**MINUTES**

**Council Meeting**

**27 June 2023**

**Attention**

**These Minutes are subject to confirmation.**

Prior to acting on any resolution of the Council contained in these minutes, a check should be made of the Ordinary Meeting of Council following this meeting to ensure that there has not been a correction made to any resolution.

**Information**

Council Meetings are run in accordance with the City of Nedlands Standing Orders Local Law. If you have any questions in relation to items on the agenda, procedural matters, public question time, addressing Council or attending 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 question time at a Council Meeting is available for members of the public to ask a question about items on the agenda. Questions asked by members of the public are not to be accompanied by any statement reflecting adversely upon any Council Member or Employee.

Questions should be submitted as early as possible via the online form available on the City’s website: [Public question time | City of Nedlands](https://www.nedlands.wa.gov.au/public-question-time)

Questions may be taken on notice to allow adequate time to prepare a response and all answers will be published in the minutes of the meeting.

**Addresses by Members of the Public**

Members of the public wishing to address Council in relation to an item on the agenda must complete the online registration form available on the City’s website: [Public Address Registration Form | City of Nedlands](https://www.nedlands.wa.gov.au/public-address-registration-form)

The Presiding Member will determine the order of speakers to address the Council and the number of speakers is to be limited to 2 in support and 2 against any particular item on a Special Council Meeting Agenda. The Public address session will be restricted to 15 minutes unless the Council, by resolution decides otherwise.

**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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# Declaration of Opening

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

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

**Councillor Brackenridge and Councillor Youngman were granted authorisation by the Deputy Mayor to attend the meeting by electronic means in accordance with reg. 14C(2)(b).**

**Councillor Brackenridge and Councillor Youngman declared that they will maintain confidentiality during the consideration of confidential business.**

**Councillors** Deputy Mayor L J McManus (Presiding Member) Coastal Districts Ward

Councillor B Brackenridge (online) Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett (until 10.16pm) Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman (online) (until 9.45pm) Dalkeith Ward

Vacant Hollywood Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

**Staff** 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 22 members of the public present and 4 online.

**Press** The Post Newspaper Representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Mayor F E M Argyle

# Public Question Time

Questions received from members of the public were read at this point.

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

* 1. **Mr Christopher Ng**

**Question**

Why does the City of Nedlands' Councillors waste ratepayers funds in refusing applications which the Council Officers recommend to be approved. The Councillors are not experts on matters of planning, engineering, traffic, environmental etc, yet they persist in refusing applications which the paid council experts have considered acceptable.

**Answer**

When Council is the decision maker in a planning matter, Council is required to act a responsible authority under the planning framework, noting the Council power to make the decision has been delegated to them from the Western Australian Planning Commission. To assist, the City’s officers provide a report outlining the details of the application and highlighting the decision which Council is being requested to make. As the decision maker, it is open to Council to reach a different conclusion to that recommended by officers, provided that the decision is based on proper planning considerations.

* 1. **Mr Rex Hubbard**

**Question 1**

Have City of Nedlands planners checked that the claimed overshadowing of 47% is correct?

**Answer**

An assessment of the amended plans found the development is proposing to overshadow 50% the southern adjoining lot. This is the figure that has been considered in the assessment and evaluation of the proposal.

**Question 2**

Considering that the 2023 revised design has 1.34-fold the R40 acceptable outcome, and that the design still results in significant overshadowing of 7A Alexander Rd’s dining room and alfresco area, why wouldn’t the original reason for refusing the development application still stand?

**Answer**

Element objective O 3.2.2 of the R-Codes Volume 2 requires building form and orientation to minimise overshadowing of habitable rooms, open space and solar collectors.

It is noted that the element objective requires minimisation of overshadowing to habitable spaces, outdoor living areas and solar collectors, not necessarily elimination of overshadowing. The development’s built form has been altered in order to reduce the length of the shadow cast over habitable rooms on the southern adjoining lot. Due to the change in upper floor design, the proposal is considered to reasonably minimise overshadowing of habitable rooms and the alfresco area.

**Question 3**

What was the 1st floor’s overall area (internal and external) in the initial 2022 design, and what is it in the 2023 revised design?

**Answer**

The initial development plans had an external first floor area of 462.6m2 and an internal first floor area of 420.7m2. The plans currently being considered have an external first floor area of 497m2 and an internal first floor area of 447m2.

**Question 4**

What is the 1st floor’s change in overall floor area as a percentage?

**Answer**

The first floor area has increased by 7.4%.

**Question 5**

Do City of Nedlands planners consider that the change in the 1st floor’s overall area (if any) has meaningfully reduced the bulk and scale of the building’s 1st floor, particularly in the rear half of the lot? If the 1st floor bulk and scale, as measured by floor area, has not changed significantly then wouldn’t the original reason for refusing the development application still stand?

**Answer**

The development has a height of two storeys and now features significant articulation and setbacks which mitigate the adverse impact of building bulk for adjoining lots. The current set of amended plans reduced the southern wall height by 150mm compared to the initially submitted plans. Irrespective of the upper storey floor area change, the proposed setbacks and double storey scale of the development is appropriate for the R40 density coding. The effect of overshadowing is contributed to by a mix of building height, building length and setbacks. In this case, the additional 1st floor area is offset by increased setbacks to the southern boundary. The current set of amended plans reduced the southern wall height by 150mm compared to the initially submitted plans.

**Question 6**

How long was the 1st floor in the initial 2022 design, and how long is it in the 2023 revised design?

**Answer**

The initial development plans had a total first floor length of 41.6m. The plans currently being considered have a total first floor length of 42.1m.

**Question 7**

What is the 1st floor’s change in overall length as a percentage?

**Answer**

The first-floor length has increased by 1.2%.

**Question 8**

Would the city’s lead planner agree that there being an INCREASE in the 1st floor’s overall length, the overall bulk and scale of the 2023 revised design has EXACERBATED the bulk and scale of the already-excessive 2022 design, particularly in the rear half of the lot, and that the original reason for refusing the development application still stands?

**Answer**

Whilst the development’s upper floor length has increased by 0.5m, the bulk and scale of the design is not considered to detrimentally affect the adjoining lots due to the increase in setback and articulation of the upper storey walls in the rear half of the lot. The average setback distance of the upper floor wall from the southern boundary has increased by approximately 35%.

**Question 9**

Would the city’s lead planner agree that there being no change to the street setback, the original reason for refusing the development application still stands?

**Answer**

Additional information regarding landscaping of the verge has been provided to the City. The extensive landscaping of the verge contributes to and complements the landscape character of the street. With the addition of the significant verge landscaping, the proposed street setback is considered overall to be appropriate for an area in transition and is commensurate with that of a two storey single house.

**Question 10**

Would the city’s lead planner agree that, there being no change to the location or number of bins along the southern boundary wall, the original reason for refusing the development application still stands?

**Answer**

An amended location as shown on the plans, for the bins has been identified along the Shrike Lane frontage of the development.

**Question 11**

If council should reject the development application for 5A&5B Alexander Rd, then can the City of Nedlands please lay out the possible implications in coming months, by answering the following questions:

When the City of Nedlands planners recommended rejecting the development in Dec 2022, did they consider they had a reasonable chance of winning an SAT appeal based on the WASAT 41 precedent?

**Answer**

The context of the WASAT 41 case is different from the proposal at 5A & 5B Alexander Road. The WASAT 41 case involved a 4 storey proposal, which is significantly different from the 2 storey proposal associated with 5A & 5B Alexander Road. In December, officers were unaware if an appeal was to be lodged with the SAT.

**Question 12**

When the new gazetted R-codes come into effect on 1-Sept-2023, do the deemed to comply overshadowing criteria for R-40 zoning change from the current criteria?

**Answer**

The new R-Codes will not change the provisions as they apply to 5A & 5B Alexander Road.

**Question 13**

When the new gazetted R-codes come into effect on 1-Sept-2023, can the applicant bypass council and elect to opt-in for a Development Assessment Panel (DAP) pathway, with only 4 dwellings in his proposed apartment block?

**Answer**

The R-Codes don’t determine the relevant Planning Authority responsible for determining applications, so the introduction of the new R-Codes on 1 September will not change the current approval pathway. Changes flagged by the WA State Government to the eligibility for DAP applications has not been implemented at this time.

**Question 14**

Given that the overshadowing deemed to comply criteria do not change, and given that applicant cannot opt-in for a Development Assessment Panel (DAP) pathway, then shouldn’t City of Nedlands continue to uphold its hard-won planning principles from the WASAT 41 case?

**Answer**

The WASAT 41 case involved a 4 storey proposal adjacent to 2 storey dwellings. The 5A & 5B Alexander Road proposal is a 2 storey proposal adjacent to 2 storey dwellings. Furthermore the WASAT 41 determination outlined how the application could be modified to potentially result in a design which may be acceptable. Caution should be exercised in suggesting that the determination in WASAT 41 has direct relevance to the current proposal.

**Question 15**

How much did it cost City of Nedlands and its ratepayers to win the WASAT 41 case at the SAT?

**Answer**

Approximately $103,000

**Question 16**

If City of Nedlands does not uphold its hard-won planning principles from the WASAT 41 case, is it reasonable for ratepayers to feel upset that the City of Nedlands wasted a large amount of their money in winning WASAT 41?

**Answer**

As outlined in an earlier answer, the direct relevance to the current proposal is questioned, on the basis of the signifcantly different proposals involved.

# Addresses by Members of the Public

Addresses by members of the public who had completed Public Address Registration Forms to be made at this point.

Mrs Jennifer Allen, spoke in support of item 15.3 - Motion Passed at the 2022 Annual General Meeting of Electors.

Councillor Hodsdon left the room at 6.11 pm and returned at 6.12pm.

Mr Digby de Bruin, spoke in support of item 15.3 - Motion Passed at the 2022 Annual General Meeting of Electors.

Mr Rex Hubbard, spoke in opposition to the recommendation for item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith.

Ms Kylie Bennett, spoke in opposition to the recommendation for item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith.

Ms Bianca Sandri, spoke in support of the recommendation for item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith.

Suspension of Standing Orders

Moved - Councillor Coghlan

Seconded - Councillor Hodsdon

**That Standing Order No. 3.4(4) be suspended for the purpose of allowing additional speakers on item 16.2 and Standing Order No. 3.4(5) be suspended for the purpose of extending the Public Address Session beyond 15 minutes to allow all those registered to address Council.**

**CARRIED UNANIMOUSLY 11/-**

Mr Yogi Yogesan, spoke in opposition to item 16.2 - PD25.06.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

Miss Saieesha Yogesan, spoke in opposition to item 16.2 - PD25.06.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

Mr Rishi Yogesan, spoke in opposition to item 16.2 - PD25.06.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

Mr Adrian Abel, spoke in support of item 16.2 - PD25.06.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands.

Mrs Siew Fung, spoke in opposition to item 16.3 - PD26.06.23 Consideration of Development Application – Residential - Three Multiple Dwellings at 23 Hillway, Nedlands.

Mr Andrew Mackellar, spoke in opposition to item 16.3 - PD26.06.23 Consideration of Development Application – Residential - Three Multiple Dwellings at 23 Hillway, Nedlands.

Mr Dan Lees, Element, spoke in support of item 16.3 - PD26.06.23 Consideration of Development Application – Residential - Three Multiple Dwellings at 23 Hillway, Nedlands.

Councillor Mangano left the room at 6.48 pm and returned at 6.49pm.

Mr Bob Stevenson, spoke in relation to item 17.3 - CSD04.06.23 Allen Park Tennis Club Fence Replacement.

Mr Peter Rattigan, spoke in in relation to item 17.3 - CSD04.06.23 Allen Park Tennis Club Fence Replacement.

Mrs Rebecca Johnston spoke in relation to the playground at Melvista.

Mr Steve Garwin, spoke in relation to item 21.3 - PD29.06.23 Consideration of Responsible Authority Report for 10 Grouped Dwellings at 3 & 5 Bruce Street, Nedlands.

Ms Claire Garwin, spoke in relation to item 21.3 - PD29.06.23 Consideration of Responsible Authority Report for 10 Grouped Dwellings at 3 & 5 Bruce Street, Nedlands.

Mr Michael Dickinson, spoke in support of item 21.3 - PD29.06.23 Consideration of Responsible Authority Report for 10 Grouped Dwellings at 3 & 5 Bruce Street, Nedlands.

# Requests for Leave of Absence

Any requests from Council Members for leave of absence were made at this point.

Nil.

# Petitions

Petitions were tabled at this point.

A copy of the following petition was circulated to Councillors prior to the meeting.

# 6.1 Petition – Objection to Three Multiple Dwellings at 23 Hillway, Nedlands

The CEO tabled a petition on behalf of Mr Andrew Mackeller and 59 others objecting to the proposed development of three-multiple dwellings at 23 Hillway, Nedlands.

The proposed development:

* Is a large bulky mass supplanted in the middle of a leafy suburban streetscape;
* Is out of character with recent developments in the Kingsway/Melvista/Hillway R60 zone;
* Does not meet the objectives set out in WA Government, Department of Planning, lands and Heritage, Residential Design Codes Volume 2 – Apartments, May 2019 for:
* Building Separation
* Minimum deep soil areas and rootable soil zone.
* Is not compliant with nor meet the intent of the Broadway Precinct Local Planning Policy for Multiple or Group Dwellings on an R60 site.

Moved – Councillor Bennett

Seconded – Councillor Hodsdon

**That Council receives the petition.**

**CARRIED UNANIMOUSLY 11/-**

# Disclosures of Financial / Proximity Interest

The Presiding Member to remind 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.



# Councillor Brackenridge – item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith.

Councillor Brackenridge disclosed a financial interest in Item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith, his interest being that he is the applicant. Councillor Brackenridge declared that he would leave the room during discussion on this item.

# 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.

# Councillor McManus – Item 15.3 - Motion Passed at the 2022 Annual General Meeting of Electors

Councillor McManus disclosed an impartiality interest in Item 15.3 - Motion Passed at the 2022 Annual General Meeting of Electors. Councillor McManus disclosed that he is a financial member of the bushland group and a small donor to the group, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor McManus declared that he would consider this matter on its merits and vote accordingly.



# Councillor Smyth – Item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith

Councillor Smyth disclosed an impartiality interest in item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith. Councillor Smyth disclosed that she has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that her impartiality on the matter may be affected. Councillor Smyth declared that she would consider this matter on its merits and vote accordingly.

# Councillor Youngman – Item 21.2 - PD28.06.23 Responsible Authority Report - 97-105 Stirling Highway - Amendment to Mixed Use Development (DAP/20/01770)

Councillor Youngman disclosed an impartiality interest in Item 21.2 - PD28.06.23 Responsible Authority Report - 97-105 Stirling Highway - Amendment to Mixed Use Development (DAP/20/01770). 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.

# Councillor Hodsdon – Item 19.2 - CEO13.06.23 Foreshore Management Steering Committee Replacement Member and Deputy Member

Councillor Hodsdon disclosed an impartiality interest in Item 19.2 – CEO13.06.23 Foreshore Management Steering Committee Replacement Member and Deputy Member. Councillor Hodsdon disclosed that he is mentioned in the report, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

# Councillor Hodsdon – Item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith

Councillor Hodsdon disclosed an impartiality interest in item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith. Councillor Hodsdon disclosed that he has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

# Councillor Senathirajah – Item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith

Councillor Senathirajah disclosed an impartiality interest in item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith. Councillor Senathirajah disclosed that he has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Senathirajah declared that he would consider this matter on its merits and vote accordingly.

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

Nil.

# Confirmation of Minutes

**10.1 Ordinary Council Meeting Minutes – 23 May 2023**

Moved – Councillor Hodsdon

Seconded – Councillor Amiry

The minutes of the Ordinary Council Meeting held 23 May 2023 be confirmed.

**CARRIED UNANIMOUSLY 11/-**

# Announcements of the Presiding Member without discussion.

Nil.

# Members Announcements without discussion.

Written announcements by Council Members were tabled at this point.

**12.1 Councillor Amiry**

I would like to commend Councillor Smyth on her dedication to maintenance of access pathways for pedestrian and cyclists. She ensured that Public Access Easements were included in the CCGS Playing Fields land transactions in perpetuity. She has since supported residents over 2 years to relocate the gate on Blenheim Street to enable access to CCGS Playing Fields. On 14 March 2023 when the contractors arrived to relocate gate and clear the wire fencing there were a few hiccups in construction, and it was Councillor Smyth’s presence on site that averted a miscommunication that would have resulted in additional cost and delay. Councillor Smyth’s physical presence at the worksite resulted in the timely completion of another project to providing the public to the CCG playing fields.

**12.2 Councillor Hodsdon**

Councillor Hodsdon gave the following announcement:

A vote of thanks to the friends of Hollywood, students, and teachers at Hollywood primary school, rangers, and staff of the City of Nedlands and our local Member Dr Katrina Stratton for organising, planning and / or supporting the tree planting exercise in the Hollywood Bushland today. It was wonderful to see how the carers instructed, educated, and cared for the students in their tree care activities. This activity is supporting, by example, the protection and enhancement of our natural environment. Well done.

# 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.

22.1 CEO16.06.23 CONFIDENTIAL Final Determination Report 6982/22

# En Bloc Items

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the officer recommendations for Items 15.1, 18.3, 18.4 and 19.2 be adopted en bloc and items 15.2, 15.3, 16.1, 16.2, 16.3, 16.4, 17.2, 17.3, 18.2, 19.3, 19.4, 22.1 and all remaining items will be dealt with separately.**

**CARRIED UNANIMOUSLY 11/-**

# Minutes of Council Committees and Administrative Liaison Working Groups

# 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).

Moved – Councillor Senathirajah

Seconded – Councillor Combes

The Minutes of the following Committee Meetings (in date order) be received:

**Audit & Risk Committee Meeting Minutes 22 May 2023**

Unconfirmed, circulated to Councillors on 30 May 2023

**CARRIED UNANIMOUSLY EN BLOC 11/-**

Councillor Bennett left the room at 7.17 pm.

# Minutes of the 2022 Annual General Meeting of Electors – 15 May 2023

Moved – Councillor Smyth

Seconded – Councillor Combes

**The minutes of the 2022 Annual General Meeting of Electors held 15 May 2023 are to be received.**

Councillor Bennett returned to the room at 7.19 pm.

**CARRIED 10/1**

**(Against: Cr. Mangano)**

# Motion Passed at the 2022 Annual General Meeting of Electors

The following Motion was Passes at the 2022 Annual General Meeting of Electors held on 15 May 2023 and is now presented to Council for consideration.

**Councillor McManus – Impartiality Interest**

Councillor McManus disclosed an impartiality interest in Item 15.3 - 15.3 Motion Passed at the 2022 Annual General Meeting of Electors. Councillor McManus disclosed that he is a financial member of the bushland group and a small donor to the group, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor McManus declared that he would consider this matter on its merits and vote accordingly.

**Regulation 11(da) - Council considered it appropriate that any requests for funding in the 2023/24 Budget is subject to identical, rigorous evaluation process.**

Moved – Councillor Senathirajah

Seconded – Councillor Mangano

**Council Resolution**

**That Council:**

1. **notes the Motion passed at the Annual General Meeting of Electors on 15 May 2023;**
2. **instructs the Chief Executive Officer to take immediate preventive action to ensure that the Allen Park Cottage does not deteriorate any further; and**
3. **instructs the Chief Executive Officer to evaluate as part of the budgetary process the request for $600,000 in the 2023/24 budget to complete the restoration of the Allen Park Cottage to its circa early 1900s condition as identified within the Heritage Report.**

Amendment

Moved - Councillor Smyth

Seconded - Councillor Bennett

That clause 3 be replaced with the following clause:

1. requests the Chief Executive Officer to list a project staged over 2 years, within the proposed 2023-24 and 2024-25 Capital Works Program and to the approximate value of $600,000 for Council to consider during budget adoption.

The AMENDMENT was PUT and was

Lost 5/6

(Against: Crs. Coghlan Senathirajah Mangano Youngman Combes & Hodsdon)

**The Substantive motion was PUT and was**

**CARRIED 8/3**

**(Against: Crs. Coghlan Mangano & Combes)**

That Council:

1. instructs the Chief Executive Officer to take immediate preventative action to ensure that the Allen Park Cottage does not deteriorate any further; and
2. considers allocating $600,000 in the 2023/24 budget to complete the restoration of the Allen Park Cottage to its circa early 1900s condition as identified within the Heritage Report.

**Administration Comment**

The City acknowledges the importance of this cottage to the local community. Preventative action has been taken by securing the site with security fencing, pest treatment, disconnection of services, and ongoing monitoring.  No other measures are considered necessary at this time.

If the recommendation from the Annual Meeting of Electors is adopted by Council, the City will list a project within the proposed 2023-24 Capital Works Program to the approximate value of $600,000 for Council to consider during budget adoption. This inclusion will require Council to either determine a source of additional income or defer a number of projects of proportional value and resource demand to future financial years.

**The Presiding Member adjourned the meeting for 5 minutes for the purposes of a refreshment break.**

The meeting adjourned at 7.40pm and reconvened at 7.45 pm with the following people in attendance:

**Councillors** Councillor L J McManus (Presiding Member) Coastal Districts Ward

Councillor B Brackenridge (online) Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman (online) Dalkeith Ward

Vacant Hollywood Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

**Staff** 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 11 members of the public present and 5 online.

**Press** The Post Newspaper Representative.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Mayor F E M Argyle

**CARRE**

# Divisional Reports - Planning & Development Report No’s PD24.06.23 to PD27.06.23

# PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | B Brackenridge |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. R-Codes Volume 2 Assessment 4. Architectural Perspectives 5. Applicants’ Supplementary Justification 6. CONFIDENTIAL ATTACHMENT – Submissions 7. Revised Development Plans 8. Revised Landscaping Plan |

**Councillor Brackenridge – Financial Interest**

Councillor Brackenridge disclosed a financial interest in Item 16.1 - PD24.06.23 Section 31 Reconsideration of Development Application – Four Multiple Dwellings at 5A & 5B Alexander Road, Dalkeith, his interest being that he is the applicant. Councillor Brackenridge declared that he would leave the room during discussion on this item.

