



City of Nedlands

# NOTES

## Council Meeting Agenda Forum

Tuesday, 12 September 2023

A handwritten signature in blue ink, appearing to read 'Bill Parker'.

**Bill Parker | Chief Executive Officer**

15 September 2023

## Information

Council Meeting Agenda Forum are run in accordance with the City of Nedlands Governance Framework Policy. If you have any questions in relation to the agenda, procedural matters, addressing the Council or attending these meetings please contact the Executive Officer on 9273 3500 or [council@nedlands.wa.gov.au](mailto:council@nedlands.wa.gov.au)

## Public Question Time

Public Questions are dealt with at the Ordinary Council Meeting.

## Deputations

Members of the public may make presentations or ask questions on items contained within the agenda. Presentations are limited to 5 minutes. Members of the public must complete the online registration form available on the City's website: [Public Address Registration Form | City of Nedlands](#)

## 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.

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## 1. Declaration of Opening

The Presiding Member declared the meeting open at 6.00 pm and drew attention to the disclaimer on page 2 and advised the meeting is being livestreamed.

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

<b>Councillors</b>	Mayor F E M Argyle (Presiding Member)	
	Councillor B Brackenridge	Melvista Ward
	Councillor R A Coghlan	Melvista Ward
	Councillor R Senathirajah	Melvista Ward
	Councillor H Amiry	Coastal Districts Ward
	Councillor L J McManus	Coastal Districts Ward
	Councillor F J O Bennett	Dalkeith Ward
	Councillor N R Youngman	Dalkeith Ward
	Vacant	Hollywood Ward
	Councillor B G Hodsdon	Hollywood Ward

<b>Staff</b>	Mr W R Parker	Chief Executive Officer
	Mr M R Cole	Director Corporate Services
	Mr T G Free	Director Planning & Development
	Mr M K MacPherson	Director Technical Services
	Mrs N M Ceric	Executive Officer
	Ms L J Kania	Coordinator Governance & Risk

**Public** There were 6 members of the public present and 4 online.

**Press** Nil.

**Leave of Absence (Previously Approved)** Nil.

<b>Apologies</b>	Councillor K A Smyth	Coastal Districts Ward
	Councillor A W Mangano	Dalkeith Ward
	Councillor O Combes	Hollywood Ward

## 3. Public Question Time

Public questions will be dealt with at the Ordinary Council Meeting.

## 4. Deputations

Deputations by members of the public who had completed Public Address Registration Forms.

Mr Nicholas Burston, spoke in support of the recommendation for item 16.2 - PD42.09.23 Consideration of Development Application - 3 Multiple Dwellings at 43 Napier Street, Nedlands.

Mr Michael Rendell, spoke in support of the recommendation for item 16.2 - PD42.09.23 Consideration of Development Application - 3 Multiple Dwellings at 43 Napier Street, Nedlands.

Mr Dwight Pedlow, spoke in opposition to the recommendation for item 16.1 - PD41.09.23 Consideration of Development Application - Residential - Amendment to Single House at 21A Cross Street, Swanbourne.

The Presiding Member read a statement and questions on behalf of Mr Brendan Casey, spoke in opposition to the recommendation for item 16.2 - PD42.09.23 Consideration of Development Application - 3 Multiple Dwellings at 43 Napier Street, Nedlands.

### Question 1

With this in mind, do you agree it was improper and reckless for the Design Review Panel to direct the Applicant to disrespect this Australian Standard and push the building back into the tree protection zone?

### Answer 1

The rear setback to the western basement wall for the two versions of the design that were reviewed by the DRP are provided below, along with the current version as lodged and advertised.

Design Review 1 – 8.5m

Design Review 2 – 9.0m

Current Version – 9.0m

This shows that there was no pushing of the building further back into the tree protection zone.

### Question 2

On page 33, your report on this DA states:

“These trees... will be retained within a deep soil area of approximately 125m<sup>2</sup>.”

