Recommendation Adopted**

Moved – Councillor Senathirajah

Seconded – Councillor Bennett

**Committee Recommendation**

**Council:**

1. **adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands included at Attachment 1;**
2. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands; and**
3. **appoints Councillor Tyson to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands.**

Councillor McManus returned to the meeting at 9.01pm.

**CARRIED ON THE CASTING VOTE 6/6**

**(Against: Crs. Bennett Mangano Youngman Wetherall & Tyson)**

Recommendation to Council

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands included at Attachment 1;
2. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands; and
3. appoints Councillor (insert name) and Councillor (insert name) to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands.

**1.0 Executive Summary**

The purpose of this report is for Council to consider the Development Assessment Panel application that proposes a Mixed-Use development comprising of 15 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands. Council is requested to make its recommendation to the Joint Development Assessment Panel (JDAP) as the Responsible Authority. Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 11 August 2021.

This application seeks to construct housing suitable for the National Disability Insurance Scheme (NDIS). All apartments will meet NDIS requirements in relation to form and function to accommodate occupants with varying degrees of disability. The development includes a specialised occupational therapy space for people with disabilities that is defined by the City’s local planning scheme as ‘Consulting Rooms’.

Administration recommends that the application be deferred to allow for resolution of issues relating to plot ratio and the western interface of the building with the adjoining R60 residential area.

**2.0 Application Details**

The proposal is for a Mixed-Use development over 6 storeys comprising of 15 Multiple Dwellings, Consulting Rooms (Specialised Gym) and Office with Basement Parking at No.119 (Lot 551) Broadway, Nedlands. The proposed development is designed for specialist disability accommodation, which will meet the NDIS guideline requirements for residents who require high physical support.

A 240m² “Consulting Room” tenancy is located on the first-floor level. The Consulting Room will be used as a specialist ‘Neurozone’ gym operated by health practitioners who undertake training sessions to assist in the recovery and physical improvement for people with disabilities. These services will be offered to residents of the dwelling in additional to external patrons that are registered with the NDIS.

A total of 18 residential car parking bays have been provided at the basement level, with 5 non-residential car bays and 2 ACROD bays at the ground floor level.

**3.0 Consultation**

In accordance with the City’s Local Planning Policy – Consultation of Planning Proposals, the development was advertised for a period of 28 days, from 21 May 2021 to 18 June 2021.

* Letters sent to all City of Nedlands and City of Perth landowners and occupiers within a 200m radius of the site;
* A sign on site was installed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website with all documents relevant to the application made available for viewing during the advertising period;
* An advertisement was placed in The Post newspaper published on 24 May 2021;
* A Social media post was made on one of the City’s Social Media platforms;
* A notice was affixed to the City’s Noticeboard at the City’s Administration Offices; and
* A community information session was held by City Officers on 2 June 2021.

At the close of the advertising period, the City received a total of 17 submissions; 4 in support, 12 objections and 1 neither objected or support the proposal. Concerns raised in the objections included, but are not limited to:

* Building height;
* Plot ratio;
* Side and rear setbacks;
* Amenity and streetscape;
* Noise;
* Tree canopy;
* Deep soil area;
* Visual privacy;
* Overshadowing;
* Traffic impacts;
* Parking;
* Sustainability; and
* Construction impacts.

Each of these issues are discussed in the Responsible Authority Report.

**4.0 Design Review**

The applicant sought pre-lodgement design review advice. At the time, the City did not have a formal Design Review Panel and therefore an independent Architectural and Landscape design review of the proposal was undertaken by The Fulcrum Agency and UDLA. For consistency, the original consultants were appointed to review the revised plans once the formal application was received.