Councillor Brackenridge left the room at 7.45 pm.

**Councillor Smyth – Impartiality Interest**

Councillor Smyth disclosed that she has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that her impartiality on the matter may be affected. Councillor Smyth declared that she would consider this matter on its merits and vote accordingly.

**Councillor Hodsdon – Impartiality Interest**

Councillor Hodsdon disclosed that he has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

**Councillor Senathirajah – Impartiality Interest**

Councillor Senathirajah disclosed that he has an association with the applicant as a fellow Councillor, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Senathirajah declared that he would consider this matter on its merits and vote accordingly.

**Regulation 11(da) - Council considered that a 4 metre setback, satisfying the deemed to comply requirements was more appropriate given the existing streetscape. Council also considered that from an amenity perspective it would be more appropriate for the bin storage area to be enclosed and additional landscaping be provided.**

Moved – Councillor Mangano

Seconded – Councillor Bennett

**That the Revised Officer Recommendation be adopted with the inclusion of a additional condition 5 as follows and all other conditions renumbered:**

1. **The primary street setback to be increased to a minimum of 4m to any portion of the building to the satisfaction of the City of Nedlands**.

Amendment

Moved - Councillor Smyth

Seconded - Councillor Mangano

**That the additional conditions be added as follows and all other conditions be renumbered:**

**6. Prior to the issue of a building permit, amended plans shall be submitted which depict a fully enclosed bin storage area to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit, amended plans shall be submitted which depict additional landscaping along the southern boundary of the site to the satisfaction of the City of Nedlands.**

**The AMENDMENT was PUT and was**

**CARRIED UNANIMOUSLY 10/-**

Amendment

Moved - Councillor Mangano

Seconded - Councillor Bennett

That the applicant submits amended plans to reduce the overall height of the structure by 800mm to reduce the overshadowing.

The AMENDMENT was PUT and was

Lost 2/8

(Against: Deputy Mayor Crs. Coghlan Senathirajah Amiry

Smyth Youngman Combes & Hodsdon)

**The Substantive motion was PUT and was**

**The vote being tied 5/5, the Presiding Member exercised his casting vote.**

**CARRIED ON THE CASTING VOTE 6/5**

**(Against: Crs. Coghlan Senathirajah Amiry Combes & Hodsdon)**

Councillor Mangano left the room at 8.14 pm and returned at 8.15pm.

**Council Resolution**

**That Council in accordance with Section 31(2)(c) of the State Administrative Tribunal Act 2004, set aside its refusal to grant development approval for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith dated 13 December 2022 and substitutes the previous decision as follows:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 June 2023 for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 16 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

1. **Prior to the issue of a building permit, an amended site plan shall be submitted which depicts the relocation of the bin storage area from the southern lot boundary to the western lot boundary.**

1. **The primary street setback to be increased to a minimum of 4m to any portion of the building to the satisfaction of the City of Nedlands**.
2. **Prior to the issue of a building permit, amended plans shall be submitted which depict a fully enclosed bin storage area to the satisfaction of the City of Nedlands.**
3. **Prior to the issue of a building permit, amended plans shall be submitted which depict additional landscaping along the southern boundary of the site to the satisfaction of the City of Nedlands.**

**Engineering and Design**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**

1. **Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:**

**a. Lot 101 (No. 7A) Alexander Road, Dalkeith**

**b. Lot 1 (No. 3A) Alexander Road, Dalkeith**

**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.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

**Landscaping**

1. **Prior to occupation, landscaping shall be completed in accordance with the plans dated 9 June 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

1. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 100L tree located on the Alexander Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

**Acoustics and Sustainability**

1. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the recommendations contained within the Kellett Design Group Energy Assessment Report dated 9 July 2021, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Waste**

1. **The development shall comply with the approved Waste Management Plan prepared by Instant Waste Management date stamped 21 April 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.**

1. **Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.**

**Parking and Access**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**

1. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

1. **Prior to occupation, the portion of the laneway abutting the western boundary of the site being constructed and drained to its full width at the landowner/applicants cost and the remaining portion of the laneway from the western boundary of the site to the nearest constructed road being made trafficable.**

**Screening**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**

Revised Officer Recommendation

That Council in accordance with Section 31(2)(c) of the State Administrative Tribunal Act 2004, set aside its refusal to grant development approval for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith dated 13 December 2022 and substitutes the previous decision as follows:

In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 June 2023 for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 16 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.

1. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.

1. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

1. Prior to the issue of a building permit, an amended site plan shall be submitted which depicts the relocation of the bin storage area from the southern lot boundary to the western lot boundary.

Engineering and Design

1. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.

1. Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.

1. Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:

a. Lot 101 (No. 7A) Alexander Road, Dalkeith

b. Lot 1 (No. 3A) Alexander Road, Dalkeith

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.

1. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:

a. Face brick;

b. Painted render;

c. Painted brickwork; or

d. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

Landscaping

1. Prior to occupation, landscaping shall be completed in accordance with the plans dated 9 June 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.

1. The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.

1. Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.

1. Prior to occupation, the applicant is to plant a minimum of one (1) x 100L tree located on the Alexander Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

Acoustics and Sustainability

1. Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.

1. Prior to occupation, the recommendations contained within the Kellett Design Group Energy Assessment Report dated 9 July 2021, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.

Waste

1. The development shall comply with the approved Waste Management Plan prepared by Instant Waste Management date stamped 21 April 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.

1. Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.

Parking and Access

1. Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.

1. All car parking dimensions (including associated wheel stops and headroom clearance), maneuvering areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.

1. Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.

1. Prior to occupation, the portion of the laneway abutting the western boundary of the site being constructed and drained to its full width at the landowner/applicants cost and the remaining portion of the laneway from the western boundary of the site to the nearest constructed road being made trafficable.

Screening

1. Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.

Recommendation

That Council, in accordance with Section 31(2)(c) of the State Administrative Tribunal Act 2004, sets aside its refusal to grant development approval for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith dated 13 December 2022 and substitutes the previous decision as follows:

In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 11 April 2023 for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 11 April 2022. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a building permit on-site stormwater retention plans shall be submitted showing all stormwater discharge from the development being contained and disposed of on-site unless otherwise approved by the City of Nedlands.

Engineering and Design

1. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.
2. Prior to the issue of a building permit, a minimum of 20% of units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:
4. Lot 101 (No. 7A) Alexander Road, Dalkeith
5. Lot 1 (No. 3A) Alexander Road, Dalkeith

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.

1. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
2. Face brick;
3. Painted render;
4. Painted brickwork; or
5. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

Landscaping

1. Prior to occupation, landscaping shall be completed in accordance with the plans dated 11 April 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.
2. The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.
3. Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.
4. Prior to occupation, the applicant is to plant a minimum of one (1) x 100L tree located on the Alexander Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

Acoustics and Sustainability

1. Prior to the issue of a building permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.
2. Prior to occupation, the recommendations contained within the Kellett Design Group Energy Assessment Report dated 9 July 2021, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.

Waste

1. The development shall comply with the approved Waste Management Plan prepared by Instant Waste Management date stamped 21 April 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.
2. Prior to the issue of a building permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.

Parking and Access

1. Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.
2. All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit, plans detailing a long section through the proposed crossover shall demonstrate the prevention of stormwater from the laneway entering the property to the satisfaction of the City of Nedlands.
4. Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.
5. Prior to occupation, the portion of the laneway abutting the western boundary of the site being constructed and drained to its full width at the landowner/applicants cost and the remaining portion of the laneway from the western boundary of the site to the nearest constructed road being made trafficable.

Screening

1. Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.

**Purpose**

The purpose of this report is for Council to reconsider a development application for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith.

At the 13 December 2022 Ordinary Council Meeting (Refer item PD81.12.22), the application was refused by Council. Subsequent to Orders made by the State Administrative Tribunal (SAT) and amended development plans submitted to the City, this application is presented to Council to reconsider the proposal under section 31 of the SAT Act 2004 and make a determination.

The previously refused application did not satisfy the Element Objectives of the following design elements:

* Street Setbacks
* Plot Ratio
* Orientation
* Waste Management

The development now achieves the Element Objectives for the above matters subject to conditions of approval and is supported.

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights 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.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| Metropolitan Region Scheme Zone | Urban |
| Local Planning Scheme Zone | Residential |
| R-Code | R40 |
| Land area | 948m2 (combined) |
| Land Use | Residential – Multiple Dwellings |
| Use Class | ‘P’ – Permitted Use |

The site is comprised of two lots, 5A and 5B Alexander Road, Dalkeith, 130m west of the Dalkeith Village Shopping Centre. The site is rectangular, has a 20m frontage and a total area of 948m2. The site has dual street access from Alexander Road to the east and Shrike Lane to the west. The site has an approximate fall of 0.5m from north to south. The site is currently vacant.

**Background**

Local Planning Scheme No. 3 (LPS3) was gazetted on 16 April 2019. From this time, a residential density coding of R60 was applicable to the western side of Alexander Road, including the subject site. On 4 February 2022, LPS3 was amended (Amendment No. 8) to reduce the density coding of the western side of Alexander Road, including the subject site, from R60 to R40.

The development application was lodged on 30 October 2020, when the density coding was R60. The proposal is now subject to the current applicable density coding of R40.

**Previous Decision**

At the Ordinary Council Meeting on 13 December 2022, Council considered a proposal for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith. Council resolved to refuse the application for the following reasons:

1. The proposed building form and orientation does not minimise overshadowing of the primary living area and outdoor living area of the neighbouring property at 7A Alexander Road, Dalkeith during mid-winter as required by Element 3.2 of the Residential Design Codes Volume 2.
2. The overall bulk and scale of the development is inappropriate for the existing and planned character of the area, specifically in relation to the bulk and scale of the building on the rear half of the lot in comparison to the rear bulk and scale of nearby dwellings and as required by Element 2.5 of the Residential Design Codes Volume 2.
3. The upper floor setback of 2.5m to the primary street (Alexander Road) is insufficient to reinforce and complement the existing and proposed landscape character of the street, which currently provides a minimum 4m of unencroached front setback area for each property on the west side of Alexander Road between Philip Road and Waratah Avenue and as required by Element 2.3 of the Residential Design Codes Volume 2.
4. The proposed waste management facilities do not minimise negative impacts on building entries and the amenity of residents as required by Element 4.17 of the Residential Design Codes Volume 2.

**SAT Application**

On 19 December 2022, an application was lodged with the SAT to review the decision. Subsequent to orders being set out by SAT and amended development plans being received by the City in April 2023, the application is presented to Council to reconsider the proposal and make a determination. Reconsideration is enabled by section 31 of the SAT Act (see legislative and policy implications section of this report).

**Amended Plans**

The application seeks development approval for the construction of a two storey building consisting of four multiple dwellings with basement car parking. Pursuant to the order made by the SAT, amended plans were prepared which make the following changes from the original proposal:

* Overshadowing – The proposal reduces overshadowing to the southern lot by increasing upper floor setbacks to the southern lot boundary (from a minimum 2.3m to 3.7m and 5.4m)
* Bulk and scale – Open space on the ground floor has been increased through the reduction in lobby size. The built form has been altered through amended setbacks to side lot boundaries.
* Landscaping – Additional landscaped area has been added on site. Increased and varied landscaping is proposed within the verge in front of the lot.
* Waste management – The waste bin storage area is roofed and enclosed. The bin pickup location has been relocated to the rear laneway.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies. The refused application did not satisfy the Element Objectives of the following design elements:

* Street Setbacks
* Plot Ratio
* Orientation
* Waste Management

The development now achieves the Element Objectives for the above matters subject to conditions of approval and is supported. Please refer to the assessment provided below and as attached at Attachment 3.

**Local Planning Scheme No. 3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy 7.3 - Residential Design Codes – Volume 2 –** **Apartments**

The proposal has been assessed against all relevant design elements of the Residential Design Codes Volume 2 – Apartments (R-Codes) which provides a comprehensive basis for the control of residential development.

The design elements that did not previously satisfy the Element Objectives require key consideration and are detailed below:

**Element 2.3 – Street setbacks**

The proposal meets the Acceptable Outcome for primary street setback on the ground floor. The primary street setback on the upper floor now contributes to the existing streetscape and complements the proposed character of the street as:

* The entire verge in front of the site is proposed to be extensively landscaped. The verge will feature an additional established street tree as well as the introduction of diverse, native plant species. This increased vegetation on the verge will mitigate the visual impact of the building's proximity to the street, softening the transition between the built environment and the adjacent public space.
* The 2.5m upper floor setback is measured from the balcony. The balcony is open to the street to create a sense of permeability and reduce the perception of bulk. The substantive, solid wall of the upper floor Unit 3 is setback a minimum of 4m from the primary street.
* The balcony incorporates various screen walls, appropriate balustrade heights, and differing balustrade materials to create visual interest. The balcony design uses materials and finishes that complement the contemporary architectural style and character of the local area, enhancing the overall visual appeal and integration with the streetscape.
* The upper floor setback is comparable to the setback of a single house in the R40 code. For R40 areas, the R-Codes Volume 1 establishes a deemed-to-comply primary street setback of 4m for single houses, with balconies able to be setback 2m as a deemed-to-comply outcome. The proposed building achieves these setbacks and would qualify as deemed-to-comply if it were a single house.

**Element 2.5 – Plot ratio**

Ground floor site coverage has been reduced resulting in the overall bulk and scale of the development being appropriate for the existing and future character of the area as:

* The lobby has been reduced in size to allow for 22% of the site being deep soil or landscaped areas, which exceeds the Acceptable Outcome of 10%. This provides for extensive and attractive landscaped spaces, particularly towards the front of the site within view from the street.
* The Residential Design Codes Volume 1 2023 (Medium Density) will be gazetted and in effect by 1 September 2023. As an R40 site, this development will be subject to the Medium Density codes when they are in effect. The Medium Density codes replace the plot ratio design element with site cover. It is worth noting that the development as proposed would meet the deemed-to-comply provisions of site cover for R40 as the building occupies approximately 61% of the site in lieu of the deemed-to-comply 65%.
* The built form does not detrimentally impact other adjoining properties as overshadowing of habitable spaces has been further reduced, visual privacy is maintained through window placement and screening, and building bulk is negated through the building’s two storey height, articulated wall lengths and ample altered side boundary setbacks, particularly to the southern boundary.
* The existing character of the western side of Alexander Road is typified by one and two storey single houses with varying architectural styles. The overall proposed scale and built form of the development results in a sympathetic design that presents as a two storey single house. The materiality and detail of the design appropriately reflects the existing context of low intensity residential development.

**Element 3.2 – Orientation**

Overshadowing of the southern lot has been reduced through increased setbacks to the southern side lot boundary. The building design optimises solar access for the dwellings within the development and reasonably minimises overshadowing of neighbouring properties as:

* The built form design maximises the ability for light to penetrate habitable rooms within the development through significant articulation of the northern wall and windows to the majority of rooms which permit northern light.
* Through articulation and varied setbacks of the southern wall, overshadowing to the adjoining lot has been reduced by approximately 10% from the previous plans. In particular, the development has been designed to minimise impacts to the adjoining lot’s alfresco area, family room and western portion of the dining room. The shadow cast is approximately 0.5m ‘longer’ than the shadow cast by the existing dividing fence.
* The bulk of the development sits comfortably within the expected building envelope of a multiple dwelling development in the R40 code while still providing functional and attractive internal living spaces and outdoor living areas for the upper floor units whilst minimising overshadowing to the adjoining dining room at 7A Alexander Road.

**Element 4.17 – Waste management**

The waste storage facilities provided minimise negative impacts on the streetscape and other residents as:

* The waste storage area has no impact on the streetscape as it is located at the rear of the development and cannot be seen from the primary street. The development proposes the waste bins are collected from Shrike Lane, avoiding an increased number of bins on the Alexander Road verge.
* The bin storage area is located away from the outdoor living spaces and habitable rooms of the proposed units. As specified in the Waste Management Plan, “The design of the bin store will provide for adequate natural ventilation through ventilated doors which will be permanent, unobstructed natural ventilation openings direct to the external air, not less than one-twentieth of the floor area”. the development plans now specify that the enclosure is proposed to be roofed to contain odour.
* The bin enclosure area provides adequate space for accessibility and manoeuvrability to allow for efficient waste collection, disposal and cleaning. As specified in the Waste Management Plan “the bin store will have bin-washing facilities including an adequate supply of hot and cold water mixed through a centralised mixing valve and have floor drainage installed”. The design and location of the enclosure minimises the potential for unsightly or unhygienic conditions.

**Sustainability**

The following sustainability initiatives are incorporated in the development:

* Solar panels
* A minimum NatHERS rating of 5.9 stars and an overall average NatHERS rating of 6.1 stars.
* R4.0 insulation to external ceilings
* Waterwise, native plants
* Natural cross-ventilation
* Water efficient plumbing fixtures and fittings
* Electric vehicle charging stations

**Design Review Panel**

The application was reviewed by the City’s Design Review Panel (DRP) on 13 June 2022. A final review of revised plans was conducted by the DRP Chair on 17 May 2023. A summary of the DRP advice is provided in the table following.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported | |
|  | Further Information Required | |
|  | Not supported | |
| SPP 7.0 Principles | 13 June 2022 | Revision 3 (Chair Review) 17 May 2023 |
| 1. Context and Character |  |  |
| 1. Landscape Quality |  |  |
| 1. Built Form and Scale |  |  |
| 1. Functionality and Built Quality |  |  |
| 1. Sustainability |  |  |
| 1. Amenity |  |  |
| 1. Legibility |  |  |
| 1. Safety |  |  |
| 1. Community |  |  |
| 1. Aesthetics |  |  |

**Consultation**

The application was directly readvertised to previous submitters and adjoining lots through correspondence inviting an inspection of the plans online.

Upon conclusion of readvertising, a total of 5 objections were received. The key concerns raised by the objections related to:

* Overshadowing
* Plot ratio
* Street setback
* Waste Management

|  |  |
| --- | --- |
| **Issue Raised** | **Officer Comments** |
| **Overshadowing**  The development will overshadow neighbouring properties. | The total shadow cast onto the adjoining lot has been reduced. The bulk, scale and height of the development is appropriate as it minimises overshadowing to adjoining habitable spaces and results in shadow that is commensurate with that of a two storey single house. Please see 3.2 Orientation above for further discussion. |
| **Plot ratio**  Plot ratio should comply | The plot ratio achieves the Element Objective as the development is not considered to detrimentally impact other adjoining properties in terms of overshadowing, visual privacy or building bulk due to the building’s two storey height, articulated wall lengths, provision of screen walls, and adequate side boundary setbacks. |
| **Street Setback**  The street setback is not consistent with the established streetscape. | The building proposes a 4m setback on the ground floor, satisfying the Acceptable Outcome for the R40 code. The upper floor proposes a 2.5m setback to the balcony and 4m setback to the solid wall. The setbacks proposed are commensurate with that of a two-storey single house and would be deemed-to-comply within the R-Codes Vol. 1. |
| **Waste Management** | A waste management report prepared by Instant Waste Management was submitted as part of the application. The report and plans specify that the bin storage area will be roofed and will be fitted with ventilated doors to help control odour. A condition of approval has been recommended to ensure that the bin storage area complies with the Nedlands Health Local Law 2017. |

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment.

**Budget/Financial Implications**

In the event that this matter is considered at a formal hearing of the SAT, the City may require the services of a planning consultant experienced in SAT representation. Costs associated with a full hearing are anticipated at between $30,000-$50,000, depending on the complexity.

Should Council resolve to grant development approval, no further costs are anticipated.

**Legislative and Policy Implications**

The reconsideration is being conducted in accordance with section 31 of the [SAT Act](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37049.pdf/$FILE/State%20Administrative%20Tribunal%20Act%202004%20-%20%5B04-d0-01%5D.pdf?OpenElement). This section allows for the SAT to invite a decision-maker to reconsider the initial decision. Upon being invited to reconsider the decision the decision-maker may:

* Affirm the decision
* Vary the decision or
* Set aside the decision and substitute a new decision.

**Decision Implications**

Council is acting as the decision-maker for the purposes of section 31 of the SAT Act. Should Council affirm the original decision, the matter will be subject to further directions. The applicant will then have the ability to request the SAT conduct a formal hearing and make a decision to either dismiss or uphold the application for review. In this event, the SAT will become the decision-maker and effectively either approve or refuse the development.

In the event Council resolves to grant development approval, the SAT matter will only continue in the event the applicant is aggrieved by the decision or a condition of approval. Resolving to grant development approval will likely result in the withdrawal of the SAT review and the development can proceed after a building permit is granted.

**Conclusion**

The application for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith, has been presented to Council for reconsideration as per section 31 of the State Administrative Tribunal Act 2004 (WA)*.* With the updated development plans and supporting information, the proposal is considered to meet the Element Objectives of the R-Codes Volume 2 and is supported.

The siting, mass and scale of the development is sympathetic to the streetscape. The proposal presents with a similar bulk, scale and height to a two-storey single house as viewed from the street and adjoining lots. The overshadowing has been reduced from the previous plans and the building has been redesigned to allow sunlight to a number of major openings of the adjoining lot during mid-winter. Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

**Question**

Councillor Mangano – what is the plot ratio now compared to what it was in the December 2022 application?

**Officer Response**

The plot ratio proposed in December 2022 was 0.82. The plot ratio of the current proposal is 0.79.

It should be noted that as of 1 September 2023, the Medium Density R-Codes 2023 come into effect. The Medium Density R-Codes 2023 do not include plot ratio as a design element and replace it with the new design element ‘site cover’. The Medium Density deemed-to-comply provision for site cover in R40 is a maximum of 65%. The current proposal achieves this deemed-to-comply provision as it covers 61% of the site.