But this statement is false. Please explain why your planning officer is unable to properly assess and accurately state the deep soil area provided for these trees, or the deep soil area proposed by this development as a whole?

**Answer 2**

The deep soil area is located at the rear of the site and notated as “landscaped garden” on the ground plan. This was confirmed by reference to the landscape plan. The ground plan shows lines that may suggest a sunken garden in the northern half of the rear yard. It has been confirmed that these lines are not part of the plan and may be the result of the conversion from CAD to PDF format. The architect has confirmed the lines are unintentional and the rear landscaped garden is at one level. This rear garden area equals approximately 125 square metres.

**Question 3**

Is it reasonable to expect that the planning reports your officers produce are accurate and truthful?

**Answer 3**

All City officers seek to ensure that all reports to Council are accurate and truthful.

**Question 4**

On page 89 and again on page 90, your report on this DA states:

“There are no substantial trees on adjoining properties within close proximity to common boundaries.”

But this statement is false. As shown on the advertised plans, there is a large tree on lot to the south which is within 500 mm of the boundary. This development’s encroachment on this tree’s root protection zone, as a result of change in soil levels and other building disturbances, is approximately 50%. And this puts the viability of the tree at risk.

So why did your planning officer lie about the presence of this tree?

**Answer 4**

The tree on the property to the south is located in front of the existing building line and in close proximity to the house on the same lot. The basement wall of the proposed development will be located approximately 1.5m to the west of and 2.5m to the north of the trunk of the tree. Condition 12 requires that an arborist report be submitted to the City prior to the issue of a Building Permit identifying tree protection strategies for the retention of trees on neighbouring properties, within 3 metres of the proposed development. This condition addresses the tree on the property to the south.

**Question 5**

The City has made a big fuss in the media and elsewhere about preserving and protecting the city’s trees. So why has the Design Review Panel and your planning department recommended a development proposal that puts 3 significant trees at risk?

**Answer 5**

The arboriculture report contained in Attachment 6 of the officer’s report states that the basement is well clear of the structural root zone radius of the jacaranda tree, with a 3.8% encroachment into the tree protection zone radius which the report concludes is “unlikely to cause significant root to the tree”. The arboriculture report also illustrates that a significant

portion of the structural root zone and tree protection zone extends into the property to the north including a portion of both being under the dwelling on the property to the north. As noted in the response to the previous question condition 12 addresses the tree on the property to the south.

**Question 6**

The Design Review Panel and your planning department got the protection of these trees completely wrong in the previous, approved development application at 43 Napier St. And it appears you are destined to get it wrong again this time. Why is this?

**Answer 6**

The arboriculture report contained in Attachment 6 combined with condition 12 demonstrate that the trees at the rear of the property will be protected.

**Question 7**

Given the building's oversized plot ratio, non-compliant street setback and its encroachment on tree protection zones, why didn't the Design Review Panel or your department direct the Applicant to reduce the plot ratio to make the building smaller?

**Answer 7**

The proposed building has a relatively high proportion of plot ratio area compared to gross floor area. This is caused by there being one apartment per level, reducing the common areas on each floor (which are excluded from plot ratio). Given the setbacks and height of the building are within those anticipated for the area, the bulk and scale of the proposed development is consistent with the designed future character.

The larger plot ratio is the result of the relatively large apartment size rather than due to external factors such as reduced setbacks or increased height. The scale of the development is relatively small when considering total number of dwellings, with a consequential reduction in development intensity.

**Question 8**

Do you agree that failing to ensure these 4 overlooking balconies achieve the Element Objective, is acting to the detriment of the overlooked neighbours, and a dereliction of your duty?

**Answer 8**

The planning assessment is that the balconies achieve the Element Objective which is explained in detail in response to the next question.

**Question 9**

So, Mr Free, please explain how 4, elevated balconies on an apartment building, that are so obviously and extremely invasive to a neighbouring resident's privacy, achieve the Element Objective for visual privacy?