Both the design reviews were assessed in accordance with SPP 7.0 - State Planning Policy 7.0 – Design of the Built Environment is summarised below.

|  |  |  |  |
| --- | --- | --- | --- |
| 3 | *Supported* | | |
| 2 | *Supported with conditions / Further Information required* | | |
| 1 | *Not supported* | | |
|  | | Pre-lodgement  10 November 2020 | Revised Plans  6 May 2021 |
| Principle 1 – Context & Character | |  |  |
| Principle 2 – Landscape Quality | |  | \* |
| Principle 3 – Built Form & Scale | |  |  |
| Principle 4 – Functionality & Build Quality | |  |  |
| Principle 5 - Sustainability | |  |  |
| Principle 6 – Amenity | |  |  |
| Principle 7 - Legibility | |  |  |
| Principle 8 – Safety | |  |  |
| Principle 9 – Community | |  |  |
| Principle 10 – Aesthetics | |  |  |

\*Further information has been requested to address Element 3.3. Elements 3.2, 3.4, 3.6 and 4.12 are supported without modification.

**5.0 Recommendation to JDAP**

The main area of concerns relates to:

* The height is not considered to respond appropriately to the adjoining R60 coded interface to the west as it presents as five-storeys. Further 3D modelling has not been provided to demonstrate that the interface is acceptable;
* The proposed plot ratio of 2.26 does not reflect the expectations of R-AC3 ‘Mid-rise urban centre’ which has a default plot ratio of 2.0. Insufficient justification has been provided to support its increase, particuarly considering visual privacy, setbacks and its interface with the western property;
* The reduced building separation from Levels 4, 5 & 6 are not considered to provide for adequate separation between the site and neighbouring properties. The reduced setbacks exacerbated building bulk as viewed from the west in particular, and compromises on visual privacy, extent of shadow cast and amenity;
* The design of the Deep Soil Area is reduced in area and does not meet the minimum area to sustain healthy growth. It is further noted that other approvals on Broadway have provided for a minimum 3m – 6m Deep Soil Area that acts as an appropriate interface to the west;

That the Metro Inner-North Joint Development Assessment Panel resolves to:

1. **Defer** DAP Application reference DAP/21/01994 and accompanying plans (Attachment 1) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme to allow for the following matters to be addressed:
2. Reduction in plot ratio to allow for a greater articulation and separation from upper levels for the western elevation of the building to the rear boundary of the property;
3. Addressing of visual privacy on the western elevation; and
4. Addressing of Deep Soil Area in order to demonstrate healthy tree growth.

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 11 August 2021.

**7.0 Conclusion**

Administration recommends that this proposal be deferred in order to address plot ratio, setbacks, visual privacy and deep soil areas.

## Consideration of Responsible Authority Report for Change of Use from 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings at Lot 684 (No.135) Broadway, Nedlands

|  |  |
| --- | --- |
| **Council** | 10 August 2021 |
| **Applicant** | Urbanista Town Planning |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. Whilst parties may be known to each other professionally, this relationship is consistent with the limitations placed on such relationships by the Codes of Conduct of the City and the Planning Institute of Australia*.* |
| **Director** | Tony Free |
| **Attachments** | 1. Responsible Authority Report and Attachments 2. Alternate Recommendation for Approval with Conditions |

**Impartiality Interest – Councillor Smyth**

Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 20 August 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised she will not stay in the room and debate the item or vote on the matter. Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

**Impartiality Interest – Councillor Coghlan**

Councillor Coghlan disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 20 August 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Coghlan advised she will not stay in the room and debate the item or vote on the matter. Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

**Councillor Bennett – Financial Interes**t

Councillor Bennett disclosed a financial interest his interest being that he is an owner/occupier of the adjoining property at 133 Broadway Nedlands. Councillor Bennett declared that he would leave the room during discussion on this item.

Councillor Smyth, Councillor Bennett and Councillor Coghlan left the meeting at 9.17 pm.