**Question**

Councillor Smyth – request that the bin storage be moved to along the laneway rather than along the fence?

**Officer Response**

Revised Development Plans (Attachment 7) and Revised Landscaping Plans (Attachment 8) have been received. The revised Development Plans show the relocation of the bin storage area to the western boundary adjacent to the laneway. There is also the possibility of waste collection directly from the laneway should an acceptable agreement be reached with the City. There will likely be only 8 bins on site as the waste generation is based on litres per unit rather than bins per unit. Each unit will have a recycling bin, but the units will likely share 2-3 general waste bins and 1-2 FOGO bins.

**Revised officer recommendation**

Following receipt of the revised plans (Attachments 7 and 8) a further assessment has been undertaken of the council reasons for refusal in December, and the provision of additional on the State Administrative Tribunal considerations.

Refusal reason 1 - Overshadowing

The upper floor of the building has been altered to increase the setbacks from the southern lot boundary. The increase in setback has reduced the length of shadow cast over the adjoining lot, with a specific reduction in the shadow cast over the habitable rooms on the ground floor. The overall design reasonably minimises overshadowing of the habitable spaces and outdoor living areas of the adjoining lot and achieves the Element Objective of design element 3.2 Orientation of Volume 2 of the R-Codes.

Refusal reason 2 - Bulk/Scale (Plot Ratio)

The development has a height of two storeys and now features significant articulation and setbacks which mitigate the impact of building bulk for adjoining lots. The overall proposed scale and built form of the development results in a design that essentially presents as a two storey single house and is appropriate for the R40 density code. It should be noted that as of 1 September 2023, the Medium Density R-Codes 2023 come into effect. The Medium Density R-Codes 2023 do not include plot ratio as a design element and replace it with the new design element ‘site cover’. The Medium Density deemed-to-comply provision for site cover in R40 is a maximum of 65%. The current proposal achieves this deemed-to-comply provision as it covers 61% of the site.

Refusal reason 3 - Street setback

Additional information regarding landscaping of the verge has been provided (refer to Attachment 8). The extensive landscaping of the verge contributes to and complements the landscape character of the street. The building also occupies a lower proportion of the street frontage (60%) compared to other houses along Alexander Road, achieving a balance between built form and open space. With the addition of the significant verge landscaping, the proposed street setback is considered to be appropriate for an R40 area in transition and is commensurate with that of a two storey single house.

Refusal reason 4 - Waste management

Amended plans have been received (refer to Attachment 7) which propose a relocation of the bins from the southern side lot boundary to the western boundary adjacent to the laneway. If feasible, this location is considered to be sufficiently integrated into the design of the development while minimising adverse impact on the amenity of adjoining sites. The proposal achieves the Element Objectives of Element 4.17 Waste Management of Volume 2 of the R-Codes.

**SAT Appeal Information**

Should the City refuse the amended proposal, the matter will progress to SAT for a formal review of the decision. The anticipated costs of defending the decision to refuse the development at the SAT are likely to be in the order of $50,000 to $60,000 as the City would require both legal and planning consultant representation. It is expected that the SAT will give due regard to the incoming Medium Density R-Codes 2023, which are certain and imminent and are likely to be in force when the SAT hands down its decision. The Medium Density codes will alter the way the development is assessed compared to the R-Codes Volume 2.

**That Council in accordance with Section 31(2)(c) of the State Administrative Tribunal Act 2004, set aside its refusal to grant development approval for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith dated 13 December 2022 and substitutes the previous decision as follows:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 June 2023 for four multiple dwellings at 5A and 5B Alexander Road, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 16 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

1. **Prior to the issue of a building permit, an amended site plan shall be submitted which depicts the relocation of the bin storage area from the southern lot boundary to the western lot boundary.**

**Engineering and Design**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**

1. **Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:**

**a. Lot 101 (No. 7A) Alexander Road, Dalkeith**

**b. Lot 1 (No. 3A) Alexander Road, Dalkeith**

**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.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

**Landscaping**

1. **Prior to occupation, landscaping shall be completed in accordance with the plans dated 9 June 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

1. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 100L tree located on the Alexander Road verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

**Acoustics and Sustainability**

1. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the recommendations contained within the Kellett Design Group Energy Assessment Report dated 9 July 2021, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Waste**

1. **The development shall comply with the approved Waste Management Plan prepared by Instant Waste Management date stamped 21 April 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.**

1. **Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.**

**Parking and Access**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**

1. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

1. **Prior to occupation, the portion of the laneway abutting the western boundary of the site being constructed and drained to its full width at the landowner/applicants cost and the remaining portion of the laneway from the western boundary of the site to the nearest constructed road being made trafficable.**

**Screening**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**

# PD25.06.23 Consideration of Development Application – Residential – Additions to Single House at 22 Clifton Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | Kellett Design Group |
| **Information Provided** | All relevant information required has been provided. |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans 3. CONFIDENTIAL ATTACHMENT – Submissions 4. Plan of Subdivision 5. Revised Development Plans |

Councillor Brackenridge returned to the meeting at 8.17 pm.

**Regulation 11(da) - Council considered that it was important to defer consideration of the matter to ensure that they were fully informed prior to determining the application.**

Moved – Councillor Hodsdon

Seconded – Councillor Coghlan

**Council Resolution**

**That the item be deferred until the 25 July 2023 Council Meeting.**

**CARRIED7/4**

**(Against: Deputy Mayor Crs. Brackenridge Amiry & Combes)**

Revised Officer Recommendation

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 26 June 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 26 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.
4. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
   1. Face brick;
   2. Painted render;
   3. Painted brickwork; or
   4. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.
2. Prior to occupation, the applicant is to plant a minimum of one (1) x 35L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.
3. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

Revised Officer Recommendation

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 21 June 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 21 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.

1. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.

1. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.
2. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:

* 1. Face brick;
  2. Painted render;
  3. Painted brickwork; or
  4. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

1. Prior to occupation, the courtyard along the eastern boundary shall be screened as shown on the approved plans in accordance with the Residential Design Codes by either;

* 1. fixed and obscured glass to a height of 1.6 metres above finished floor level; or
  2. fixed screening devices to a height of 1.6 metres above finished floor level that are at least 75% obscure and made of a durable material; or
  3. a minimum sill height of 1.6 metres above the finished floor level; or
  4. an alternative method of screening approved by the City of Nedlands.

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.

1. Prior to occupation, the applicant is to plant a minimum of one (1) x 35L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

1. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

Recommendation

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 18 May 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 18 May 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.
4. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:
   1. Face brick;
   2. Painted render;
   3. Painted brickwork; or
   4. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

1. Prior to occupation, the retreat and courtyard shall be screened as shown on the approved plans in accordance with the Residential Design Codes by either;
   1. fixed and obscured glass to a height of 1.6 metres above finished floor level; or
   2. fixed screening devices to a height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or
   3. a minimum sill height of 1.6 metres above the finished floor level; or
   4. an alternative method of screening approved by the City of Nedlands.

The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.

1. Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.
2. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit, plans detailing a long section through the proposed crossover shall demonstrate the prevention of stormwater from the laneway entering the property to the satisfaction of the city of Nedlands.
4. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

**Purpose**

The purpose of this report is for Council to consider a development application for additions to the single house at 22 Clifton Street, Nedlands. This proposal is being presented to Council for consideration due to the proposal receiving objections within the consultation period. Council is specifically requested to exercise its judgment in considering the merits of the application against the design principles for the following aspects of the proposal:

* Ground floor northern setback (see report section Clause 5.1.3 Lot boundary setbacks)
* Eastern and southern boundary walls (see report section Clause 5.1.3 Lot boundary setbacks)
* Retaining walls and site works along the eastern and northern boundary (see report section Clause 5.3.7 Site works)
* Visual privacy to the south (see report section Clause 5.4.1 Visual privacy)

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights 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.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R40 |
| **Land area** | 240m2 |
| **Land Use** | Single House |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 22 Clifton Street, Nedlands. The site is on the eastern side of Clifton Street and has an existing single storey house, which is to be partially retained. The site recently underwent a two lot subdivision with a battle-axe configuration. This application relates to the eastern (Clifton Street facing) lot of the subdivision. The site is orientated east-west and is bound by Clifton Street to the east. The site is relatively flat, with a 0.7m slope from east to west. The lot is regular in shape, with a 11.1m frontage and a total area of 240m2.

**Application Details**

This application seeks development approval for additions and alterations to a single house at 22 Clifton Street, Nedlands. This application proposes the partial retention of the existing single storey house, with additions and alterations on the ground floor, slightly extending the ground floor footprint to the east and north. Additionally, the proposal includes the addition of a second storey consisting of 2 bedrooms, bathroom, office, living room and balcony.

On 18 May 2023, amended plans were submitted reducing the length of the office and living room on the upper floor to reduce the shadow cast to the southern property. This proposal now achieves the deemed-to-comply provisions for overshadowing.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (R-Codes), Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy 7.3 - Residential Design Codes – Volume 1**

The R-Codes apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions or via a design principle assessment pathway.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to lot boundary setbacks, site works and visual privacy. A new version of the Codes for low and medium density development will come into effect on 1 September 2023 (R-Codes 2023). Consistent with Western Australian Planning Commission advice to local government, the City has assessed the development against the deemed-to-comply provisions of the R-Codes 2021. Where a design principle assessment has been required, due regard has been made to the relevant design principle of the R-Codes 2023.

Clause 5.1.3 Lot Boundary Setback

* The master suite on the ground floor proposes a 1.8m setback to the northern lot boundary.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed northern lot boundary setback is considered to meet the design principles for the following reasons:

* The impacts of building bulk are reduced using articulation on the ground floor. The ground floor proposes the retention of the 9.2m portion of wall from the living to ensuite which is setback 1.1m (excluding the minor projection of the chimney), with the addition of the master suite, a length of 4.3m which is set back further at 1.8m.
* Building separation is maintained with a minimum of 2.2m between the subject site house and the northern dwelling at 20 Clifton Street, therefore as viewed from the street, the setbacks to the north are consistent with the existing and desired future character of the locality.
* Ventilation is maintained for the site and adjoining northern site through the varied setback on the ground floor.
* The wall is to the northern boundary so does not result in overshadowing.
* There are no overlooking concerns as there are privacy screens proposed to the northern lot boundary to 1.6m above finished floor level, therefore mitigating loss of privacy for the northern landowners.
* It is worth noting that the proposed ground floor northern lot boundary from the master suite setback will achieve deemed-to-comply of Clause 3.4.1 of the Medium Density R-Codes, which stipulates a minimum 1.5m setback.

Clause 5.1.3 Lot Boundary Setback - Boundary Walls

* The eastern boundary wall is 4.0m in height; and
* The southern boundary wall is located within 3m behind the street setback line.

The Hampden-Hollywood Local Planning Policy was adopted by Council on 28 March 2023. The subject development application was submitted 1 March 2023 and had been designed and assessed prior to the adoption of the Policy. Notwithstanding, the proposal has been assessed against the Hampden-Hollywood Precinct LPP.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking.

The proposed eastern boundary wall is considered to meet the design principles for the following reasons:

* The boundary wall along the eastern elevation makes more effective use of the site by providing pockets of outdoor living areas for the courtyard and retreat.
* Solar access is maintained as the wall is located on the eastern boundary and achieves the deemed-to-comply provisions.
* Ventilation is maintained for the site and adjoining eastern site through the articulation of setbacks along the eastern boundary with the remainder of the ground floor being setback a minimum of 3.4m.
* There are no overlooking concerns as a result of the eastern boundary wall.
* The eastern boundary wall is not viewable from the street.

The proposed southern boundary wall is considered to meet the design principles for the following reasons:

* The southern boundary wall consists of the existing retained 10.9m portion of wall (verandah and dining/living), with the addition of a 4.2m portion of wall (laundry and scullery). This allows the front setback area to achieve greater street setback provisions and makes more effective use of space for the outdoor living area.
* The most significant portion of the southern wall in terms of scale is that of the existing house, which is to remain and be incorporated into the new design.
* The impacts of building bulk are mitigated as the proposed boundary wall is located 1.5m from the southern lot’s (24 Clifton) boundary and therefore will not be perceived from the southern adjoining landowner as a boundary wall. The addition is minor in nature, with a length of 4.2m and 3.5m in height which is consistent with a single storey wall height.
* Solar access for the southern lot is maintained and achieves the deemed-to-comply provisions.
* Ventilation is maintained for the site and adjoining southern site through the 1.2m setback (pedestrian access leg) on the ground floor.
* There are no overlooking concerns as a result of the southern boundary wall.

The proposed boundary walls are consistent with the desired future character statement of the Policy for the following reasons:

* The proposed additions and alterations aim at retaining the existing Californian bungalow style façade, whilst incorporating more contemporary design materials into the extension.
* The proposal siting is consistent with the existing and desired future character by incorporating large front setbacks ranging from 6.0m to 8.0m. Additionally, the proposal facilitates street activation through the inclusion of the upper floor balcony, verandah, front facing outdoor living area and low permeable fences to promote passive surveillance.
* The proposal features no boundary walls as perceived from the street. Building separation is maintained by a minimum of 2.1m between the subject site house and the southern dwelling at 24 Clifton Street. This facilitates the appearance of building separation and is consistent with the desired future character of the area.

Clause 5.3.7 Site Works

* Retaining walls and site works along the northern and eastern lot boundaries are to a maximum height of 0.8m.

The lot slopes approximately 0.7m from west to east, with the fill at the rear of the site proposed to retain a consistent flat level across the site for more effective use for the residents. The proposed site works achieve the design principles as they respond to the natural slope of the site, do not add to building bulk and do not result in visual privacy concerns for the adjoining landowners.

Clause 5.4.1 Visual Privacy

* The balcony on the upper floor overlooks the southern property.

The design principles for visual privacy consider the minimal overlooking of active habitable spaces and outdoor living areas of adjacent dwellings and maximum visual privacy to side and rear boundaries. The proposed overlooking is considered to meet the design principles for the following reasons:

* Overlooking is minimised as the balcony opening is perpendicular to the lot boundary, so overlooking is oblique and not direct.
* Overlooking from the balcony is reduced through the use of building siting, with the upper floor being setback 2.5m from the southern property’s lot boundary.
* Oblique overlooking from the balcony does not impact the adjoining southern outdoor living area or major openings as the overlooking falls within the front yard of the adjoining lot.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for lot boundary setbacks, site works and visual privacy.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to two adjoining properties. The application was advertised for a period of 14 days from 19 April 2023 to 3 May 2023. At the close of the advertising period, two objections were received.

The following is a summary of the concerns/comments raised and the Administration’s response and action taken in relation to each issue:

1. Reduced lot boundary setbacks to the south impacts the appearance of building bulk and adjoining amenity.

Amended plans were received on 18 May 2023 to achieve the deemed-to-comply provisions for lot boundary setbacks for the southern upper floor walls. Additionally, the proposed boundary wall on the ground floor is restricted to a maximum of 3.4m in height, consistent with a single storey height. The southern boundary wall is considered to achieve the design principles for Clause 5.1.3 (see discussion above).

1. Increased overshadowing will obstruct direct solar access and adversely impact amenity.

Amended plans were received on 18 May 2023 to achieve the deemed-to-comply provisions for solar access to adjoining sites. This included reducing the length of the office and living room on the upper floor to reduce the total shadow cast to the southern property.

1. Lack of open space impacts the appearance of building bulk.

Open space on the site satisfies the deemed-to-comply provision.

1. Extent of overshadow from future rear lot is concerning.

The proposed future shadow from the rear lot has been considered, and a proportionate share of the deemed-to-comply provision for allowable overshadow has been given to both lots on 22 Clifton Street, as per the R-Codes. The proposed shadow cast from the future rear lot development will be considered through a separate development application and will be available for community comment should the shadow exceed allowable limits.

1. Concerns with visual privacy from future rear lot.

Any future development on the rear lot will be considered through a separate development application and will be available for community comment should the overlooking be proposed.

1. The minimum 0.8m setback to the north on the ground floor is a concern.

This portion of wall features an existing minor projection containing a chimney which is setback 0.8m from the northern lot boundary. There are no changes proposed to this portion of wall as part of this application.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application for additions and alteration to a single house has been presented for Council consideration due to objections being received. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and, as such, is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

**Question**

Councillor Mangano – how wide is the bin access way to the rear lot?

**Officer Response**

The pedestrian access leg is 1.0m in width. Please see Attachment 4 - Plan of Subdivision for reference.

**Question**

Does the overshadowing now meet the deemed to comply requirements?

**Officer Response**

Correct. The overshadowing proposed achieves the deemed-to-comply requirements. The proposal casts a 90.6sqm shadow, which is 19.9% of the southern property (proportional deemed-to-comply shadow is 20%)

**Question**

Can the southern boundary setbacks provisions be clarified?

**Officer Response**

Disregarding the new lot boundaries (pedestrian access leg), the deemed-to-comply setback to the southern boundary is 1.5m. The additional portion of the wall is setback 1.5m, the existing portion of the wall is setback 1.2m.

**Question**

Councillor McManus – can the applicant be asked to reduce the fill to the deemed to comply level?

**Officer Response**

The fill along the northern boundary to the retreat has been reduced to 0.5m above natural ground level at its highest point being the eastern end of the retreat (deck) area. Master suite has also been reduced (stepped down), so that now the site works and visual privacy to the northern boundary now achieve the deemed-to-comply provisions of the Residential Design Codes Volume 1. Attachment 5 – Revised Development Plans, show these changes.

**Question**

Councillor McManus – can the dividing fence with the northern neighbour be a full height solid wall?

**Officer Response**

The screening is no longer required along the northern boundary. The retreat and master suite are no longer raised more than 0.5m above natural ground level and therefore achieve the deemed-to-comply provisions of the Residential Design Codes Volume1 .

**Revised Officer Recommendation**

As a result of the revised plans dated 21 June 2023 addressing the points raised in the questions above, a revised officer recommendation is provided to reflect the revised Development Plans shown in Attachment 5.

**That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 21 June 2023 for additions to the single house at 22 Clifton Street, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 21 June 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

* 1. **Face brick;**
  2. **Painted render;**
  3. **Painted brickwork; or**
  4. **Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

1. **Prior to occupation, the courtyard along the eastern boundary shall be screened as shown on the approved plans in accordance with the Residential Design Codes by either;**

* 1. **fixed and obscured glass to a height of 1.6 metres above finished floor level; or**
  2. **fixed screening devices to a height of 1.6 metres above finished floor level that are at least 75% obscure and made of a durable material; or**
  3. **a minimum sill height of 1.6 metres above the finished floor level; or**
  4. **an alternative method of screening approved by the City of Nedlands.**

**The required screening shall be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, one tree shall be planted within the lot and shall have a minimum planting area of 2m x 2m, to the satisfaction of the City of Nedlands. The tree is to be maintained for the life of the development.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 35L tree located on the Clifton Street verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

# PD26.06.23 Consideration of Development Application – Residential - Three Multiple Dwellings at 23 Hillway, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | Element Advisory |
| **Information Provided** | All relevant information required for this assessment has been provided by the applicant. |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans dated 16 May 2023 3. Architectural Perspectives 4. R-Codes Volume 2 Assessment 5. Landscape Concept Report 6. CONFIDENTIAL ATTACHMENT – Submissions 7. Revised Landscaping Concept Report |

Moved – Councillor Bennett

Seconded – Councillor Mangano

That the Development Application for the three Multiple Dwellings at 23 Hillway, Nedlands be referred to the Council Meeting of 25 July 2023, to allow for further discussions to occur with both the applicant and objectors, with the aim of reducing the impact of the development on nearby properties.

Lost 5/6

(Against: Deputy Mayor Crs. Brackenridge Amiry   
Youngman Combes & Hodsdon)

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

Moved – Councillor Amiry

Seconded – Councillor Combes

**That the Revised Officer Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 8/3**

**(Against: Crs. Smyth Bennett & Mangano)**

**Council Resolution / Revised Officer Recommendation**

**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 May 2023** **for three multiple dwellings at 23 Hillway, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 16 May 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Engineering and Design**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**

1. **Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:**

**a. Lot 667 (No. 94) Kingsway, Nedlands**

**b. Lot 32 (No. 92A) Kingsway, Nedlands**

**c. Lot 31 (No. 92) Kingsway, Nedlands**

**d. Lot 2 (No. 90) Kingsway, Nedlands**

**e. Lot 666 (No. 96) 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.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

**Landscaping**

1. **Prior to occupation, landscaping shall be completed in accordance with the Landscape Concept Report dated 8 June 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

1. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Hillway verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

**Acoustics and Sustainability**

1. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the recommendations and specifications contained within the Emergency Sustainable Design Assessment Report dated 6 September 2022, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Waste**

1. **The development shall comply with the approved Waste Management Plan date stamped 23 December 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.**

1. **Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.**

**Parking**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**

1. **All car parking dimensions (including associated wheel stops and headroom clearance), maneuvering areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

**Screening**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**

Recommendation

That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 May 2023 for three multiple dwellings at 23 Hillway, Nedlands, subject to the following conditions:

1. This approval relates only to the development as indicated on the approved plans dated 16 May 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.
2. All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.
3. All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.

Engineering and Design

1. Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.
2. Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:

a. Lot 667 (No. 94) Kingsway, Nedlands

b. Lot 32 (No. 92A) Kingsway, Nedlands

c. Lot 31 (No. 92) Kingsway, Nedlands

d. Lot 2 (No. 90) Kingsway, Nedlands

e. Lot 666 (No. 96) 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.

1. Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:

a. Face brick;

b. Painted render;

c. Painted brickwork; or

d. Other clean finish as specified on the approved plans.

And are to be thereafter maintained to the satisfaction of the City of Nedlands

Landscaping

1. Prior to occupation, landscaping shall be completed in accordance with the Landscape Concept Report dated 23 December 2022 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.
2. The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.
3. Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.
4. Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Hillway verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.

Acoustics and Sustainability

1. Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.
2. Prior to occupation, the recommendations and specifications contained within the Emergen Sustainable Design Assessment Report dated 6 September 2022, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.