**Answer 9**

Separation distances between the balconies and the rear boundary are 8.1m and 12m, which exceed the acceptable outcomes. Whilst this is not an automatic satisfaction of the element objective, the provision of sufficient separation is the established method of visual



privacy for all types of residential development. For instances, the deemed-to-comply (as-of-right) setback for a upper floor balcony to a single house and grouped dwelling is 6m for the R60 density. The proposed setbacks exceed the 7.5m deemed-to-comply for a balcony in a low density code (R50 or lower). The Residential Design Codes do not seek to eliminate all overlooking as this is impractical in an urban area. Rather, the Codes seek to provide separation commensurate to the lot size and location of the opening. The proposal is considered to meet the Element Objective for visual privacy as direct overlooking has been minimised by placing the main balcony and indoor living areas at the front (east) of the building, leaving western-facing balconies and room to lower-activity usage.

**Question 10**

Given that it is reasonable to expect that your department apply the planning codes fairly and consistently, please explain your department's complete inconsistency on this issue, when the site conditions and the planning code are exactly the same?

**Answer 10**

The setback of the west-facing upper floor balcony for the 2022 approved development was 5.5m from the edge of the balcony floor to the western (rear) boundary. The acceptable outcome setback for visual privacy to an unscreened balcony is 6m. The design elected to use full screening in order to allow for the balcony to be located as subsequently approved.

The current proposal seeks to place two west-facing balconies on the two upper levels. The balcony off Bed 1 will be setback 8.1m from the western (rear) boundary. The balcony off the Sitting Room will be setback 12.2m from the rear boundary. Both balconies meet the acceptable outcome for setback to the western boundary.

Mr Dale Harris, spoke in support of the recommendation for item 16.3 - PD43.09.23 - West Melvista Parking Restrictions.

Mr Matthew McNeilly, spoke in support of the recommendation for item 16.3 - PD43.09.23 - West Melvista Parking Restrictions.

**5. Requests for Leave of Absence**

Any requests from Council Members for leave of absence will be dealt with at the Ordinary Council Meeting.

**6. Petitions**

Petitions will be dealt with at the Ordinary Council Meeting.

## **7. Disclosures of Financial Interest**

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

There were no disclosures of financial interest.

## **8. Disclosures of Interests Affecting Impartiality**

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

### **8.1 Councillor Youngman – PD44.09.23 CONFIDENTIAL – Legal Opinion Received on Judicial Review Prospects for JDAP Decision for 97-105 Stirling Highway, Nedlands**

Councillor Youngman disclosed an impartiality interest in Item 24.1 - PD44.09.23 CONFIDENTIAL – Legal Opinion Received on Judicial Review Prospects for JDAP Decision for 97-105 Stirling Highway, Nedlands. Councillor Youngman disclosed that his mother lives on Baird Street and he has no financial interest in his mother's property nor any other financial involvement with her, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Youngman declared that he would consider this matter on its merits and vote accordingly.

Please note this interest was declared at the item.

## **9. Declarations by Members That They Have Not Given Due Consideration to Papers**

This item will be dealt with at the Ordinary Council Meeting.

## **10. Confirmation of Minutes**

This item will be dealt with at the Ordinary Council Meeting.

## **11. Announcements of the Presiding Member without discussion**

This item will be dealt with at the Ordinary Council Meeting.

**12. Members Announcements without discussion**

This item will be dealt with at the Ordinary Council Meeting.

**13. Matters for Which the Meeting May Be Closed**

For the convenience of the public, the following Confidential items are identified to be discussed behind closed doors, as the last items of business at this meeting.

**14. En Bloc Items**

This item will be dealt with at the Ordinary Council Meeting.

**15. Minutes of Council Committees and Administrative Liaison Working Groups****15.1. Minutes of the following Committee Meetings (in date order) are to be received:**

This is an information item only to receive the minutes of the various meetings held by the Council appointed Committees (N.B. This should not be confused with Council resolving to accept the recommendations of a particular Committee. Committee recommendations that require Council's approval should be presented to Council for resolution via the relevant departmental reports).