**Regulation 11(da) - The Council considered that the proposal was not providing activation to Broadway sufficiently via the proposed resident gym where previously a café had been provided. The lack of communal open space and overall bulk and space was considered to be inappropriate.**

Moved – Councillor Mangano

Seconded – Councillor Youngman

**Council:**

* + - 1. **Refuse that the DAP Application reference DAP/19/01655 as detailed on the DAP Form 2 dated 27 April 2021 is appropriate for consideration in accordance with regulation 17 of *the Planning and Development (Development Assessment Panels) Regulations 2011* as the proposal represents substantial changes to the previous development approval as provided under s17(1)(c) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.**

**In the event that the JDAP accepts the DAP Application reference DAP/19/01655, the following Responsible Authority recommendation is submitted:**

**Refuse DAP Application reference DAP/19/01655 and Development Plans dated 12 May 2021 (Attachment 2) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme due to the following reasons:**

* 1. **There is insufficient activation between the ground floor of the development and the street as required by clauses 16 and 32.4 of City of Nedlands Local Planning Scheme No.3;**
  2. **No communal open space is provided for the development, contrary to Element 3.4 of State Planning Policy 7.3 *Residential Design Codes Volume 2*; and**
  3. **The overall bulk and scale of the amended development is not considered appropriate for the existing or planned character of the area, contrary to Element 2.5 of State Planning Policy 7.3 *Residential Design Codes Volume 2*.**
     + 1. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 16 Multiple Dwellings at No.135 Broadway, Nedlands; and**
       2. **appoints Councillor Mangano and Councillor Youngman to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development for 16 Multiple Dwellings at No.135 Broadway, Nedlands.**

Amendment

Moved - Councillor Youngman

Seconded - Councillor Mangano

**That an additional condition be added as follows:**

**Should the JDAP Prior to occupation, all balustrades, which do not face the street shall have obscure glaze of solid construction, to the satisfaction of the City of Nedlands.**

**The AMENDMENT was PUT and was**

**CARRIED UNANIMOUSLY 9/-**

**The Substantive Motion was PUT and was**

**CARRIED 8/1**

**(Against: Cr. Wetherall)**

**Committee Recommendation**

**Council:**

1. **refuse that the DAP Application reference DAP/19/01655 as detailed on the DAP Form 2 dated 27 April 2021 is appropriate for consideration in accordance with regulation 17 of *the Planning and Development (Development Assessment Panels) Regulations 2011* as the proposal represents substantial changes to the previous development approval as provided under s17(1)(c) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.**

**In the event that the JDAP accepts the DAP Application reference DAP/19/01655, the following Responsible Authority recommendation is submitted:**

**Refuse DAP Application reference DAP/19/01655 and Development Plans dated 12 May 2021 (Attachment 2) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme due to the following reasons:**

1. **There is insufficient activation between the ground floor of the development and the street as required by clauses 16 and 32.4 of City of Nedlands Local Planning Scheme No.3;**
2. **No communal open space is provided for the development, contrary to Element 3.4 of State Planning Policy 7.3 *Residential Design Codes Volume 2*; and**
3. **The overall bulk and scale of the amended development is not considered appropriate for the existing or planned character of the area, contrary to Element 2.5 of State Planning Policy 7.3 *Residential Design Codes Volume 2*.**
4. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 16 Multiple Dwellings at No.135 Broadway, Nedlands;**
5. **appoints Councillor Mangano and Councillor Youngman to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development for 16 Multiple Dwellings at No.135 Broadway, Nedlands; and**
6. **advises should the JDAP choose to approve the Development Council requests the following condition be added:**

**Prior to occupation, all balustrades, which do not face the street shall have obscure glaze of solid construction, to the satisfaction of the City of Nedlands.**

Councillor Smyth, Councillor Bennett & Councillor Coghlan returned to the meeting at 9.30 pm.

Recommendation to Council

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 16 Multiple Dwellings at No.135 Broadway, Nedlands included at Attachment 1;
2. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 16 Multiple Dwellings at No.135 Broadway, Nedlands; and
3. appoints Councillor (insert name) and Councillor (insert name) to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development for 16 Multiple Dwellings at No.135 Broadway, Nedlands

**1.0 Executive Summary**

The purpose of this report is for Council to consider a Development Assessment Panel application at No.135 Broadway, Nedlands and make its recommendation to the Metro Inner-North Joint Development Assessment Panel as the Responsible Authority. Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 11 August 2021.