Waste

1. The development shall comply with the approved Waste Management Plan date stamped 23 December 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.
2. Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.

Parking

1. Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.
2. All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.
3. Prior to the issue of a building permit, plans detailing a long section through the proposed crossover shall demonstrate the prevention of stormwater from the street entering the property to the satisfaction of the City of Nedlands.
4. Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.

Screening

1. Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.

**Purpose**

The purpose of this report is for Council to consider a development application for three multiple dwellings at 23 Hillway, Nedlands. This application is being presented to Council as the proposal received objections within the consultation period. The matters below have been identified as key considerations for the determination of this application.

* Building Height
* Street Setbacks
* Side and Rear Setbacks
* Building Separation

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights 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.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R60 |
| **Land area** | Lot: 1,947m2 |
| **Land Use** | Residential (Multiple Dwellings) |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 23 Hillway, Nedlands and is 200m south-west of Broadway (**Attachment 1**). The site is currently occupied by a single storey, single house with a pool. The site slopes upward from east to west with a rise of approximately 4.0m.

The locality is predominantly characterised by single residential houses between one to two storeys. The properties in this area are coded R60, R12.5 and R10. This street block of Hillway acts as a transitional corridor between the mixed-use, high-density development on Broadway and the low-density residential development further west. As a result, the immediate area is expected to undergo a gradual transition to a higher density and scale of development.

**Application Details**

The existing single house on site is being retained. The application seeks development approval for the construction of a three storey building in the south-west corner of the site consisting of three multiple dwellings with basement car parking. Each multiple dwelling contains three bedrooms and two bathrooms. Vehicle access will be obtained from a ramped driveway from Melvista Avenue. All resident parking (for the single house and multiple dwellings), visitor parking and bin storage is located within the basement.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies. The matters below have been identified as key considerations for the determination of this application.

* Building Height
* Street Setbacks
* Side and Rear Setbacks
* Building Separation

The development meets the Element Objectives for the above matters subject to conditions of approval and is supported. Please refer to the assessment provided below and as attached at Attachment 4.

**Local Planning Scheme No. 3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) identifies those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**State Planning Policy 7.3 - Residential Design Codes – Volume 2 –** **Apartments**

The proposal has been assessed against all relevant design elements of the Residential Design Codes Volume 2 – Apartments (R-Codes) which provides a comprehensive basis for the control of residential development. Those elements which require key consideration are detailed below.

**Element 2.2 – Building height**

The lot is located within the Broadway Precinct Local Planning Policy (Broadway LPP) area, which specifies an Acceptable Outcome of three storeys and a maximum height of 12m for R60 development. The proposal meets the three storey Acceptable Outcome, has a maximum height of 11.7m and also responds to the desired future character of the local area as specified in the policy for the following reasons:

* The Residential sub-precinct of the Broadway LPP area is identified as a transitional zone, characterised by a mix of architectural styles and densities. The three storey height of the development serves as an appropriate transition from the approved five and six storey apartments along Broadway (and 5 Hillway) to the lower one and two storey houses further west.
* The building’s height is reduced as viewed from the adjacent north-western lots as the structure incorporates a flat roof design and benefits from the topography of the site, which features an upward slope towards Kingsway.
* The overall height, massing, and setbacks of the development have been carefully considered to ensure a well-proportioned building that responds to the relatively large lot size and surrounding context. The building's height is within the acceptable limits specified by the Broadway Precinct LPP, maintaining an appropriate and desired scale that respects the neighbourhood character.

**Element 2.3 – Street setbacks**

The proposal meets the Acceptable Outcome for primary street setback on all floors with the exception of a minor projection on levels 1 and 2. Overall, the building’s primary and secondary street setbacks contribute to the existing streetscape and complement the proposed character of the street as:

* The development maintains a substantive setback of 2m from Melvista Avenue (the primary street). Many of the houses in the immediate locality address Melvista Avenue as the secondary street. This includes the adjacent lot at 96 Kingsway and the lot across the street from the development at 25 Hillway, which both maintain an approximate 1.5m minimum setback from Melvista Avenue. The 2m setback of the proposed building is complementary to this established setback pattern along Melvista Avenue.
* The building is proposed to be setback 30m from Hillway. The north-western side of Hillway is characterised mainly by houses setback from the street between 9m and 15m to accommodate large front gardens. The proposed 30m setback to the new development does not affect the existing 15m setback or garden area of the retained single house on site, ensuring consistency with the Hillway streetscape is maintained.
* The development contributes to the landscape character of the street as the majority of the hedges along Melvista Avenue and Hillway will be retained. The entrance to the apartment building from Melvista Avenue features landscaped planters and small trees, with landscaping along the eastern ground floor unit terrace also visible from the street.

**Element 2.4 – Side and rear setbacks**

The side setbacks to the north-west and north-east boundaries largely achieve the Acceptable Outcome of 3m and provide adequate separation to the neighbouring properties as:

* An average setback of 3.7m to the north-western boundary is proposed with a maximum 5m and minimum 3m setback maintained. The varying setback through wall articulation helps break up the massing of the building and creates visual interest. Further, the height of the wall is reduced as perceived from the adjacent lots which sit higher than 23 Hillway due to the natural slope of the land.
* The north-western wall is enhanced by engaging façade treatments. The use of high-quality materials, appropriate colour schemes and architectural detailing, such as bronze battens, render finish, and facebrick contribute to the visual character of the area.
* The development maintains an approximate 25m setback from the north-eastern boundary. At this distance, any impacts of building bulk or height are negated. The existing house retains a 5.8m side setback from the north-eastern boundary.
* The setbacks from side boundaries enable the retention of large deep soil zones across the site and provide adequate space for landscaping strips along the north-western side boundary to obscure and soften the view of the building as seen from adjacent lots.
* Due to the north-south orientation and natural slope of the lot, any solar collectors on the neighbouring lots will not be adversely impacted by shadow cast from the development.

**Element 2.7 – Building separation**

A minimum 4.5m building separation distance is proposed on site between the new apartments and the existing single house. The separation distance ensures there is sufficient residential amenity and adequate landscaping and outdoor space for the following reasons:

* The design of the apartment building takes into consideration the privacy of the residents in both the proposed development and the adjacent single-storey house. The appropriate placement of highlight windows minimises overlooking and an adequate 6.5m offset ‘cone of vision’ distance is maintained between major openings in the two walls. This design approach ensures privacy and a comfortable living environment for all residents.
* The separation area is a paved and landscaped space that is distinctly separate from the ground floor unit terrace. This space acts as a raised and fenced ‘buffer’ between the existing house and the new building. The proposed separation distance does not compromise the provision of private outdoor living area for the existing dwelling, which has access to a pool and garden area approximately 250m2 in size.
* The 4.5m separation distance provided is sufficient to allow for proper airflow and the incorporation of landscaping and greenery. The design considers the orientation of the building to provide a north-western separation corridor that minimises overshadowing and allows for natural light.

**Sustainability**

The following sustainability initiatives are incorporated in the development:

* Solar panels.
* An average of 7 star NatHERS rating for the development.
* Waterwise, native plants.
* Natural cross-ventilation.
* Water efficient plumbing fixtures and fittings
* Electric vehicle charging station with provision for future installation of additional stations.

A condition is recommended that requires the implementation of the sustainability initiatives in the sustainable design assessment report prepared by EMERGEN dated 6 September 2022.

**Local Planning Policy 5.10 – Broadway Precinct**

The Broadway LPP requires all development within the policy area be consistent with the desired future character statement of the policy. The development satisfies this requirement for the following reasons:

* The development contributes to the dwelling stock available in the locality through the addition of three multiple dwellings containing three bedrooms and two bathrooms each.
* The development is three storeys in height and is an appropriate transition from the high and medium density areas of Broadway and Hillway to the single and double storey, low density areas to the west.
* The development maintains a generous setback from Hillway, the original primary street, and an appropriate distance from Melvista Avenue. The street setbacks create ample space for the retention of existing landscaping and the addition of new planter boxes and medium trees. The setbacks and landscaping provided contribute to the established leafy streetscapes typical of the area.
* Vehicle access is consolidated through one access point that services the existing house and the new development. The driveway comprises a small proportion of the Melvista Avenue frontage.
* The development is setback at least 3m from all boundaries as viewed from the street and avoids the use of nil setback boundary walls to maintain the detached streetscape character of the area.

**Design Review Panel**

The application was reviewed by the City’s Design Review Panel (DRP) on 17 October 2022. A final review of revised plans was conducted by the DRP Chair on 23 May 2023. A summary of the DRP advice is provided in the table following.

|  |  |  |
| --- | --- | --- |
| **DRP Design Quality Evaluation** | | |
|  | Supported  Further Information Required  Not supported | |
|  |
|  |
| SPP 7.0 Principles | 13 February 2023  DRP 1 | 23 May 2023 (Chair Review) |
| 1. Context and Character |  |  |
| 1. Landscape Quality |  |  |
| 1. Built Form and Scale |  |  |
| 1. Functionality and Built Quality |  |  |
| 1. Sustainability |  |  |
| 1. Amenity |  |  |
| 1. Legibility |  |  |
| 1. Safety |  |  |
| 1. Community |  |  |
| 1. Aesthetics |  |  |

Amended plans were submitted plans after DRP 1 which made the following changes to further emphasise the separation between the existing single house and the new apartment building:

* Removal of the eastern portion of the ground floor dwelling’s terrace adjacent to the single house.
* Creation of a separate pedestrian path leading to the existing single house.

The Chair of the DRP provided the following concluding comments after reviewing the amended plans:

The proponents have engaged with the comments in a very constructive manner and have improved the design accordingly. I now consider that the proposal should be supported (GREEN) on all 10 Design Principles.

In particular, and addressing the one Design Principle that the DRP identified as requiring further information and/or further consideration:

Amenity

The amended design reduces the eastern terrace to allow greater and improved separation between the new apartments and the original house that is being retained. The pedestrian paths to both apartments and the original house have been amended to create a generous and inviting shared path including accessible ramps.

**Consultation**

The application was advertised for 28 days from 3 February 2023 to 3 March 2023 by the following:

* Letters posted to all 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;
* Notice given on the City’s social media platforms; and
* Community information session held on 22 February 2023.

Upon conclusion of advertising, a total of 6 objections were received. The key concerns raised by the objections related to:

* Street Setbacks
* Side Setbacks
* Consistency with local character
* Traffic and Parking

|  |  |
| --- | --- |
| **Issue Raised** | **Officer Comments** |
| **Street Setback**  The setback to the street does not satisfy the Acceptable Outcome. | The setbacks to both Melvista Avenue and Hillway largely satisfy the Acceptable Outcome of the R-Codes Volume 2 and the Broadway Precinct LPP. The setbacks achieve the Element Objectives. Please see Element 2.3 above for further discussion. |
| **Side Setbacks and Separation**  Side setbacks do not achieve the Acceptable Outcome and are insufficient. | The setbacks to adjacent lots and the existing house ensure adequate separation to mitigate the adverse effects of bulk, protect visual privacy and provide for landscaping and open space. Please see Elements 2.4 and 2.7 above. |
| **Consistency with Local Character**  The development’s height and bulk are excessive and are not consistent with the established character of the area. | Overall, the development is consistent with the Broadway LPP desired future character statement and is the type of development that is typical and expected for the R60 code in an infill area. Please see Elements 2.2, 2.4 and the Broadway LPP section above for further discussion. |
| **Aesthetics**  The design of the building is not congruent with the established surrounding streetscapes. | The building is considered to integrate with the area as the construction materials reference the existing single house on site. The façade incorporates red facebrick, white rendering and limestone. The City’s Design Review Panel concluded that the development was designed in an attractive and inviting manner that was complementary to the existing locality. |
| **Development’s Impact on the Verge**  The development encroaches onto the verge and will result in excessive crossovers. | The development proposes one additional crossover to service the single driveway. The vehicle access point has been consolidated for all four dwellings on site and satisfies the Element Objectives for Element 3.8 Vehicle access. The development plans present a concept for the verge that includes the retention of the existing hardstand to facilitate pedestrian access and provide a space for the collection of waste bins. Any works in the verge will be subject to a separate vehicle crossover application. |
| **Traffic and Parking**  The development does not provide adequate parking spaces and will result in increased traffic congestion. | The Car Parking Technical Note accompanying the proposal states that the development will generate 2 vehicle trips during peak times. This is an amount of traffic that is expected for the scale of the development and the site’s density coding.  The development meets or exceeds the Acceptable Outcomes in relation to parking by providing two bays for every unit and one visitor bay. |
| **Overshadowing**  The development will overshadow neighbouring properties and the street. | The orientation of the lot as well as the bulk, scale and height of the development ensure that overshadowing only falls over the street during mid-winter. |
| **Development Plans Information**  The development plans do not provide sufficient information. | Sufficient additional information has been supplied to undertake a comprehensive analysis of the proposal against the planning framework. Specifically, this includes: a feature survey of the site, the provisional location of services, a plan depicting which trees on site are to be retained and removed, and depiction of natural ground level on the north-western elevation. |

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

The City’s Primary Controls for Apartment Developments Local Planning Policy has not been used to assess this development application. The Policy attempts to fetter the exercise of discretion in a manner contrary to the R-Codes and the broader discretion available in clause 67(2) of the Deemed Provisions. A policy instrument that seeks to fetter the exercise of discretion as provided by the Deemed Provisions and R-Codes could not be considered to be based upon sound town planning principles. Clause 3(3) of the Deemed Provisions requires a local planning policy to be based on sound town planning principles.

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application for three multiple dwellings has been presented to Council for consideration due to objections being received. The objections received relate to height, setbacks and consistency with local character. An assessment against the relevant Element Objectives and the Broadway LPP has identified that the proposal can be supported.

The siting, mass and scale of the development is sympathetic to the streetscape and is proportional to the size of the lot. Overall, the proposal is appropriate and characteristic of medium density development in the R60 code. Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

**Question**

Councillor Mangano – further information regarding setbacks between the existing dwelling and the proposed building should a future subdivision be requested.

**Officer Response**

Should a lot boundary be created between the proposed multiple dwelling building and the existing house on the site, deemed-to-comply setbacks are as follows:

* Single house –minimum 1.5m
* Multiple dwellings –minimum 3m.

Provision is made on the submitted plans for a 4.5m separation between the existing and proposed buildings that will accommodate the above deemed-to-comply setbacks.

**Question**

Councillor Amiry – can a condition be included in regard to a future subdivision requiring one of the buildings to be demolished?

**Officer Response**

Subdivision of the property is possible that accommodates both the existing and proposed buildings and meets all relevant R-Codes provisions. In order to be valid, a condition of development approval must have a planning purpose. Demolition of either building is not required to achieve a planning purpose in this case given compliance with the R-Codes is possible. Placement of a condition requiring demolition at the time of subdivision is not possible.

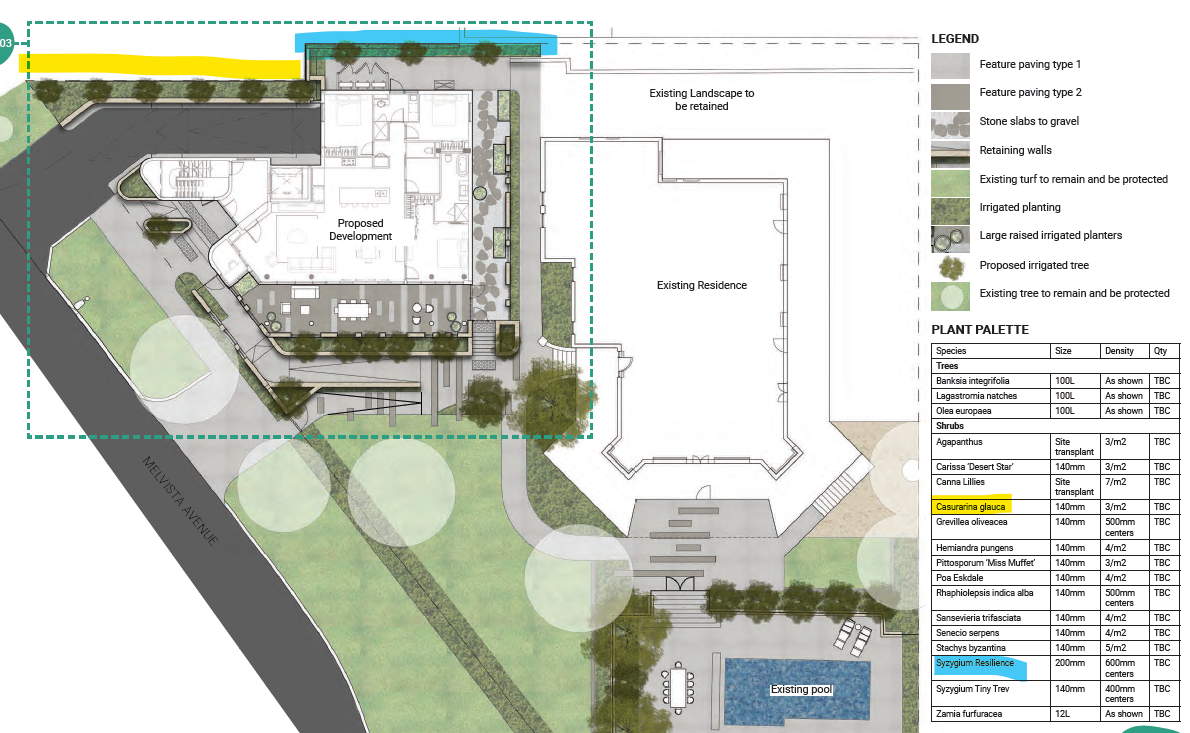
**Revised Officer Recommnedation**

In response to concerns with respect to the impact of the proposed developmnet a revised landscaping concept has been submitted (see Attachmnet 7). In regards to the landscaping the applicant has advised that the intent is to plant *Banksia integrifolia* along the rear boundary, this being one of the nominated trees in the landscaping plan submitted (See Attachment 7 – refer to third and second last images of the attachment).

The landscape architect has advised that these can grow to a height of 15m, with a spread of 6m, and so should readily be capable of providing a canopy visual screening effect to at least part of the proposed building.

Further advice provided suggests that these trees have been known to grow out of cliff faces, which provide minimal soil volumes. In this regard our landscape architect is confident that there is sufficient soil volume available to support successful tree growth, having regard for the basement setback from the boundary.

In addition to tree planting, understory planting can also be accommodated. Noting the section highlighted in blue below, this could accommodate [Syzgium Resilience](https://aus01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.benaranurseries.com%2Fsyzygium-austra-resilience&data=05%7C01%7Cdreid%40nedlands.wa.gov.au%7Cf580e414692241258e0908db6e0786e2%7Cd583947c8c4246bd927527ca45e5e84c%7C0%7C0%7C638224751318996998%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=ETqHg7Qc1lbpodoy1YWaMBChqCZoRaczu27NO3eN6Xg%3D&reserved=0) a 4m high Lilly Pilly (in keeping with existing site hedging).



**That Council:**

**In accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 16 May 2023** **for three multiple dwellings at 23 Hillway, Nedlands, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 16 May 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**

1. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**

1. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Engineering and Design**

1. **Prior to the issue of a building permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**

1. **Prior to the issue of a building permit, a minimum of 20% units (1 unit) are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation to the satisfaction of the City of Nedlands.**

1. **Prior to the issue of a building permit and the commencement of excavation works, a Dilapidation Report shall be submitted to the City of Nedlands 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:**

**a. Lot 667 (No. 94) Kingsway, Nedlands**

**b. Lot 32 (No. 92A) Kingsway, Nedlands**

**c. Lot 31 (No. 92) Kingsway, Nedlands**

**d. Lot 2 (No. 90) Kingsway, Nedlands**

**e. Lot 666 (No. 96) 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.**

1. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**

**a. Face brick;**

**b. Painted render;**

**c. Painted brickwork; or**

**d. Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

**Landscaping**

1. **Prior to occupation, landscaping shall be completed in accordance with the Landscape Concept Report dated 8 June 2023 to the satisfaction of the City of Nedlands. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**

1. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all communal and private open space areas with landscaping shall include a tap connected to an adequate water supply for the purpose of irrigation.**

1. **Prior to occupation, the applicant is to plant a minimum of one (1) x 30L tree located on the Hillway verge, at the expense of the applicant and to the satisfaction of the City of Nedlands.**

**Acoustics and Sustainability**

1. **Prior to the issue of a Building Permit the applicant is to lodge with the City of Nedlands an amended acoustic report prepared by a suitably qualified and licensed acoustic consultant demonstrating compliance of mechanical plants with the requirements of the Environmental Protection (Noise) Regulations 1997 to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, the recommendations and specifications contained within the Emergen Sustainable Design Assessment Report dated 6 September 2022, or any approved modifications, are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Waste**

1. **The development shall comply with the approved Waste Management Plan date stamped 23 December 2022 to the satisfaction of the City of Nedlands. Any modification to the approved Waste Management Plan will require further approval by the City.**

1. **Prior to the issue of a Building Permit, the bin storage area shall be located and designed to meet the definition of a ‘suitable enclosure’ as defined by the City of Nedlands Health Local Law 2017.**

**Parking**

1. **Prior to occupation of the development, all car parking bays and visitor bicycle bays are to be clearly line marked, drained and with visitor car parking clearly marked or signage provided, and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.**

1. **All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all bicycle racks shall be provided and installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.**

**Screening**

1. **Prior to occupation, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.**

# PD27.06.23 Consideration of Development Application – Residential - Five Grouped Dwellings at 69 (Lot 645) Waratah Avenue, Dalkeith

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | Niche Living Projects |
| **Information Provided** | All relevant information required has been provided. |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Aerial Image and Zoning Map 2. Development Plans dated 6 March 2023 |

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

Moved – Councillor Hodsdon

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 9/2**

**(Against: Crs. Youngman & Mangano)**

**Council Resolution / Recommendation**

**That Council, in accordance with Clause 68(2)(b) of the Deemed Provisions of the Planning and Development (Local Planning Schemes) Regulations 2015, approves the development application in accordance with the plans date stamped 6 March 2023 for five grouped dwellings at 69 Waratah Avenue, Dalkeith, subject to the following conditions:**

1. **This approval relates only to the development as indicated on the approved plans dated 6 March 2023. It does not relate to any other development on this lot and must substantially commence within 2 years from the date of the decision letter.**
2. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
3. **Prior to the issue of a demolition permit and building permit, a Demolition or Construction Management Plan (as appropriate) shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City.**
4. **Prior to occupation, fences within the primary street setback area are to be visually permeable above 1.2m in height to the satisfaction of the City of Nedlands.**
5. **Prior to occupation, walls on or adjacent to lot boundaries are to be finished externally to the same standard as the rest of the development in:**
   1. **Face brick;**
   2. **Painted render;**
   3. **Painted brickwork; or**
   4. **Other clean finish as specified on the approved plans.**

**And are to be thereafter maintained to the satisfaction of the City of Nedlands**

1. **Prior to occupation, landscaping shall be completed in accordance with the Landscaping Plan dated 6 March 2023. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **Prior to the issue of a demolition permit and building permit, a suitably qualified arborist is to submit a plan to be approved by the City of Nedlands outlining tree protection measures to be undertaken to conserve the tree identified for retention as shown on the landscaping plans. The approved measures are to be monitored by the arborist and implemented for the duration of the demolition and construction process to the satisfaction of the City of Nedlands.**
3. **The street tree(s) within the verge in front of the lot are to be protected and maintained through the duration of the demolition and construction process to the satisfaction of the City of Nedlands. Should the tree(s) die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**
4. **Prior to the issue of a building permit, plans detailing a long section through the proposed crossover shall demonstrate the prevention of stormwater from the street entering the property to the satisfaction of the City of Nedlands.**
5. **All stormwater discharge from the development shall be contained and disposed of on-site unless otherwise approved by the City of Nedlands.**

**Purpose**

The purpose of this report is for Council to consider a development application for five grouped dwellings at 69 Waratah Avenue, Dalkeith. The application is referred to Council for determination as the application is for five grouped dwellings. Council is specifically requested to exercise its judgement in considering the merits of the application against the design principles for the following aspects of the proposal:

* Street setback to Lot 1 and common property setbacks (see report section 5.1.2 Street setback).
* Northern and western lot boundary setbacks (see report section 5.1.3 Lot boundary setbacks).
* Open space to Lot 2 (see report section 5.1.4 Open space).
* Outdoor living area provision to Lots 1 and 5 (see report section 5.3.1 Outdoor living areas).