This item will be dealt with at the Ordinary Council Meeting.

## **16. Divisional Reports - Planning & Development Report**

### **16.1. PD41.09.23 Consideration of Development Application - Residential - Amendment to Single House at 21A Cross Street, Swanbourne**

#### **Questions or Requests for Further Information**

Councillor Youngman – can the heights of the screens be provided?

Councillor Amiry – could additional clearer drawings be provided for the Council meeting?

Councillor McManus – can officers meet with the applicant and the neighbour before the Council meeting to discuss the application?

### **16.2. PD42.09.23 Consideration of Development Application - 3 Multiple Dwellings at 43 Napier Street, Nedlands**

#### **Questions or Requests for Further Information**

Cr Hodsdon – how much deep soil area is being provided?

### **16.3. PD43.09.23 - West Melvista Parking Restrictions**

#### **Questions or Requests for Further Information**

Councillor Hodsdon – how many parking permits is each resident permitted?

Councillor Coghlan – could attachment numbering and labelling be corrected?

Councillor Coghlan – could all submissions be included in the Council agenda?

Councillor Coghlan - can an amendment be prepared to limit parking from 7am?

Councillor Coghlan – why has the City not provided no parking/stopping as well as no parking and line marking on Betty Street and Doonan Road?

## **17. Divisional Reports - Technical Services**

### **17.1. TS10.09.23 - Bulk Collection and Disposal Tender**

#### **Questions or Requests for Further Information**

Nil.

**17.2. TS11.09.23 - RFT 2022-23.09 - Feature Survey Tender**

Nil.

**17.3. TS12.09.23 - Register for WALGA RoadWise Council**

Questions or Requests for Further Information

Nil.

**18. Divisional Reports - Corporate Services**

**18.1. CPS38.09.23 - Monthly Financial Report - August 2023**

This item will be dealt with at the Council Meeting.

**18.2. CPS39.09.23 - Monthly Investment Report - August 2023**

This item will be dealt with at the Council Meeting.

**18.3. CPS40.09.23 - List of Accounts Paid - August 2023**

This item will be dealt with at the Council Meeting.

**19. Divisional Reports – Reports from the Audit & Risk Committee**

**19.1. ARC17.08.23 - Risk Management Policy**

Questions or Requests for Further Information

Councillor Youngman – Page 232 dot points 2 & 3 should be first as these points focus on health and safety.

**19.2. ARC18.08.23 - Internal Audit Services FY23-24 FY24-25**

Questions or Requests for Further Information

Nil.

**20. Divisional Reports – Reports from the Workforce Plan Implementation Committee**

**20.1. WPIC01.08.23 Organisation Review – Stage 2 Outcomes & Workforce Plan – 2023 Update**

This item will be dealt with at the Council Meeting.

**21. Reports by the Chief Executive Officer**

**21.1. CEO21.09.23 - Register of Outstanding Council Resolutions**

Questions or Requests for Further Information

Nil.

**21.2. CEO22.09.23 - Draft Council Members and CEO Attendance at Events Policy**

Questions or Requests for Further Information

Nil.

**22. Council Members Notice of Motions of Which Previous Notice Has Been Given**

This item will be dealt with at the Ordinary Council Meeting.

**23. Urgent Business Approved By the Presiding Member or By Decision**

This item will be dealt with at the Ordinary Council Meeting.

## **24. Confidential Items**

Confidential items to be discussed at this point.

### **24.1. PD44.09.23 CONFIDENTIAL - Legal Opinion Received on Judicial Review Prospects for JDAP Decision for 97-105 Stirling Highway, Nedlands**

A confidential report has been circulated to Council Members separately.

### **24.2. CPS41.09.23 CONFIDENTIAL - Desktop Computer Refresh**

A confidential report has been circulated to Council Members separately.

## **25. Declaration of Closure**

There being no further business, the Presiding Member will declare the meeting closed.