This application is for a proposed Form 2 Application for a change of use from Mixed-Use comprising of 20 Serviced Apartments, 8 Multiple Dwellings and Café to 16 Multiple Dwellings.

**2.0 Background**

History

* On 14 August 2019 a Form 1 JDAP Application was lodged for a seven-storey mixed use development with 26 serviced apartments (9 of which are dual key functionality in the form of short stay accommodation).
* On 11 November 2019 the Metro West JDAP deferred the item to consider several design issues particularly in relation to height, bulk/scale, mixed use objectives, internal amenity and parking.
* On 18 December 2019 the Metro West JDAP resolved to refuse the application. The applicant lodged an application to the State Administrative Tribunal seeking a review of the decision.
* On 6 April 2020, the Metro West JDAP resolved to approve the application, via a section 31 reconsideration process, subject to conditions. The amended proposal included 20 Serviced Apartments, 8 Multiple Dwellings and Café with basement parking.

**3.0 Application Details**

The development proposal, as applied via the Form 2 process includes a Change of Use from Mixed Use Development comprising of 20 Serviced Apartments units, 8 Multiple Dwellings and Café with Basement Parking to Mixed Use comprising of 16 Multiple Dwellings with Basement Parking.

In addition to, the plans illustrate modifications have been made to the proposal. This can be summarised as follows:

* Removal of the fifth floor lounge terrace being removed and being replaced with an additional residential apartment. This results in an increase in plot ratio from 2.28 to 2.30;
* Removal of two levels of basement parking. All parking will be provided from ground level, aided by car stackers;
* The reconfiguration of the ground floor car park;
* A change of use from Café and converted to a resident gym;
* Modifications to setbacks;
* The removal of the commercial bin area and end of trip facilities;
* Additional lifts and extension of roof area;
* Existing gym removed from the first floor
* All serviced apartments being reconfigured and converted into larger residential apartments; and
* Modification to private balcony areas.

The current application was lodged as a change of use Form 2, minor amendment with a total application fee of $278. The above list of changes demonstrates that the proposal is a new development proposal and as such appropriate application fees should be charged, the application advertised as a new development proposal via the Form 1 process and the application processed as a completely new development. This matter is addressed later in the report.

Consideration of a Form 2 Application

S17(1) of the *Planning and Development (Development Assessment Panels) Regulations 2011* state –

“(1) An owner of land in respect of which a development approval has been granted by a DAP pursuant to a DAP application may apply for the DAP to do any or all of the following –

1. to amend the approval so as to extend the period within which any development approved must be substantially commenced under regulation 16A(2);
2. to amend or delete any condition to which the approval is subject;
3. to amend an aspect of the development approved which, if amended, would not substantially change the development approved;
4. to cancel the approval,”

Sub clause (c) is relevant to the subject change of use application. It is Administration’s view that the proposed land uses and built form changes substantially change the development that has been previously approved and consideration in the full assessment of this application. In particular:

* The change of use for Serviced Apartments to Multiple Dwellings require a new assessment against the State Planning Policy 7.3 – Residential Design Codes (Volume 2) – Apartments;
* The removal of commercial land use at ground level which requires a new assessment against the ‘Mixed Use Objectives’ as there is no longer an active use at ground level; and
* The new basement area which requires new technical assessments (parking and waste) by the City.

**4.0 Consultation**

In accordance with the City’s Local Planning Policy – Consultation of Planning Proposals, the development was advertised for a period of 28 days, from 15 May 2021 until 12 June 2021. Public consultation consisted of:

* Letters sent to all City of Nedlands and City of Perth landowners and occupiers within a 200m radius of the site;
* A sign on site was installed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website with all documents relevant to the application made available for viewing during the advertising period;
* An advertisement was placed in The Post newspaper published on 15 May 2021;
* A Social media post was made on one of the City’s Social Media platforms;
* A notice was affixed to the City’s Noticeboard at the City’s Administration Offices; and
* A community information session was held by City Officers on 26 May 2021.