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights 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.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R40 |
| **Land area** | Parent Lot: 1,103m2  Strata Lot 1: 175m2  Strata Lot 2: 180m2  Strata Lot 3: 180m2  Strata Lot 4: 181m2  Strata Lot 5: 189m2 |
| **Land Use** | Residential – Grouped Dwellings |
| **Use Class** | ‘P’ – Permitted Use |

The site is located at 69 Waratah Avenue, Dalkeith, within the street block bound by Adelma Road to the west and Curlew Road to the east (Attachment 1). The site has an area of 1,103m2 and features a natural slope of approximately 1.4m from the southern boundary down to the northern boundary. The lot has preliminary subdivision approval for five survey strata lots and common property.

The existing streetscape is characterised by predominantly two-storey single houses. The properties in this area are coded R40 or R60 and are expected to undergo a gradual transition to a higher density and scale of development.

**Application Details**

The application seeks development approval for the construction of five, two-storey grouped dwellings. The development proposes a single common property access leg off of Waratah Avenue. The development includes two visitor parking bays located behind Lot 5. The visitor bays have been located behind the front dwellings to reduce the visual impact of parking on the streetscape.

**Discussion**

**Assessment of Statutory Provisions**

If a proposal does not satisfy the deemed to-comply provisions of the State Planning Policy 7.3: Residential Design Codes (R-Codes), Council is required to exercise a judgement of merit to determine the proposal against the design principles of the R-Codes. The R-Codes require the assessment to consider the relevant design principle only and to not apply the corresponding deemed-to-comply provisions. It is recommended that the application be approved by Council as it is considered to satisfy the design principles of the R-Codes. Further, it is considered unlikely that the development will have a significant adverse impact on the local amenity and character of the locality.

**Local Planning Scheme No. 3**

Schedule 2, Clause 67(2) (Consideration of application by Local Government) – identifies those matters that are required to be given due regard to the extent relevant to the application. Where relevant, these matters are discussed in the following sections. Overall, the development is considered to meet these objectives, particularly in regard to height, scale, bulk and appearance, and the potential impact it will have on the local amenity.

**Design Review Panel**

The application was reviewed by the City’s Design Review Panel (DRP) on 5 December 2022 and 13 March 2023. A final review of revised plans was conducted by the DRP Chair on 9 May 2023. A summary of the DRP advice is provided in the table following.

|  |  |  |  |
| --- | --- | --- | --- |
| **DRP Design Quality Evaluation** | | | |
|  | Supported | | |
|  | Further Information Required | | |
|  | Not supported | | |
|  | No information | | |
| SPP 7.0 Principles | 5 December 2022 | 13 March 2023 | 9 May 2023 (Chair Review) |
| 1. Context and Character |  |  |  |
| 1. Landscape Quality |  |  |  |
| 1. Built Form and Scale |  |  |  |
| 1. Functionality and Built Quality |  |  |  |
| 1. Sustainability |  |  |  |
| 1. Amenity |  |  |  |
| 1. Legibility |  |  |  |
| 1. Safety |  |  |  |
| 1. Community |  |  |  |
| 1. Aesthetics |  |  |  |

There was notable improvement in the overall design over the course of the design review process.

In relation to sustainability, it is acknowledged that there are no specific sustainability requirements or reports for grouped dwellings beyond the requirements of the National Construction Code. Notwithstanding the applicant has stated that the design will include sustainability initiatives including:

* The use of low-maintenance materials with low whole-of-life costs to reduce the need for replacement, repairs, and maintenance.
* Installation of water efficient fittings and fixtures in bathrooms, kitchens, and toilets.
* The use of LED lighting throughout and light sensors to public areas to reduce power consumption.
* Incorporation of high-quality insulation throughout.
* A resolved landscaping plan which includes the retention of one existing tree and the addition of 12 new trees on site to contribute to increasing tree canopy and reducing heat loads. A condition is recommended to ensure the landscaping is implemented and maintained for the life of the development.

**State Planning Policy 7.3 - Residential Design Codes – Volume 1**

The R-Codes apply to all single and grouped dwelling developments. An approval under the R-Codes can be obtained in one of two ways. This is by either meeting the deemed-to-comply provisions via a design principle assessment pathway.

The proposed development is seeking a design principle assessment pathway for parts of this proposal relating to street setback, lot boundary setback and parking. A new version of the R Codes for low and medium density development will come into effect on 1 September 2023 (R-Codes 2023). Consistent with Western Australian Planning Commission advice to local government, the City has assessed the development against the deemed-to-comply provisions of the R-Codes 2021. Where a design principle assessment has been required, due regard has been made to the relevant design principle of the R-Codes 2023.

Clause 5.1.2 Street Setback

1. The upper floor balcony to Lot 1 is setback 1.5m from the primary street; and
2. Lots 1 to 5 propose varying setbacks between nil and 2.2m to the common property driveway.

The design principles for street setbacks consider the immediate and future streetscape, privacy, site planning requirements and building mass. The development meets the design principles as:

* In relation to the primary street setback, the element seeking discretion relates to an upper floor balcony only. The bulk of the development is set back to achieve the deemed-to-comply. The balcony is open framed and presents minimal building bulk onto adjoining properties or the streetscape. The subject balcony is the primary outdoor living area for Lot 1 and thereby the setback positively contributes to the streetscape by providing opportunity for activation and passive surveillance.
* In relation to the common property setbacks to Lots 1-5, these are internal to the parent lot and have no adverse impact on any external lots or the streetscape. The varying setbacks along the driveway allow room for vegetation to break up the building bulk.
* The proposal adequately responds to site planning requirements, including vehicle access, parking, and utility services. These site planning requirements are appropriately screened from the street interface where possible.
* The site features an existing verge tree outside of Lot 1, which will aid in softening the appearance of the dwelling as viewed form the street.

Clause 5.1.3 Lot Boundary Setbacks

1. Lot 4 proposes a 1.1m setback from the ground floor living room wall to the northern lot boundary;
2. Lot 5 proposes a 1.4m setback from the upper floor bedroom 1 wall to the western lot boundary; and
3. Lot 3 proposes a boundary wall abutting the northern R10 coded site, and results in three boundary walls across the parent lot.

The design principles for lot boundary setbacks consider the impact of building bulk on adjoining properties, providing adequate sun and ventilation and minimising overlooking. The proposed lot boundary setbacks are considered to meet the design principles for the following reasons:

* The proposed lot boundary setbacks do not impede on any adjoining lot’s solar access or ventilation. Solar access achieves the deemed-to-comply provisions of the R-Codes.
* All external walls feature multiple articulations and openings across all storeys which reduce the impact of building bulk by breaking up the mass of built form addressing the northern and southern lots.
* The proposed setbacks do not impact adjoining properties in terms of overlooking. The development satisfies the deemed-to-comply provisions of the R-Codes.
* The proposed lot boundary setbacks and boundary walls are consistent with the site’s density code and typical of a grouped dwelling proposal.

Clause 5.1.4 Open Space

Lot 2 proposes 41% open space.

The design principles for open space consider the impact of building bulk, provision of adequate sun and ventilation and ability to use external spaces for outdoor pursuits and recreation. The proposed open space meets the design principles for the following reasons:

* Lot 2 meets all other lot boundary setback, outdoor living area and landscaping deemed-to-comply provisions of the R-Codes and thereby the level of open space is not considered to result in undue building bulk or an overdevelopment of the lot.
* The dwelling is not visible from the street, thereby the amount of open space on site will have no impact on the streetscape character.
* All habitable rooms to the dwelling are provided with operable major openings thereby ensuring good access to natural light and ventilation for residents.
* Adequate space remains on site for external fixtures and essential facilities.

Clause 5.3.1 Outdoor Living Areas

1. The primary outdoor living area for Lot 1 is located within the primary street setback area and is entirely covered.
2. The primary outdoor living area for Lot 5 is over two thirds covered.

The design principles for outdoor living areas consider the space to be functional and usable, allow for winter sun and natural ventilation, the provision of landscaping and to facilitate street surveillance when in the front setback area. The development meets the design principles for the following reasons:

* The primary outdoor living areas for both Lots 1 and 5 are directly accessible from the primary living area of the dwelling via large sliding doors which allows for use in conjunction with the indoor space. These spaces are predominantly covered to provide weather protection and useability year-round.
* Both Lots 1 and 5 are provided with two outdoor living spaces to enhance amenity and functionality for residents. In addition to their primary outdoor living spaces, both lots feature a ground floor street facing courtyard. These courtyards are predominantly uncovered to allow for winter sun and natural ventilation and provide sufficient space for planting and landscaping. The courtyard to Lot 5 is bound by a front fence that is visually permeable above 0.6m. This allows for views of the lot’s landscaping from the street and provides passive surveillance.

**Consultation**

The application is seeking assessment under the design principles of the R-Codes for street setback, lot boundary setbacks, open space outdoor living areas.

The development application was advertised in accordance with the City’s Local Planning Policy - Consultation of Planning Proposals to affected adjoining landowner and occupiers, within five properties in either direction of the subject site, on both sides of the street. The application was advertised for a period of 14 days from 29 April 2023 to 4 May 2023. No objections were received.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a decision in accordance with clause 68(2) of the [Deemed Provisions](https://www.dplh.wa.gov.au/getmedia/6e4785e3-d40f-45cd-95e8-85d3115ee32e/PD_LPS_Deemed_Provisions). Council may determine to approve the development without conditions (cl.68(2)(a)), approve with development with conditions (cl.68(2)(b)), or refuse the development (cl.68(2)(c)).

**Decision Implications**

If Council resolves to approve the proposal, development can proceed after receiving a Building Permit and necessary clearances.

In the event of a refusal, the applicant will have a right of review to the State Administrative Tribunal. The Tribunal will have regard to the R-Codes as a State Planning Policy. Similarly, should an applicant be aggrieved by one or more conditions of approval, this can be reviewed by the Tribunal.

**Conclusion**

The application is referred to Council for determination in accordance with Delegation 9.2.1, being an application for five or more grouped dwellings. The proposal is considered to meet the key amenity related elements of R-Codes Volume 1 and, as such, is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the R-Codes in relation to being consistent with the immediate locality and streetscape character.

Accordingly, it is recommended that the application be approved by Council, subject to conditions of Administration’s recommendation.

**Further Information**

**Question**

Councillor Mangano – how many times can an extension to a building licence be approved?

**Officer Response**

Building permits are issued with a two year approval period. Extensions are normally issed for a further 6 to 12 months. There is no limit on the number of extensions which can be granted. As a result of COVID 19, materials and labour shortages it has been very common in recent years for construction works to be taking longer to complete than prior to COVID 19.

**Question**

Please confirm the deemed comply front setback?

**Officer Response**

The deemed to comply provisions currently for the setback to Waratah Avenue is 4 metres, noting there are some allowances. As of September 1 2023, the deemed to comply front street will be 3 metres. It is only the upper level balcony on Unit 1 which is not meeting the deemed to comply provisions.

# Divisional Reports - Community Services & Development Report No’s CSD03.06.23 to CSD04.06.23

# CSD03.06.23 Developing an Age-Friendly Strategy

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Employee disclosure required where there is an interest in any matter of which the employee is providing advice or a report. |
| **Report Author** | Patricia Panayotou, Manager Community Service Centres |
| **CEO** | Bill Parker, Chief Executive Officer |
| **Attachments** | Nil. |

**Regulation 11(da) - Council supports the development of an Age-Friendly Nedlands Strategy and the creation of a working group including residents but from existing resources. Should the working group determine the need for additional funds a submission can be made to the Mid-Year Budget review.**

Moved – Councillor Senathirajah

Seconded – Councillor Hodsdon

**That the Recommendation be adopted with the following amendments:**

1. **adds the word “Nedlands” after the words “Age-Friendly” in clause 1;**
2. **replaces clause 2 with the following:**
3. **requests the CEO to submit to the August Council meeting the Terms of Reference for an Age-Friendly Nedlands Working Group (AFNWG), consisting of Councillors, Staff and Community members. The role of the AFNWG is to assist with the development of the Strategy, and its implementation following adoption by Council; and**
4. **Replaces clause 3 with the following:**
5. **Requests the CEO, as part of the Workforce Implementation process, to assign the required resource to coordinate the Strategy development process and to provide administrative support to the Working Group (AFNWG).**

**CARRIED 6/5**

**(Against: Crs. Amiry Smyth Bennett Mangano & Combes)**

**Council Resolution**

**That Council:**

1. **supports the development of an Age-Friendly Nedlands Strategy.**
2. **requests the CEO to submit to the August Council meeting the Terms of Reference for an Age-Friendly Nedlands Working Group (AFNWG), consisting of Councillors, Staff and Community members. The role of the AFNWG is to assist with the development of the Strategy, and its implementation following adoption by Council; and**
3. **requests the CEO, as part of the Workforce Implementation process, to assign the required resource to coordinate the Strategy development process and to provide administrative support to the Working Group (AFNWG).**

Recommendation

That Council:

1. supports the development of an Age-Friendly Strategy.
2. as part of the Strategic Community and Corporate Business Planning process, considers an amount of $40,000 to develop a strategy for consideration in the 2024/2025 financial year.
3. as part of the Workforce Planning process, assign a Full Time Equivalent (FTE) resource towards developing and implementing a strategy and administering any associated advisory group.

**Purpose**

For Council to consider developing an Age-Friendly Strategy.

**Voting Requirement**

Simple Majority.

**Background**

Following a notice of motion from Councillor Rajah Senathirajah, Council resolved at its Ordinary Meeting on 13 December 2022 as follows:

“Council instructs the CEO:

1. to initiate the process to develop a Strategy that will provide framework for:
2. the provision of services by the City to the senior residents in Nedlands;
3. the facilitation of opportunities for the senior residents to make positive contributions to the community; and
4. taking the lead to grow Nedlands into an Age-Friendly Community; and
5. to report to Council in June 2023 on the proposed methodology and time frame to develop the strategy, together with the Terms of Reference for a Working Group if that will facilitate engagement with the different stakeholders.”

This report has been prepared in response to the Notice of Motion.

**Discussion**

According to the 2021 Census, more than 27% of the City’s population is over 60. The City has long been committed to working to support its older residents and take account of their needs in a range of ways:

* Services provided by Nedlands Community Care
* Positive Ageing Program
* Volunteering opportunities
* Libraries
* Tresillian Arts Centre
* Various clubs and associations

**Age friendly communities**

An age-friendly community is one which recognises the great diversity among older people and promotes their inclusion and contribution in all areas of community life. It respects their decisions and lifestyle choices and anticipates and responds flexibly to ageing-related needs and preferences.

The World Health Organisation (WHO) has taken a leadership role in researching, creating and promoting age-friendly cities. WHO is recognised for setting the international benchmark for age friendly communities which are modelled on the eight focus areas that form part of an age-friendly community:

* Transport and Movement
* Outdoor Spaces and Buildings
* Housing
* Health and Community Services
* Civic participation and employment
* Communication and Information
* Social participation
* Respect and Inclusion

In April, the state government launched its first seniors’ strategy, An Age Friendly WA: *State Seniors* Strategy 2023-2033. Many councils in WA have developed or are developing local age friendly strategies.

**Purpose of an Age Friendly Strategy**

An Age Friendly Strategy aims to promote age friendly initiatives and enhance the quality of life of older adults as they age. A strategy will be an important part of the Council decision-making framework, forming a key part of the City’s Integrated Planning and Reporting Framework as an informing strategy sitting alongside existing strategies. A strategy will recognise a whole of Council approach towards prioritising positive ageing opportunities for the Nedlands community. The strategy will include a clear and measurable action plan to monitor Council’s efforts and progress towards an age-friendly community.

**Timeframe to develop strategy**

For 2023/24, the Community Service Centres department will be managing the withdrawal from NCC services and working on the expansion of the Positive Ageing Program. An additional 1 FTE Positive Ageing Officer was supported by Council at the February Council meeting, for consideration in the 2023/2024 budget process. Administration will need to review the Positive Ageing team structure and Positive Ageing activities and how they are delivered across the City. The City will be reviewing its Positive Ageing Program with a view to expand its offerings to include services to assist residents with community transport and social support opportunities. It would be timely to develop a strategy in 2024/2025 once the new team structure is established.

**Proposed methodology**

|  |  |
| --- | --- |
| **Stages** | **Task** |
| 1 – Assess | * Project scope * Establish advisory group * Literature review * Community profile |
| 2 – Ask | * Stakeholder engagement |
| 3 – Analyse | * Data analysis * Draft report & feedback * Final report and action plan |
| 4 – Act | * Deliver, monitor and evaluate   action plan |

**Consultation**

Developing a strategy will require extensive consultation.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive

place.

**Values Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

**Budget/Financial Implications**

There is no budget allocation proposed in the draft 2023/24 budget to develop an Age Friendly Strategy. If Council support the development of a strategy, funds will need to be included for consideration in the Corporate Business Planning process that is currently underway. The main cost incurred by the City to develop a strategy will be fees to engage a consultant.

At its February 2023 meeting, Council resolved to consider an additional 1 x FTE Positive Ageing Officer in the 2023/24 annual budget to support the increase on the provision of services and activities to assist senior residents through the expansion of the Positive Ageing Program. Should Council wish to develop a strategy, it could allocate dedicated resources to this as part of expanding the Positive Ageing Program.

**Legislative and Policy Implications**

Nil.

**Decision Implications**

If Council endorses the recommendations, administration will be able to progress developing a strategy in 2024/2025. The formation of a working group and establishing a ‘terms of reference’ will coincide with the project being formally included in the Corporate Business Plan.

If Council does not endorse the recommendation, the City will not progress with developing an Age Friendly Strategy at this time.

**Conclusion**

Developing an Age-Friendly Strategy is a way for Council to consider its vision for an Age Friendly Community. If Council wish to develop a strategy, this will require budget allocation and dedicated FTE resources.

**Further Information**

Nil.

# CSD04.06.23 Allen Park Tennis Club Fence Replacement

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Rose Stewart, Acting Coordinator Community Development |
| **CEO** | Bill Parker, Chief Executive Officer |
| **Attachments** | 1. 2023 APTC Allen Park Tennis Club Request for Fence 2. CONFIDENTIAL - Quote - Allen Park Tennis Club Fence 3. CONFIDENTIAL - APTC Treasurer’s Report – March 2023 |

**Regulation 11(da) - Council agreed to list this for consideration in the 2023/24 Annual Budge process.**

Moved – Councillor McManus

Seconded – Councillor Hodsdon

**Council Resolution**

**That Council:**

1. **supports the request for financial assistance to replace the fencing at the Allen Park Tennis Club; and**
2. **considers an allocation of $100,000 in the 2023/24 budget process.**

Amendment

Moved - Councillor Senathirajah

Seconded - Councillor Youngman

Clause 2 be replaced with the following:

2. requests the CEO to work with the Management Committee of the Tennis Club to look at options on how the City can assist with the replacement of the fence.

The AMENDMENT was PUT and was

Lost 5/6

(Against: Deputy Mayor Crs. Brackenridge Smyth Amiry Combes & Hodsdon)

**The Original Motion was PUT and was**

**CARRIED 7/4**

**(Against: Crs. Coghlan Senathirajah Youngman & Mangano)**

Recommendation

That Council:

1. does not provide financial assistance to Allen Park Tennis Club for fence replacement; and
2. requests the CEO to ensure the City’s administration supports the Club to explore alternative solutions i.e. staged approach of fence replacement.

**Purpose**

Allen Park Tennis Club (APTC) have submitted a request for financial assistance to replace the court fencing at the Club. The *Council Provided Grants, Subsidies and Donations* Council policy outlines that requests for funds from Council will be presented to Council for a decision.

**Voting Requirement**

Simple Majority.

**Background**

**APTC**

APTC was founded in 1929 and is located on a portion of Allen Park, Swanbourne (Reserve R 7804). It leases the building and the surrounding fenced tennis court area from the City. The first clubroom was built in 1938 and the current building, including the perimeter fence, was built in 1964. The Club and its facilities are used all year round. APTC is one of three tennis clubs in the City of Nedlands.

**Membership**

APTC has a membership of 136, 47% of which are City of Nedlands residents. As well as coaching and competitions, the hard courts are available to hire by members of the public through an online booking system. Many of these casual users are City of Nedlands residents.

Additionally, professional tennis coaching business Prime Tennis operate from the Club where 50 junior players complete development programs through Prime Tennis each term.

**Basis of club tenancy**

APTC occupies a Council facility on the basis of a peppercorn lease. The current lease expires in March 2036.

The overarching rationale for Council’s community-purpose leases is to provide the facility to the user group free of rental charge, at no cost to Council. While Council does not seek to profit from community purpose leases, nor should such leases result in a financial impost to Council and therefore ratepayers generally. The principle underlying community use leases is that all costs associated with the facility must be met by the lessee.

In exchange for use of a rent-free facility, the tenant is responsible for all maintenance of the facility, including responsibility for the facility’s structure, as well as any capital development and replacement of the facility.

**Discussion**

**Request for assistance**

APTC have asked for financial assistance to replace the court fencing at the Club (See attachment 1). The Club have been quoted $123,100 (ex GST) for the works which include the removal of the existing fencing and replacing 560m of fencing and gates.

**Current fence**

The existing fence was built in 1964. The fence is in poor condition and many of the fence posts are rusted through at the base. The Club has patched the fence numerous times in the past. However, the fencing has now reached the end of its life and a replacement is required.

APTC notified the City that a section of the fence is in danger of falling and are concerned that this may happen if a child were to climb on it. As the fence abuts Allen Park Upper Oval, Administration has installed some temporary fencing to ensure ongoing public safety. This is not a long-term solution and if the fence becomes unsafe again, it will likely need to be removed in the interest of safety.

**Previous CSRFF Grant Funding Applications**

Since 2020, APTC has applied three times for funding to replace the fence through the Community Sport and Recreation Funding program (CSRFF). In general, DLGSCI will fund up to 1/3 of the total cost of an approved project, with the remaining 2/3 to be funded by either the applicant sporting club or a combination of the applicant sporting club and the relevant local government authority. While a project of this nature is eligible to apply, it would be considered a low priority for funding.

Council has supported all of APTC’s applications for funding. However, the applications have not received DLGSCI support and therefore the project has not proceeded. Council funding has always been conditional on receiving DLCSCI support.

**Previous Assistance from Council**

APTC last received a CSRFF grant of $46,000 from Council in 2013. This grant was for the extension of the clubrooms including toilets and storage.

**APTC financial position**

APTC has advised that it is not in a position to fund the entire cost of the replacement. The Club runs at a small profit but does not have the funds for such a large capital expense. However, APTC has advised it could contribute $15,000 to the fence replacement. The club’s Treasurer’s financial report for March 2023 can be seen at CONFIDENTIAL Attachment 1.

**What could the club do?**

**Apply for CSRFF Grant funding:** APTC can re-apply for a CSRFF grant in the upcoming small grant round in August. The outcome of this round would be announced in November. A fence replacement project would be considered a low priority for CSRFF and the grant round is typically competitive.

**Increase membership fees and capital contribution:** Full senior membership at APTC costs $530 p/a. This is slightly lower than a senior membership at other Tennis Clubs in the City which range between $595 - $624 per annum. APTC membership fees include a voluntary $25 contribution to the club’s capital expenditure fund. The Club may wish to increase this portion of the membership fee and make it a mandatory contribution.

**Fundraising/sponsorship:** The Club could undertake fundraising activities or seek external sponsorship from private businesses.

**Recruit more members:**The Club advised that it is trying to find other ways to increase membership.

**Consult with other Clubs:**The Club could seek advice from other Tennis Clubs on how they are managing budgets for capital maintenance, seeing these clubs as having a shared commitment to the sport rather than as competition. Administration could assist with connecting APTC with other Clubs both within and beyond the City of Nedlands.

**Consultation**

Internal consultation has occurred across relevant City departments:

* Land and Property advised that the Club is responsible for all maintenance and repair within the leased area, including the boundary fence, under its lease agreement.
* The Assets team have advised that there are no capital works planned to replace the fence as it is the responsibility of the tenant under the lease.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Healthy and Safe**

Our City has clean, safe neighborhoods where public health is protected and promoted.

**Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Providing for sport and recreation

**Budget/Financial Implications**

This request is unbudgeted. The City has no budget allocation to repair or replace the asset.

In terms of the City’s CSRFF donation budget, there is $12,185 remaining for 2022/2023 financial year.

**Legislative and Policy Implications**

The *Council Provided Grants, Subsidies and Donations* Council policy notes that Council provides a range of grants, subsidies or donations aimed at strengthening the capacity of the community to meet its own needs and outlines that requests for funds from Council will be presented to Council for a decision.

[Council Provided Grants, Subsidies and Donations](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nedlands.wa.gov.au%2Fdocuments%2F267%2Fcouncil-provided-grants-subsidies-and-donations&wdOrigin=BROWSELINK)

The *Use of Council Facilities for Community Purposes* Council Policy states that “in exchange for use of a rent-free facility, the tenant is responsible for all maintenance of the facility, including responsibility for the facility’s structure, as well as any capital development and replacement of the facility.” And that “leases should not result in a financial impost on Council and therefore rate-payers general”.

[Use of Council Facilities for Community Purposes](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.nedlands.wa.gov.au%2Fdocuments%2F245%2Fuse-of-council-facilities-for-community-purposes&wdOrigin=BROWSELINK)

**Decision Implications**

If Council do not provide financial assistance, the Club will need to review its plan for replacing the fence. In the meantime, if the fence condition deteriorates further, it may need to be removed in the interest of public safety. This would have a negative impact on the usability of the tennis courts.

If Council choose to provide financial support to replace the court fencing, the funding will need to be sourced from other City projects. Additionally, funding structural maintenance that is the clubs’ responsibility under its lease may set a precedent for other groups with similar arrangements.

**Conclusion**

APTC is a long-standing Club in the City. There is significant social worth in supporting all physical activity because of its health benefits. To date, the Club has received minimal financial support from the City. The City does not have budget allocation for this project, given it’s the Club’s responsibility under its lease agreement. Therefore, it is recommended that the City does not provide financial support to the Club but continues to work with the Club to find a solution.

**Further Information**

Nil.

# Divisional Reports - Corporate & Strategy Report No’s CPS26.06.23 to CPS28.06.23

# CPS26.06.23 Monthly Financial Report – May 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Statement of Financial Activity – 31 May 2023  2. Statement of Net Current Assets – 31 May 2023  3. Statement of Comprehensive Income – 31 May 2023  4. Statement of Financial Position – 31 May 2023  5. Reserve Movements – 31 May 2023  6. Borrowings – 31 May 2023  7. Capital Works Program – 31 May 2023 |

Councillor Bennett left the room at 9.12 pm.

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

Moved – Councillor Hodsdon

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

Councillor Bennett returned to the room at 9.14 pm.

Councillor Youngman left the room at 9.15 pm.

**CARRIED 9/1**

**(Against: Cr. Mangano)**

Councillor Youngman returned to the room at 9.18 pm.

**Council Resolution / Recommendation**

**That Council receive the Monthly Financial Report for 31 May 2023.**

**Purpose**

Administration is required to provide Council with a monthly financial report in accordance with regulation 34(1) of the *Local Government (Financial Management) Regulations 1996*. The monthly financial variance from the budget of each business unit is reviewed with the respective manager and the Executive to identify the need for any remedial action. Material variances are highlighted to Council in the attached Monthly Financial Report.

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

The monthly financial management report meets the requirements of regulation 34(1), 34(3), and 34(5) of the *Local Government (Financial Management) Regulations 1996*.

The attached report shows the month end position as at the end of May 2023. The municipal closing surplus as at 31 May 2023 is $4,091,314 which is a $8,502,937 favourable variance, compared to a budgeted deficit for the same period of $4,411,523.

The operating revenue at the end of May 2023 was $35,174,556 which represents a $814,891 unfavourable variance compared to the year-to-date budget, primarily in operating grants, subsidies, and contributions.

The operating expense at the end of May 2023 was $33,507,860 which represents a $1,286,476 favourable variance compared to the year-to-date budget, primarily in employee costs, and materials and contracts.

The attached Statement of Financial Activity compares Actuals with Amended Budget by Nature or Type as per regulation 34 (3) of the *Local Government Financial Management Regulations 1996*. Material variances, as defined by a previous decision of Council, from the budget of revenue and expenditure are detailed below.

**Operating Activities**

**Operating grants, subsidies, and contributions**

Unfavourable variance of $1,368,037 primarily due to timing of revenue recognition of Nedlands Community Care grants of $1,023,163.

**Fees and charges**

No variance analysis required as variance to budget is less than 10%.

**Service charges**

No variance analysis required as variance to budget is less than $20,000.

**Interest earnings**

No variance analysis required as variance to budget is less than 10%.

**Other revenue**

Favourable variance of $565,673 primarily due to unbudgeted sundry income in civil maintenance.

**Employee costs**

No variance analysis required as variance to budget is less than 10%.

**Materials and contracts**

Favourable variance of $1,204,313 primarily due to contract services for parks maintenance $291,259, civil maintenance of $255,365, arboriculture of $219,729, building maintenance of $206,495.

**Utility charges**

Unfavourable variance of $149,006 primarily due to timing of water and electricity bills.

**Depreciation and amortisation**

No variance analysis required as variance to budget is less than 10%.

**Insurance expenses**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Interest expenses**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Other expenditure**

Unfavourable variance of $124,702 primarily due to timing of sundry purchasing in the Information Technology business unit.

**Loss on disposal of assets**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Investing Activities**

**Non-operating grants, subsidies, and contributions**

Favourable variance of $1,045,125 primarily due to grant revenue recognised ahead of schedule.

**Proceeds from disposal of assets**

No variance analysis required as variance to budget is less than $50,000.

**Purchase of property, plant, and equipment**

No variance analysis required as variance to budget is less than 20%.

**Purchase and construction of infrastructure**

Favourable variance of $3,334,565 primarily due to timing of accounts being settled for completed projects.

**Payments for intangible assets**

Favourable variance of $737,630 primarily due vacant positions within the OneCouncil team and rescheduling of consultant bookings.

**Financing Activities**

**Repayment of borrowings**

No variance analysis required as variance to budget is less than 10%.

**Recoup from self-supporting loans**

No variance analysis required as variance to budget is less than $20,000.

**Payment for principal portion of lease liability**

No variance analysis required as variance to budget is less than $20,000.

**Transfer to reserves**

Unfavourable variance of $1,334,596 due to timing of transfers being processed.

**Transfer from reserves**

No variance analysis required as variance to budget is less than $20,000 and 10%.

**Rates**

No variance analysis required as variance to budget is less than 10%.

Outstanding rates debtors are $739,814 as at 31 May 2023 compared to $617,000 as at 31 May 2022. Breakdown as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Receivable** | **31-May-23 ($)** | **31-May-22 ($)** | **Variance ($)** |
| Rates & UGP | 516,580 | 413,000 | 103,580 |
| Rubbish & Pool | 72,823 | 64,000 | 8,823 |
| Pensioner Rebates | 95,517 | 84,000 | 11,517 |
| ESL | 54,893 | 56,000 | (1,107) |
| **Total** | **739,814** | **617,000** | **122,814** |

**Employee Data**

|  |  |
| --- | --- |
| **Description** | **Number** |
| Full time / Part time / Casual - Total Headcount | 186.00 |
| Establishment (Budgeted FTE) | 169.04 |
| Occupied positions (FTE) | 146.25 |
| Casual positions (FTE) | 13.48 |
| Contract employees - temporary/agency (FTE) | 9.00 |
| Resignations (employee number) | 3.00 |

The figures reported are as at the end of the calendar month of May 2023.

**Consultation**

N/A

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally sensitive, beautiful and inclusive place.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

The 2022/23 approved budget is in line with the City’s strategic direction and was prepared in line with the City’s level of tolerance of risk and it is managed through budgetary review and control. The budget was based on a zero-based budgeting concept which requires all income and expenses to be thoroughly reviewed against data and information available to perform the City’s services at a sustainable level. Our operations and capital spend, and income is undertaken in line with and measured against the budget. This ensures that there is an equitable distribution of benefits in the community.

**Budget/Financial Implications**

At the Special Council Meeting on 11 August 2022, item CPS36.08.22, Council adopted the following thresholds for the reporting of material financial variances in the monthly statement of financial activity reports:

a. Operating items – Greater than 10% and a value greater than $20,000

b. Capital items – Greater than 10% and a value greater than $50,000

pursuant to regulation 34(5) of the *Local Government (Financial Management) Regulations 1996*, and *Australian Accountings Standard AASB 1031 Materiality*.

**Legislative and Policy Implications**

[*Local Government Act 1995*, *Local Government (Financial Management) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45568.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-k0-00%5D.pdf?OpenElement)*,* and *Australian Accounting Standards.*

**Decision Implications**

Nil.

**Conclusion**

The municipal surplus as at 31 May 2023 is $4,091,314 which is favourable, compared to a budgeted deficit for the same period of $4,411,523 being a 192.74% variance.

The operating revenue at the end of May 2023 was $35,174,556 which represents a $814,891 or 2.26% unfavourable variance compared to the year-to-date budget of $35,989,447, primarily in operating grants, subsidies, and contributions.

The operating expense at the end of May 2023 was $33,507,860, which represents a $1,286,476 or 3.7% favourable variance compared to the year-to-date budget of $34,794,336, primarily in materials and contracts and employee costs.

**Further Information**

Nil.

# CPS27.06.23 Monthly Investment Report – May 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | NIL. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director/CEO** | Michael Cole – Director Corporate Services |
| **Attachments** | 1. Investment Report for the period ended 31 May 2023 |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council receive the Investment Report for the period ended 31 May 2023.**

**Purpose**

In accordance with the Council’s Investment Policy, Administration is required to present a summary of investments to Council on a monthly basis.

**Voting Requirement**

Simple Majority.

**Background**

Nil.

**Discussion**

Council’s Investment of Funds report meets the requirements of Section 6.14 of the *Local Government Act 1995.*

The Investment Policy is structured to minimise any risks associated with the City’s cash investments. The officers adhere to this Policy, and continuously monitor market conditions to ensure that the City obtains attractive and optimum yields without compromising on risk management.

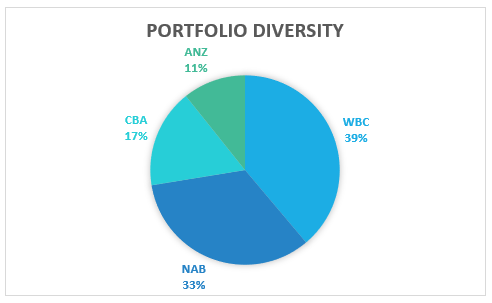
The Investment Summary shows that as at 31 May 2023 and 31 May 2022 the City held the following funds in investments:

|  |  |  |
| --- | --- | --- |
| **Funds** | **31-May-23 ($)** | **31-May-22 ($)** |
| Municipal | 1,886,160 | 12,602,428 |
| Reserve | 8,709,070 | 5,509,611 |
| **Total Investments** | **10,595,230** | **18,112,039** |

The total interest earned from investments as at 31 May 2023 was $294,872, comprising of $258,216 received at maturity and $36,656 accrued.

The Investment Portfolio comprises holdings in the following institutions:

|  |  |  |
| --- | --- | --- |
| **Financial Institution** | **Funds Invested** | **Proportion of Portfolio** |
| NAB | $ 3,562,973 | 33% |
| WBC | $ 4,113,014 | 39% |
| ANZ | $ 1,132,826 | 11% |
| CBA | $ 1,786,417 | 17% |
| **Total** | **$ 10,595,230** | **100.00%** |



**Consultation**

N/A.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally sensitive, beautiful and inclusive place.

**Values**  **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

The May 2023 YTD Actual interest income from investments is $294,872 compared to the May 2023 YTD Budget of $338,396

**Legislative and Policy Implications**

City of Nedlands - Investment of Operating Cash Policy

**Decision Implications**

N/A.

**Conclusion**

The Investment Report is presented to Council.

**Further Information**

N/A

# CPS28.06.23 List of Accounts Paid – May 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | NIL. |
| **Report Author** | Stuart Billingham – Manager Financial Services |
| **Director/CEO** | Michael Cole - Director Corporate Services |
| **Attachments** | 1. Creditor Payment Listing – May 2023; and 2. Credit Card and Purchasing Card Payments – May 2023 |

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**Council receives the List of Accounts Paid for the month of May 2023.**

**Purpose**

The purpose of this report is to present list of accounts paid for the month of May 2023.

**Voting Requirement**

Simple Majority.

**Background**

*Regulation 13* of the *Local Government (Financial Management) Regulations 1996* requires a list of accounts paid to be prepared each month, showing each account paid since the last list was prepared. This list is to include the following information:

1. the payee’s name;
2. the amount of the payment:
3. the date of the payment; and
4. sufficient information to identify the transaction.

**Discussion**

The accounts payable procedures ensure that risk is managed, and no fraudulent payments are made by the city, and these procedures are strictly adhered to by the officers. These include the final vetting of approved invoices by the Coordinator Revenue and the Manager Financial Services (or designated alternative officers).

**Consultation**

Nil.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Priority Area**

Nil.

**Budget/Financial Implications**

The payments are made in accordance with the approved budget.

**Legislative and Policy Implications**

In accordance with regulation 13 of the [*Local Government (Financial Management) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45568.pdf/$FILE/Local%20Government%20(Financial%20Management)%20Regulations%201996%20-%20%5B03-k0-00%5D.pdf?OpenElement) administration is required to present the List of Accounts Paid for the month of September 2022 to Council.

**Decision Implications**

Nil.

**Conclusion**

The List of Accounts Paid for the months of May 2023 complies with the relevant legislation and can be received by Council (see attachments).

**Further Information**

Nil.

# Reports by the Chief Executive Officer CEO13.06.23 to CEO14.06.23

# CEO13.06.23 Foreshore Management Steering Committee Replacement Member and Deputy Member

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Nicole Ceric – Executive Officer |
| **CEO** | Bill Parker |
| **Attachments** | Nil. |

**Impartiality Interest – Councillor Hodsdon**

Councillor Hodsdon disclosed that he is mentioned in the report, and as a consequence, there may be a perception that his impartiality on the matter may be affected. Councillor Hodsdon declared that he would consider this matter on its merits and vote accordingly.

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY EN BLOC 11/-**

**Council Resolution / Recommendation**

**That Council appoints Councillor Hodsdon as Member and Councillor Combes as Deputy Member to the Foreshore Management Steering Committee.**

**Purpose**

The purpose of this report is for Council to appoint Councillor Hodsdon as member and Councillor Combes as Deputy Member to the Foreshore Management Steering Committee.

**Voting Requirement**

Absolute Majority.

**Background**

In March 2022, Council established the Foreshore Management Steering Committee and appointed the Mayor and four Councillors (one Councillor from each ward) as per the Terms of Reference. Councillor Hodsdon was appointed the Hollywood Ward Member.

**Discussion**

Councillor Basson was elected at the extraordinary election on the 16 September 2022 and on 22 November 2022 he was appointed as Member and Councillor Hodsdon the Deputy Member to the Foreshore Management Steering Committee. Due to Councillor Basson’s resignation, Council needs to appoint a new Member and subsequently a new Deputy Member from the Hollywood Ward to the Foreshore Management Steering Committee.

**Consultation**

Councillor Combes and Councillor Hodsdon as the Hollywood Ward Councillors have been emailed in relation to the requirement to appoint a Member and Deputy Member to this Committee as per the Terms of Reference.

**Strategic Implications**

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Great Communities**

We enjoy places, events and facilities that bring people together. We are inclusive and connected, caring and support volunteers. We are strong for culture, arts, sport and recreation. We have protected amenity, respect our history and have strong community leadership.

**Budget/Financial Implications**

There are no budget / financial implications.

**Legislative and Policy Implications**

Section 5.8 of the [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement) allows Council to establish Committees to assist the Council to exercise the power and discharge the duties of the Local Government.

Section 5.10 of the [Local Government Act 1995](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement) states that a committee is to have its members appointed by absolute majority.

[Regulation 4 of the Local Government (Administration) Regulations:](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43667.pdf/$FILE/Local%20Government%20(Administration)%20Regulations%201996%20-%20%5B03-m0-00%5D.pdf?OpenElement) outlines that a committee member may resign from membership of a committee by giving the CEO or the committee’s presiding member written notice of the resignation.

Council Terms of Reference for the Foreshore Management Steering Committee states (extract below):

**Membership**

1. The membership of the committee shall comprise the Mayor and one Councillor from each ward with the Councillors being determined by nomination and if necessary, a ballot conducted at a Council Meeting and up to one non-Councillor Member, being a representative from the Department of Biodiversity, Conservation and Attractions (DBCA) as a non-voting member.
2. Council will appoint one Councillor from each ward as deputy members of the committee.
3. If a vacancy on the committee occurs for whatever reason, then Council shall appoint a replacement in accordance with the same arrangements as for the original appointment.
4. Deputy members are only required to attend and vote if the primary member is absent, an apology or on leave or has resigned.
5. The term of the presiding member and committee members will expire immediately prior to the next ordinary Council election.
6. The presiding member shall be determined by election amongst the members of the committee at the first meeting of the Committee.
7. Should the elected presiding member not be present during a meeting of the committee then a temporary presiding member shall be elected in accordance with 7 above.