The City received a total of 7 submissions at the close of the advertising period, with 2 submission in support, 1 stating neither objector or support and offered comments with the remaining 4 submissions objecting to the proposal. A summary of the key issues included:

* Removal of the café and whether it conforms to the Mixed-Use zone objections;
* Form 1 vs Form 2 Application;
* Visual Privacy
* Bulk/Scale/Setbacks
* Landscaping/Deep Soil
* Traffic
* Car Parking

**5.0 Recommendation to JDAP**

That the Metro Inner-North Joint Development Assessment Panel resolves to:

1. **Refuse** that the DAP Application reference DAP/19/01655 as detailed on the DAP Form 2 dated 27 April 2021 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011* as the proposal represents substantial changes to the previous development approval as provided under s17(1)(c) of the *Planning and Development (Development Assessment Panels) Regulations 2011*.
2. **Approve** the modifications to DAP Application reference DAP/19/01655 and Development Plans dated 12 May 2021 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme subject to the following conditions:

**Amended Conditions:**

1. Amend Condition 3 –

“This approval is for Multiple Dwellings. Development shall be in accordance with these land uses as defined within Local Planning Scheme No. 3, the approved plan(s), any other supporting information and conditions of approval.”

1. Amend Condition 8

“Prior to the lodgement of a Building Permit, a revised Acoustic Report shall be submitted and approved by the City and is to be prepared by a suitably qualified acoustic engineer certifying that the proposal incorporates both modelling and sufficient sound attenuation measures to limit noise impact on adjoining properties and internal residents within the requirements of the Environmental Protection (Noise) Regulations 1997 and the National Construction Code. The measures identified in the report shall be implemented and thereafter maintained to the satisfaction of the City.”

1. Amend Condition 12

“Prior to the lodgement of a Building Permit, a revised Waste Management Plan shall be submitted and approved by the City of Nedlands. The amended Waste Management Plan shall be implemented and thereafter complied with by the landowner(s) for the life of the development to the satisfaction of the City.”

1. Delete Condition 13

“The Short-Term Accommodation Management Plan forms part of this approval. The approved Management plan is to be implemented, adhered to and updated, thereafter to the satisfaction of City of Nedlands.”

1. Amend Condition 20

“At Building Permit Stage, four (4) Multiple Dwellings on the hereby approved development plans shall meet ‘Silver Level’ requirements as defined in the Liveable Housing Design Guidelines.”

**New Conditions:**

1. New Condition 1

**“**Pursuant to clause 26 of the Metropolitan Region Scheme, this approval is deemed to be an approval under clause 24(1) of the Metropolitan Region Scheme.”

1. New Condition 3

“The gymnasium tenancy, located at Ground Level is not to be created as common property”

1. New Condition 8

“Prior to the commencement of excavation works, a Dilapidation Report prepared by a practising Structural Engineer should be submitted to the City of Nedlands for approval, and the owners of the adjoining properties listed below detailing the current condition and status of all buildings (both internal and external together with surrounding paved areas and rights of ways), including ancillary structures located upon these properties:

1. Lot 8 (No.133) Broadway, Nedlands;
2. Lot 685 (No.137) Broadway, Nedlands; and
3. Lot 681 (No.66) Kingsway, Nedlands

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate in writing to the satisfaction of the City of Nedlands that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Landowners shall be notified in writing no less than 14 days prior to construction.”

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 11 August 2021.

**6.0 Conclusion**

The development proposal, as applied via the Form 2 process includes a Change of Use from Mixed Use Development comprising of 20 Serviced Apartments units, 8 Multiple Dwellings and Café with Basement Parking to Mixed Use comprising of 16 Multiple Dwellings with Basement Parking. It is Administration’s view that this constitutes a new Form 1 Application subject to additional fees. Notwithstanding, it is recommended that approval be granted.

# Urgent Business Approved By the Presiding Member or By Decision

Nil.

# Confidential Items

Nil.

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed 9.32pm.