Therefore, a replacement member is required to comply with the Council’s adopted Terms of Reference.

**Decision Implications**

Should Council not appoint a replacement member to the Foreshore Management Steering Committee it would be in breach of the Council’s adopted Terms of Reference.

**Conclusion**

It is recommended that Council appoint Councillor Hodsdon as the Hollywood Ward Committee Member to replace Councillor Basson, and appoint Councillor Combes as the Hollywood Ward Committee Deputy Member.

**Further Information**

Nil.

# CEO14.06.23 Community Scorecard Report 2023

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Gemma Johnstone – Corporate Planning & Performance Coordinator |
| **CEO** | Bill Parker |
| **Attachments** | 1. 2023 Community Scorecard Report |

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

Moved – Councillor Hodsdon

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 10/1**

**(Against: Cr. Mangano)**

**Council Resolution / Recommendation**

**That Council receives the 2023 Community Scorecard Report as provided in Attachment 1.**

**Purpose**

The purpose of this report is for Council to receive the 2023 Community Scorecard Report.

**Voting Requirement**

Simple Majority.

**Background**

At its meeting held on 22 November 2022, the Council adopted the 2022/23 CEO Key Performance Indicators (KPIs), including to:

* Facilitate a community engagement survey to inform the strategic planning process and set the City’s benchmarks in service delivery.
* Develop a Strategic Community Plan (SCP) in consultation with the community and key stakeholders giving clear strategic direction for the City.
* Develop a Corporate Business Plan (CBP) informed by the Strategic Community Plan (SCP) and the Service Delivery Review outcomes.

To address these KPIs and meet statutory requirements, at its meeting held 28 February 2023, Council approved the Community Consultation Plan to facilitate the major review of the Strategic Community Plan (SCP) and Corporate Business Plan (CBP). A key component of the Community Consultation Plan is the Community Scorecard.

**Discussion**

Between 27 March and 14 April 2023, the 2023 Community Scorecard was available for all community members to complete online and via post/unaddressed mail. At close, 1,686 community members had submitted a response.

The City of Nedlands ‘Overall Performance’ is 68 out of 100, which is 4 index points above the industry average.

Compared to the 2016 Community Scorecard, the City’s Performance Index Score is higher for ‘Liveability’ and ‘Rates value’, and lower for ‘Governance’ and ‘Vision’.

‘Strengths’ that emerged include:

|  |  |
| --- | --- |
| **Top Performers** | * Library services * Playgrounds, parks and reserves * Access to health and community services * Sport and recreation services and facilities |
| **Most Improved** | * Footpaths, trails and cycleways * Youth services and facilities * Streetscapes, trees and verges * Services and facilities for children and families |
| **Strongest compared to other local governments** | * Local roads * Public transport * Community safety and crime prevention * Education, training and personal development |

‘Priorities’ that emerged include:

* Responsible growth and development.
* Planning & building approvals.
* Streetscapes, trees & verges.
* Activation of town centres / local shopping areas.
* Sustainable practices / climate change.

Full results of the 2023 Community Scorecard are provided in Attachment 1.

**Consultation**

The Community Scorecard was available for all community members (i.e., residents, visitors, business owners, Councillors, employees etc.) to complete online and via post/unaddressed mail between 27 March and 14 April 2023.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

The 2023 Community Scorecard, including printing and postage to all residential properties, cost approximately $27,190 (excluding GST). Note, this forms part of the overall costs of the SCP and CBP Major Review/new Council Plan development.

**Legislative and Policy Implications**

* Section 5.56 of the [*Local Government Act 1995*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_43454.pdf/$FILE/Local%20Government%20Act%201995%20-%20%5B07-t0-00%5D.pdf?OpenElement) requires all local governments are to plan for the future of their local government area.
* Regulation 19C and 19DA of the [*Local Government (Administration) Regulations 1996*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_45589.pdf/$FILE/Local%20Government%20(Administration)%20Regulations%201996%20-%20%5B03-o0-02%5D.pdf?OpenElement) pprescribes how Section 5.56, through adoption of a Strategic Community Plan and Corporate Business Plan, is achieved.

**Decision Implications**

If Council does not receive the Officers Recommendation, the CEO will be unable to close out completion the KPI: ‘Facilitate community engagement survey to inform the strategic planning process and set the City of Nedlands benchmarks in service delivery.’

The 2023 Community Scorecard Report will, however, still be used to inform major review of the SCP and CBP, and development of the new Council Plan.

**Conclusion**

It is proposed that Council receive the 2023 Community Scorecard Report 2023 as required by CEO KPIs and the Strategic Community Plan and Corporate Business Plan Major Review/Council Plan development process.

**Further Information**

Nil.

# CEO15.06.23 Register of Outstanding Council Resolutions

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | No officer involved in the preparation of this report has a declarable interest. |
| **Report Author** | Libby Kania – Coordinator Governance and Risk |
| **CEO** | Bill Parker |
| **Attachments** | 1. Register of Outstanding Council Resolutions – June 2023 |

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

Moved – Councillor Combes

Seconded – Councillor Amiry

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 10/1**

**(Against: Cr. Mangano)**

**Council Resolution / Recommendation**

**That Council receives the Register of Outstanding Council Resolutions dated June 2023.**

**Purpose**

For Council to consider the Register of Outstanding Council Resolutions (OCR) and the actions taken by Administration in progressing these items.

**Voting Requirement**

Simple Majority.

**Background**

Council has requested that all Outstanding Council Resolutions be tabled on a monthly basis at the OCM. The first OCR report was tabled at the March OCM.

**Discussion**

Attached to the Council report is the register of OCRs for Council’s noting and consideration.

The report has been updated by officers when required.

Information will be periodically provided to Councillors on previous resolutions of Council that:

(i) have been completed since the last update and

(ii) have not yet been fully implemented. Reasons for any delays or unforeseen challenges are included.

Councillors are able to seek an update on any particular project or resolution outside of the reporting period, by contacting the CEO directly for information.

**Consultation**

Nil.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

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**Values** **Great Governance and Civic Leadership**

We value our Council’s quality decision-making, effective and innovative leadership, transparency, accountability, equity, integrity and wise stewardship of the community’s assets and resources. We have an involved community and collaborate with others, valuing respectful debate and deliberation.

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

*Local Government Act 1995*.

**Decision Implications**

Councillors have oversight of the implementation of previous Council decisions, through access to the Register and the Councillor portal. Information on decisions may be provided through the CEO Weekly update, and direct request to the CEO. The City may include the register on the website to provide transparency to the community, although the community is able to access the document through the Council agenda.

**Conclusion**

That the Council receives the Register of Outstanding Council Resolutions for noting.

**Further Information**

**Question**

Councillor Mangano – Bishop Road – update please?

**Officer Response**

This project will be included in the 3 year CWP for prioritisation and funding consideration by Council as part of the Annual Budget process.

**Question**

Councillor McManus – Waratah Avenue bollard replacement?

**Officer Response**

The City is yet to arrive at a preferred replacement for wheel stops and bollards with the adjoining properties, and is planning to discuss alternative treatments in the coming weeks.

# Council Members Notice of Motions of Which Previous Notice Has Been Given

Nil.

# Urgent Business Approved By the Presiding Member or By Decision

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

As per Standing Orders Local Law 3.10 the following items were approved by the Presiding Member.

# PD28.06.23 Responsible Authority Report - 97-105 Stirling Highway - Amendment to Mixed Use Development (DAP/20/01770)

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | Urbanista Town Planning |
| **Information Provided** | All relevant information required has been provided. |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director** | Tony Free – Director Planning and Development |
| **Attachments** | 1. RAR and Attachments |

**Councillor Youngman – Impartiality Interest**

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.

Moved – Councillor Coghlan

Seconded – Councillor Bennett

**Council Resolution**

1. **It is recommended that the Metro Inner-North Joint Development Assessment Panel, pursuant to section 31 of the *State Administrative Tribunal Act 2004* in respect of SAT application DR 140 of 2022, resolves to:**
   1. **Reconsider its decision dated 5 August 2022 and SET ASIDE the decision and substitute a new decision and NOT ACCEPT that the DAP Application reference DAP/20/01770 as detailed on the amended plans dated 26 May 2023 (Attachment 2) is appropriate for consideration on a Form 2 application in accordance with regulation 17 of the Planning and Development (Development Assessment Panels) Regulations 2011;**
   2. **Reconsider its decision dated 5 August 2022 and SET ASIDE the decision and substitute a new decision to REFUSE DAP Application reference DAP/20/01770 and amended plans dated 26 May 2023 (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, for the proposed minor amendment to the approved Mixed Use Development at 97-105 Stirling Highway, Nedlands, for the following reasons:**

**Reasons:**

1. **The revised apartment layouts do not provide a sufficient level of residential amenity to achieve Element Objective 4.3 – Size and layout of dwellings.**
2. **The application has not sufficiently demonstrated that the amount of traffic likely to be generated by the amended development will not unduly impact on the amenity of the surrounding area and traffic flow and safety.**
3. **That Council appoints McLeods to attend the JDAP to represent the Council in defending this refusal.**

Councillor Mangano left the room at 9.31 pm and returned at 9.32 pm.

**The Presiding Member adjourned the meeting for the purposes of a refreshment break.**

The meeting adjourned at 9.38 pm and reconvened at 9.44 pm with the following people in attendance:

**Councillors** Councillor L J McManus (Presiding Member) Coastal Districts Ward

Councillor B Brackenridge (Online) Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman (online) Dalkeith Ward

Vacant Hollywood Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

**Staff** 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 3 members of the public present and 5 online.

**Press** The Post Newspaper Representative

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Mayor F E M Argyle

Councillor Youngman retired from the meeting at 9.45 pm.

Councillor Brackenridge left the room at 10.02 pm.

**The Motion was PUT and was**

**CARRIED UNANIMOUSLY 9/-**

Recommendation

That Council adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the Amendment to a mixed use development at 97-105 Stirling Highway, Nedlands as follows:

It is recommended that the Metro Inner-North Joint Development Assessment Panel, pursuant to section 31 of the State Administrative Tribunal Act 2004 in respect of SAT application DR 140 of 2022, resolves to:

1. Reconsider its decision dated 5 August 2022 and SET ASIDE the decision and substitute a new decision and ACCEPT that the DAP Application reference DAP/20/01770 as detailed on the amended plans dated 26 May 2023 (Attachment 2) is appropriate for consideration on a Form 2 application in accordance with regulation 17 of the Planning and Development (Development Assessment Panels) Regulations 2011; and
2. DEFER its Reconsideration of its decision dated 5 August 2022 for DAP Application reference DAP/20/01770 and amended plans dated 26 May 2023 (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, for the following reasons:

Reasons

* + - 1. To enable modifications to be undertaken to improve the internal functionality and amenity of apartment types A2, A3.1, A3.2, B2.1, B2.2, B3, B4, B5, B6, B7, C1, C2, C3, C4, C5, C7 as noted by the City’s Design Review Panel.
      2. To enable the applicant to review the Transport Impact Assessment to provide:

a. Information on the likely alternative vehicle movements if the right turn movements are no longer available at Baird Avenue and Stirling Highway.

b. Sensitivity testing of the network performance in the future horizon year of 2035 based on the existing road network.

c. Analysis of the impact this development may have on Carrington Street and Smyth Road.

d. Demonstration of how the internal vehicle ramps meet Australian Standards.

**Purpose**

The purpose of this report is for Council to consider the Responsible Authority Report for amendments to an existing approved mixed use development at 97-105 Stirling Highway, Nedlands. Council’s recommendation will be incorporated into the Responsible Authority Report and lodged with the DAP Secretariat on 6 July 2023.

**Voting Requirement**

Simple Majority.

This report is of a quasi judicial nature as it is a matter that directly affects a person’s rights 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.

The decision must be made in a manner that is impartial, free from bias, and in accordance with the principles of natural justice. The decision must be made in having regard to the facts of the matter under consideration, and in accordance with the relevant laws and policies as they apply to that matter.

Discretionary considerations and judgments in the decision must be confined to those permitted to be considered under the laws and polices applicable to the matter and given such weight in making the decision as the relevant laws and polices permit them to be given.

**Background**

**Land Details**

|  |  |
| --- | --- |
| **Metropolitan Region Scheme Zone** | Urban |
| **Local Planning Scheme Zone** | Residential |
| **R-Code** | R-AC1 |
| **Land area** | 6044m2 |
| **Land Use and Use Class** | Residential – P  Restaurant/Café – P  Shop – P  Office – P  Motor Vehicle, Boat or Caravan Sales – A  Community Purpose – A |

The application comprises two lots, being 97 and 105 Stirling Highway, Nedlands. The lot is located on the north side of Stirling Highway between Baird Avenue and Dalkeith Road. The site is currently occupied by a commercial building comprising a Motor Sales use and Shops.

**History**

* + The application was first considered by the Metro Inner-North JDAP on 17 July 2020 where the Panel resolved to refuse the application.
  + The applicant subsequently lodged an application for review of the decision on 23 July 2020 with the State Administrative Tribunal (SAT). Following a series of mediation sessions, revised plans for the development were received by the City on 18 November 2020. SAT orders were made inviting the decision-maker, under Section 31 of the State Administrative Tribunal Act 2004 to reconsider its decision based on the amended plans.
  + The application was reconsidered by the Metro Inner-North JDAP on 8 February 2021 where the Panel resolved to set aside the previous decision and approve the application subject to conditions. The approval is valid for a period of 4 years.
  + On 23 June 2022 the applicant lodged a JDAP Form 2 to amend the existing approval dated 8 January 2021. This was considered by the JDAP at its meeting of 5 August 2022 where the JDAP resolved to refuse the application on the basis that the Form 2 proposed to amend aspects of the approval which, if amended, would substantially change the development approved.

**Application to the State Administrative Tribunal**

Subsequent to JDAP’s 5 August 2022 decision, the applicant exercised their right for a review of the decision by the State Administrative Tribunal (SAT) on 25 August 2022. Three mediation sessions took place.

The SAT has made orders inviting the decision-maker (i.e. the Metro Inner-North JDAP), under Section 31 of the State Administrative Tribunal Act 2004 (SAT Act) to reconsider its decision. The decision-maker may:

* + affirm the previous decision,
  + vary the decision, or
  + set aside the decision and substitute a new decision.

Revised plans and supporting documentation for the development were received by the City on 24 April 2023 and 26 May 2023 and form the basis of this report.

**Application Details**

The application seeks to amend the existing DAP approval as detailed below:

Building Envelope

* Amendments to the typical floor plates of all towers:
  + western tower has decreased in floor area by 182m2 to 125m2 per floor.
  + central tower has increased in floor area by 99m2 to 107m2 per floor.
  + eastern tower has increased in floor area by 181m2 to 215m2 per floor.
* Increased building separation between the east and central towers.
* Increase in rear setback to all towers.
* Façade and architectural detail changes.

Apartments

* Increase in number of apartments from 231 to 332 (101 additional apartments).
* Subsequent changes to dwelling mix, consisting of a greater number of one- and 2-bedroom apartments and a reduction in 3- and 4-bedroom apartments.
* Changes to internal apartment layouts. Subsequent changes to dwelling sizes, room sizes, natural ventilation and solar access.

Basement

* Increase in car bays from 504 bays to 580 bays (76 additional car bays)
* Reallocation of commercial, residential and visitor car bays.

Ground Floor

* Redesign of ground floor plane to create a wider central pedestrian spine. Commercial tenancies have been redesigned and re-oriented to wrap around the services cores.
* Change in western vehicle access point from the northern laneway access to Baird Avenue.

Mezzanine / Levels 1 and 2

* Removal of mezzanine and podium levels.
* Level 1 has been replaced with a residential communal facility (gym, communal residential offices and outdoor terraces). Subsequent changes to car parking requirements.
* Level 2 Residential apartments to the north-west removed and replaced with a communal pool, sauna and terrace.
* Level 1 connecting podium removed and replaced with a “bridge” connecting the east tower with the central and western towers.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), State Planning Policies and the R-Codes Volume 2. The matters below have been identified as key considerations for the determination of this application:

* Form 2 determination
* Communal open space
* Internal amenity
* Traffic and vehicle access

Form 2 Determination

Regulation 17(1) of the DAP Regulations provides:

*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 —*

*(c) to amend an aspect of the development approved which, if amended, would not substantially change the development approved;*

Reg. 17(1) involves a two-stage process, the first of which requires a precondition to be satisfied before the second stage (exercise of discretion) may arise. In this instance the first stage requires the decision maker to be satisfied that the proposed amendment would not substantially change the development if approved. Only if the decision maker is satisfied then the application becomes a valid application under Reg. 17(1)(c) and can be determined.

The plans considered by the JDAP at its meeting of 5 August 2022 were determined to substantially change the development if approved, given the proposed changes to both land use and built form.

In relation to land use, the plans dated 26 May 2023 have reinstated both the ‘office’ and ‘shop’ land uses to the development. A comparative analysis of the land use mix is provided in **Table 1** below. As demonstrated, the mix of land uses within the amended plans are commensurate with the approved plans and do not change the essence of the approved development.

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 1: Land Use Comparison** | | | |
|  | **Approved Plans dated 8 February 2021** | **Refused plans dated 5 August 2022** | **Amended plans dated 26 May 2023** |
| **Residential** | **27,737m2 / 85%** | **32,060m2 / 96%** | **29,314m2 / 87%** |
| **All Non-residential** | **4,912m2 / 15%** | **1,442m2 / 4%** | **4,426m2 / 13%** |
| Office (NLA) | 3,458m2 | 0m2 | 3,102m2 |
| Shops (NLA) | 296m2 | 0m2 | 357m2 |
| Restaurant/Café (NLA) | 353m2 | 792m2 | 412m2 |
| Motor Vehicle (NLA) | 641m2 | 489m2 | 391m2 |
| Community Purpose (NLA) | 164m2 | 161m2 | 164m2 |

In relation to built form, the plans dated 26 May 2023 have reduced the height of the central tower to be consistent with the approved height. The amended plans still propose changes to the architectural language, ground floor layout, setbacks and floor plates of the towers, and the removal of the podium element. However, these external changes are not considered to be so significant that they alter the essence of the development. The overall height, bulk and functionality of the development remains similar to that approved by the JDAP.

The plans dated 26 May 2023 are considered to have resolved the previous reasons for refusal to the extent that the amended plans are appropriate for determination via the JDAP Form 2 application pathway.

*Element Objective 3.4 – Communal open space*

A key element of the Form 1 approval was the extensive amount of high quality communal open spaces for residents. **Table 2** below compares the amount and type of communal open space between the approved and the proposed development:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Table 2: Comparison of Communal open space** | | | | |
| **Floor** | **Development** | **Indoor Area** | **Outdoor Area** | **Total** |
| 2 | Approved | - | 925 | 925 |
| Proposed | 640 | 780 | 1420 |
| 15/18 | Approved | - | 390 | 390 |
| Proposed | - | - | - |
| 20/22 | Approved | 157 | 492 | 649 |
| Proposed | 153 | 283 | 436 |
| 22/24 | Approved | 158 | 520 | 678 |
| Proposed | 168 | 676 | 844 |
| **Total** | **Approved** | **315** | **2327** | **2642** |
| **Proposed** | **961** | **1739** | **2700** |

The amended plans provide roughly the same amount of communal space as the approved plans. The main difference is that the amended plans contain about 600m2 less outdoor area and have removed the rooftop playground on the central tower. The proposed communal open space is well provisioned with gyms, steam rooms, sauna rooms, pools and open terraces for a variety of recreational, leisure and active uses. The quality and quantity of amenities are sufficient for the building residents.

*Element Objective 4.3 – Size and layout of dwellings*

The amended plans have significantly redesigned the individual apartment layouts of both towers. This is evidenced by the net reduction in plot ratio, yet an increase of 101 apartments. The redesign results in a greater number of one- and two-bedroom apartments and a reduction in three- and four-bedroom apartments. It is noted that consistent advice throughout the SAT review process is that the increase in apartment numbers in and of itself does not constitute a material change to the essence of the development. However, there remains a need to consider the changed apartment layouts against the element objectives of the R-Codes.

Notwithstanding that the amended apartment layouts meet the minimum internal floor areas and dimensions as stipulated by the R-Codes Acceptable Outcomes, many apartments are compromised in terms of their proportionality and the quality and functionality of the space. As highlighted in the DRP review comments, there are many apartment planning issues that are considered to generate a poor level of amenity for residents. These include:

* Many bedroom doors (A2, A3.1, A3.2, B2.1, B2.2, B3, B4, B7, C1, C2, C3, C4, C5, C7) still open directly to living areas with no recess or transition space.
* Many apartments still have bedrooms detached from bathrooms (B2.1, B4, B7, C1, C3, C7).
* If the flexible rooms in B5 and C1 are used as bedrooms no access to the balcony is provided directly from living areas as the direct doors have been deleted.
* Some 2 bedroom apartments (B4, B6, B7) have no functional dining area and accommodate a very small dining table.

On balance the internal size and layout of the redesigned apartments is not considered to be functional, well-proportioned, nor provide the flexibility to accommodate furniture settings and personal goods, appropriate to the expected household size. In the reasons for approval of the initialapplication, the JDAP noted that “the apartments are considered generous size and good layout”. It is recommended that further changes be made, which may necessitate the need to reduce the total number of apartments in order to improve the amenity of each.

Traffic Impact

In providing a recommendation on the Form 2 application, the City is required to be satisfied that the traffic impacts of the revised development are appropriate and do not place an undue burden on the road network and surrounding areas. During the assessment of the Traffic Impact Statement (TIA) the City highlighted a number of areas of concern which required further information and/or justification. Whilst some of these matters have been addressed by the revised TIA, the City continues to have outstanding concerns as detailed below which should be addressed prior to determination of the application.

1. Due to current access controls on Stirling Highway, the only permitted right turn movement from Stirling Highway into the site is from Baird Avenue (right turn movements are banned in the peak hours at Dalkeith Road and Stirling Highway). Baird Avenue is flagged to be downgraded to a left-in-left-out intersection in the future. The City requested information on the likely alternative vehicle movements if the right turn movements are no longer available at Baird Avenue and Stirling Highway.

The applicant’s response infers that Baird Avenue will only be downgraded at the same time as the signalised intersection at Dalkeith Road and Stirling Highway is upgraded to permit right turn movements at all times of the day from all directions.

The City maintains the position that it is feasible that the intersection of Baird Avenue and Stirling Highway could be downgraded to a left-in-left-out in the future by means of a simple median island on Stirling Highway without Dalkeith Road and Stirling Highway being upgraded and for this reason the applicant should demonstrate the development can maintain adequate access in the future without the reliance on a full upgrade of the Dalkeith Road and Stirling Highway traffic signals.

1. The City requested sensitivity testing of the network performance in the future horizon year of 2035 based on the existing road network. The Applicant argued that in the 2035 scenario Stirling Highway would be fully upgraded, significantly changing movements through the network and therefore could not accurately assess the future performance of this intersection.

The City maintains that an assessment of the current network should still be completed for the year 2035 as there is no current commitment to the upgrade of the Stirling Highway corridor and it is reasonable to want to know how the network adjacent a development of this scale in this central location will function if the network remains as is.

1. The TIA states that 20% of the total trips will be to and from the general northwest direction. Based on the existing road network these trips are almost certainly going to pass through the Carrington Street and Smyth Road intersection. Anecdotal evidence suggests this intersection is near capacity. The City wishes to understand any impact this development may have on Carrington Street and Smyth Road and believes it is appropriate for a development of this scale to consider its impact on the wider road network (particularly where there is existing capacity constraints) instead of only the two intersections immediately adjacent the development.

The City also has concerns regarding the vehicle access ramps in the basement car park. The City’s swept paths show that there is room for two cars, however, the separation distances do not conform to the Australian Standards. The design of the ramps should be reviewed.

**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 17 February to 17 March 2023.

* Letters sent to all City of Nedlands and City of Subiaco landowners and occupiers within a 200m radius of the site (letters);
* 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 February 2023; and
* A community information session was held by City Officers on 1 March 2023, which was attended by three people.

At the close of the advertising period, the City received 78 submissions; 75 opposing the proposal, one supporting the proposal and two providing comments only. A full schedule of submissions and applicant responses are provided in the attachments within the RAR. A summary of the submissions is provided in **Table 3**.

|  |  |
| --- | --- |
| **Table 3: Public Consultation** | |
| **Issue Raised** | **Officer Comment** |
| Traffic   * Roads can’t support additional traffic * TIA is inadequate * Removal of rear laneway not supported * Possible street closure   **51 submissions** | Officers are requesting further information on the impact of road network changes to the development (See above). However, the density of land in Nedlands is such that a certain increase in traffic is to be expected as the City grows. |
| Height   * Overshadowing * Too big * Not in keeping with area * Reflection/glare   **30 submissions** | The height has been approved via the Form 1 application. There is no proposed increase or decrease in height as part of this application. |
| Number of Dwellings  **24 submissions** | There are no planning provisions which limit the number of dwellings within a development. All dwellings achieve the minimum size and dimensions stipulated by the R-Codes Acceptable Outcomes. Notwithstanding, the City has concerns regarding the amenity of the apartment layouts which is discussed within the RAR. These amenity impacts may partly be a result of the increased number of dwellings. |
| Visual Privacy  **21 submissions** | The rear setback pertaining to visual privacy has been approved via the Form 1 application. This application seeks to increase the rear setback by 0.75m thereby is an improvement on the overall visual privacy. There is no additional adverse impact to visual privacy as a result of the Form 2 amendments. |
| Parking  **17 submissions** | The Form 2 applications seeks an additional 76 additional car bays beyond that approved by the Form 1. The number of parking bays meets the R-Codes Acceptable Outcomes and includes provision for bays to be shared between residential visitors and office visitors |
| Infrastructure (schools, water, power) can’t support density  **14 submissions** | It is the proponent’s responsibility to upgrade water/sewerage/power to service the development (if necessary) in conjunction with the relevant service authorities. Provision of schools is a matter for the state. In general, infill development is encouraged over outer suburbs development as the provision of services exist and areas are more walkable and sustainable. |
| Lack of open space  **9 submissions** | The development is subject to the WAPC’s DC2.3 policy, which currently allows a collection of a percentage of public open space or cash-in-lieu at the development stage to pay for open space in the locality as a result of the population increase. Communal open space within the development is well-provisioned for the residents. See “Communal open space” above. |
| Light spill, safety and noise from units  **8 submissions** | The development must adhere to other legislative requirements including environmental noise regulations. Should an approval be granted, a condition is recommended ensuring the outdoor lighting is designed in accordance with the Australian Standards to limit light spill to adjacent properties. More residents and visibility of surrounding streets contributes to more safety by providing “eyes on the street” which is a central principal of minimising opportunities for crime through design. |
| Construction Management  **6 submissions** | A Demolition and Construction Management Plan is required to be provided to, and approved by, the City prior to the issue of a building permit. This will address any construction related issues including but not limited to parking, dust, and noise. |
| Not an amendment  **5 submissions** | City Officers are satisfied that the development may be considered an amendment to the existing approval. See “Form 2 Determination” above. |
| Internal amenity   * Ceiling height of units * Units too small   **4 submissions** | City Officers and the DRP have concerns about the internal layout of some of the units, which result in reduced internal amenity. This is one of the reasons for deferral. |
| Sustainability   * Inadequate landscaping * Trees won’t grow * Pollution   **4 submissions** | The development proposes to achieve a 5 star Green Star rating and be carbon neutral, thereby meeting the Element Objectives of the R-Codes. These items will form a condition of any approval.  The trees shown in the planter boxes have a minimum soil depth of 700 in lieu of 1m, which can be rectified as part of a condition on any approval. |
| Plot Ratio  **3 submissions** | The proposed plot ratio is less than the approved plot ratio. As this is a Form 2 application, the proposal is compared to the approved development. |

**Other Referrals**

**Design Review Panel**

During the assessment of the original application, the State Design Review Panel (SDRP) reviewed the application as the City of Nedlands did not have its own Panel. The SDRP considered the application on three occasions (20 August 2019, 15 October 2019, 17 December 2019). On 20 April 2020 and 17 June 2020, the Office of the Government Architect (OGA) provided supplementary comments for City of Nedlands.

The DPLH Design Review Guide highlights that it is important to optimise the consistency of the panel and advice particularly across subsequent reviews for the same proposal. In this regard it is considered the SDRP were invited review the Form 2 application in best practice. The SDRP declined to review the Form 2 proposal.

The Form 2 application was referred to the City’s Design Review Panel (DRP) on the 20 March 2023 and the amended plans were reviewed by the DRP Chair on 1 May and 2 June 2023. A full record of the DRP minutes is provided in the RAR attachments. The final summary on the revised plans is provided below.

1 May 2023

“The development’s level of impact on adjoining properties has not substantially increased from the previous approved version with the exception of potential increased traffic from an increased number of apartments as well as parking bays.

Some items noted in the previous Minutes have been addressed however there are a significant number of items that have not been addressed including key resident amenity issues related to apartment planning, a reduction in the amount of communal space for residents, the loss of the podium element to the front façade of the public plaza space facing Stirling Highway, a reduction in the size of the pool, the removal of the windows providing natural light into both ends of the tower’s communal corridors, an east tower pedestrian entry / lobby which lacks legibility and a lack of separation between the vehicle and pedestrian entry points to the western tower.

As such the amended proposal is considered to generate a significantly lower level of resident amenity when compared to the previous approved scheme and requires further amendments to address a number of resident amenity issues.”

2 June 2023

“In response to the previous comments minor changes have been made to address some items however there are still a number of significant Functionality, Built Form & Scale as well as Amenity issues that have not been addressed as noted in the following Design Principles. The amended proposal is considered to generate a significantly lower level of resident amenity when compared to the previously approved scheme.”

**Main Roads**

As the lots are affected by a Primary Regional Road Reservation the application was referred to Main Roads WA (MRWA) for comment. MRWA provided comment on 28 March 2023 noting no objection to the proposal amendments, and that the Main Roads Correspondence dated 17 December 2020 remains applicable.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area** Urban form - protecting our quality living environment

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

The reconsideration is being conducted in accordance with section 31 of the [SAT Act](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37049.pdf/$FILE/State%20Administrative%20Tribunal%20Act%202004%20-%20%5B04-d0-01%5D.pdf?OpenElement). This section allows for the SAT to invite a decision-maker to reconsider the initial decision. Upon being invited to reconsider the decision the decision-maker may:

* Affirm the decision
* Vary the decision or
* Set aside the decision and substitute a new decision.

For this matter, the JDAP is the decision-maker and Council is being asked to provide comment.

**Decision Implications**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on or before 6 July 2023. The recommendation noted above is the officer recommendation that is also included in the RAR. In the event that Council does not adopt the officer recommendation, Council’s recommendation will be located at the front of the RAR as the Responsible Authority Recommendation and the officer recommendation will be contained in the rear of the report. In the event that Council does not make a recommendation, the RAR will be forwarded to DAP with the Officer Recommendation only.

**Conclusion**

An application under r.17 of the Development Assessment Panel Regulations 2011 is not an application for a review or reconsideration of the original decision. The proposed modifications sought are not considered to change the ‘essence’ of the development and thereby can be considered via the Form 2 pathway.

The proposal is generally supported subject to conditions. However, there are still concerns that have not been addressed and a little more work could be carried out. Deferral of the amendments is recommended until sufficient information or amendments are supplied addressing the following concerns:

* Internal amenity of the units
* Insufficient traffic modelling
* Vehicle access for basement ramps.

**Further Information**

Nil.

# PD29.06.23 Consideration of Responsible Authority Report for 10 Grouped Dwellings at 3 & 5 Bruce Street, Nedlands

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | Big Sky Homes |
| **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 involved in the preparation of this report and the proponents or their consultants. |
| **Report Author** | Roy Winslow – Manager Urban Planning |
| **Director/CEO** | Tony Free – Director Planning and Development |
| **Attachments** | 1. Responsible Authority Report and Attachments |

Councillor Brackenridge returned to the room at 10.10 pm.

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

Moved – Councillor Senathirajah

Seconded – Councillor Combes

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED 9/1**

**(Against: Cr. Mangano)**

**Council Resolution / Recommendation**

**Adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of ten grouped dwellings at No.3 & No.5 Bruce Street, Nedlands as follows:**

**It is recommended that the Metro Inner-North JDAP resolves to:**

1. **Approve DAP Application reference DAP/22/83640 and accompanying plans dated stamped 31 May 2023 (Attachment 3) 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, subject to the following conditions:**

**Conditions**

**General Conditions**

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.**
2. **This decision constitutes planning approval only and is valid for a period of 4 years from the date of approval. If the subject development is not substantially commenced within the specified period, the approval shall lapse and be of no further effect.**
3. **All works indicated on the approved plans shall be wholly located within the lot boundaries of the subject site.**
4. **Prior to occupation, Lots 160 (No. 3) and Lot 159 (No. 5) Bruce Street, Nedlands are to be legally amalgamated or alternatively the owner may enter into a legal agreement with the City of Nedlands, drafted by the City’s solicitors at the expense of the owner and be executed by all parties concerned prior to the commencement of the works, to ensure that that the development and use approved on the lots operate concurrently at all times.**

**Engineering and Design**

1. **Prior to the issue of a Building Permit on-site stormwater retention plans shall be submitted showing all stormwater discharge from the development being contained and disposed of on-site unless otherwise approved by the City of Nedlands.**
2. **Prior to the issue of a Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction and demolition processes to the satisfaction of the City.**
3. **Prior to occupation of Unit 5 of Lot 160 (No. 3) Bruce Street, the western side of the roof top terrace is to be screened to the extent shown on the approved plans and in accordance with the Residential Design Codes by:**
   * 1. **fixed and obscured glass to a minimum height of 1.6 metres above finished floor level; or**
     2. **fixed screening devices to a minimum height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
     3. **an alternative method of screening approved by the City of Nedlands.**

**The screening shall be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **The north facing living room window of Unit 1 (No. 3) Bruce Street depicted on approved plans shall be modified to be excluded from the definition of ‘major opening’ under the Residential Design Codes by:**
   * 1. **reducing the size of windows; or**
     2. **replacement with obscured windows that cannot be opened; or**
     3. **increase in sill height to not less than 1.6m above finished floor level; or**
     4. **An alternative method approved by the City of Nedlands.**

**The windows shall be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **The northern side of the first floor balcony of Unit 1 (No. 3) Bruce Street is to be screened to the extent shown on the approved plans and in accordance with the Residential Design Codes by:**
2. **fixed and obscured glass to a minimum height of 1.6 metres above finished floor level; or**
3. **fixed screening devices to a minimum height of 1.6 meters above finished floor level that are at least 75% obscure and made of a durable material; or**
4. **an alternative method of screening approved by the City of Nedlands.**

**The screening shall be thereafter maintained to the satisfaction of the City of Nedlands.**

1. **Prior to occupation, all screening devices and obscure windows must be installed and thereafter maintained in perpetuity to the satisfaction of the City of Nedlands.**
2. **Clothes drying areas shall be located and/or screened to not be visible from the street or adjoining properties to the satisfaction of the City of Nedlands.**
3. **Infill panels of fences within the primary street setback area are to be visually permeable (as defined by the Residential Design Codes) above 1.2m in height to the satisfaction of the City of Nedlands.**
4. **External lighting must be installed in accordance with an External Lighting Plan submitted to and approved by the City of Nedlands prior to occupation of the development. External lighting must be designed and located to prevent light spill onto adjoining properties and comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting to the satisfaction of the City of Nedlands.**
5. **Prior to occupation of the development, visitor car parking bays are to be constructed, drained and clearly identifiable as visitor parking bays to the satisfaction of the City of Nedlands.**
6. **Roof materials are to have a maximum solar absorptance rating of 0.4.**

**Landscaping**

1. **Prior to occupation, landscaping shall be installed in accordance with the approved Landscaping Plan. All landscaped areas are to be maintained on an ongoing basis for the life of the development on the site to the satisfaction of the City of Nedlands.**
2. **The street trees within the verge in front of the lots are to be protected and maintained through the duration of the demolition and construction processes to the satisfaction of the City of Nedlands. Should the trees die or be damaged, they are to be replaced with a specified species at the owner’s expense and to the satisfaction of the City of Nedlands.**

**Sustainability**

1. **Prior to the issue of a Building Permit, an Ecologically Sustainability Development (ESD) report prepared by a suitably qualified person shall be submitted and approved to the City of Nedlands. Recommendations contained within the report are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.**

**Noise**

1. **Prior to the issuing of a Building Permit, an amended acoustic report and noise management plan shall be prepared by a suitably qualified acoustic engineer certifying that the proposal incorporates sufficient sound attenuation measures in accordance with the quiet house design requirements as identified in State Planning Policy 5.4 – Road and Rail Noise. All recommendations contained within the acoustic report shall be implemented and adhered to for the lifetime of the development to the satisfaction of the City of Nedlands.**
2. **Prior to occupation of the development, a notification pursuant to Section 70A of the Transfer of Land Act 1893 shall be prepared at the expense of the owner and** registered **against the Certificate of Title to the land the subject of the proposed development advising the owners and subsequent owners of the land of the following matter(s):**

**“This lot is situated in the vicinity of a transport corridor and is currently affected or may in the future be affected by transport noise. Additional planning and building requirements may apply to development on this land to achieve an acceptable level of noise reduction.”**

**Advice Notes:**

1. **This is a Planning Approval only and does not remove the responsibility of the applicant/owner to comply with all relevant building, health and engineering requirements of the City, any obligations under the Strata Titles Act, or the requirements of any other external agency.**
2. **A building permit is required for the works.**
3. **The Construction Management Plan and Demolition Management Plans are to be prepared in the manner and form provided by the City of Nedlands.**
4. **Separate approval is required from the City of Nedlands for any works located within the verge, including landscaping and crossovers. A Vehicle Crossover Permit application is required to be submitted and approved by the City of Nedlands prior to verge works commencing.**

**Purpose**

The purpose of this report is for Council to consider the Joint Development Assessment Panel (JDAP) application for the development of ten grouped dwellings across No’s 3 and 5 Bruce Street, Nedlands.

Council is requested to 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 and lodged with the DAP Secretariat on 28 June 2023.

Administration recommends Council adopt the Officer Recommendation for approval.

**Voting Requirement**

Simple Majority.

**Background**

**Land Details**

|  |  |
| --- | --- |
| Proposed Land Use | Residential – Grouped Dwellings |
| Proposed Net Lettable Area | N/A |
| Proposed No. Storeys | Three (3) |
| Proposed No. Dwellings | Ten (10) |

**Application details**

Approval is sought to develop ten grouped dwellings across two existing lots at No. 3 (Lot 160) and No. 5 (Lot 159) Bruce Street, Nedlands.

**Discussion**

**Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 1 (R-Codes) and Local Planning Policies. The matters below have been identified as key considerations for the determination of this application.

* Lot Boundary Setbacks
* Parking
* Visual Privacy
* Outdoor Living Areas
* Street Setbacks
* Building Height

The development meets the design principles and/or policy objectives relating to the above and can be supported, subject to conditions.

**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 24 February to 24 March 2023 as follows:

* Letters sent to owners and occupiers of land within a 200m radius of the site;
* A sign was displayed at the site’s street frontage for the duration of the advertising period;
* An advertisement was published on the City’s website and 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 February 2023; and
* A community information session was held on 8 March 2023, however no residents attended.

The City received nine submissions in response to advertising. Five (5) submissions raised objection to the proposal; three expressed support; and one provided comment only. Key concerns raised in objections relate to:

* Building height
* Overshadowing
* Safety and security concerns over unrestricted site access
* Privacy
* Tree retention and landscaping
* Local character and aesthetics
* Traffic
* Car parking

Privacy concerns raised by neighboring landowners have been considered and additional screening is recommended in accordance with a condition of approval where sources of overlooking subject to neighbor concern do not meet the minimum privacy setback distances prescribed by the R-Codes.

The proposal initially involved large, unscreened windows providing a southern outlook from upper floor bedrooms and living areas of units proposed at No. 5 Bruce Street. Notwithstanding the fact the windows are setback from the lot boundary in accordance with the deemed-to-comply provisions of the R-Codes relating to visual privacy and lot boundary setbacks, the owners of the adjoining property to the south (No. 7 Bruce Street) raised concerns with respect to the impact the windows would have on the privacy of ground-floor indoor and outdoor living areas of their home, stating:

“the major issues relates to the direct lines of sight between the windows and balconies on the second floor of the Units 3, 4 and 5 of 5 Bruce Street and the living room, son’s bedroom and outdoor living area at No. 7 Bruce Street.”

In response, the applicant provided amended plans which included fixed screens to the external face of windows of the second floor bedrooms and living rooms of Units 3, 4 and 5 (No. 5 Bruce Street). The screens include louvers be set at an angle to limit overlooking at ground level of the adjoining property. The balcony remains unscreened, however complies with the deemed-to-comply provisions of the R-Codes.

All other matters are addressed within the Responsible Authority Report and have been given due regard in accordance with Clause 67(y) of the Planning and Development (Local Planning Schemes Regulations) 2015.

**Design Review Panel**

The development was reviewed by the City’s Design Review Panel on two occasions, being 13 March 2023 and 15 May 2023. A final review was then carried out by the DRP Chair on 6 June 2023, where the proposal was supported against all 10 principles of good design as outlined in State Planning Policy 7.0 – Design of the Built Environment. A summary of the Panel’s evaluation of the proposal at each stage of the review process is provided following:

|  |  |  |  |
| --- | --- | --- | --- |
| **Table 2: DRP Design Quality Evaluation** | | | |
|  | Supported | | |
|  | Further Information / Condition Required | | |
|  | Not supported | | |
| SPP 7.0 Principles | DRP 1  13 March 2023 | DRP 2  15 May 2023 | Chair Review  6 June 2023 |
| 1. Context and Character |  |  |  |
| 1. Landscape Quality |  |  |  |
| 1. Built Form and Scale |  |  |  |
| 1. Functionality and Built Quality |  |  |  |
| 1. Sustainability |  |  |  |
| 1. Amenity |  |  |  |
| 1. Legibility |  |  |  |
| 1. Safety |  |  |  |
| 1. Community |  |  |  |
| 1. Aesthetics |  |  |  |

It is noted that following the final review by the DRP Chair, amended plans demonstrating screens over second-floor south-facing windows of Units 3, 4 and 5 (No. 5) were provided. The screens are to be designed to maintain solar access and ventilation to proposed units, while reducing the impact of overlooking of the adjoining property. Amended plans illustrating screening devices were not referred to the DRP for further advice.

**Strategic Implications**

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Great Natural and Built Environment**

We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

**Priority Area**

Urban form - protecting our quality living environment

**Budget/Financial Implications**

N/A

**Legislative and Policy Implications**

Council is requested to make a recommendation to the JDAP in accordance with Regulation 12(5) of the [*Planning and Development (Development Assessment Panels) Regulations 2011*](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44190.pdf/$FILE/Planning%20and%20Development%20(Development%20Assessment%20Panels)%20Regulations%202011%20-%20%5B00-n0-00%5D.pdf?OpenElement)*.* Council may recommend to approve, refuse or defer the application.

**Decision Implications**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on the 28 June 2023. The recommendation noted above is the officer recommendation that is also included in the RAR. In the event that Council does not adopt the officer recommendation, Council’s recommendation will be located at the front of the RAR as the Responsible Authority Recommendation and the officer recommendation will be contained in the rear of the report. In the event that Council does not make a recommendation, the RAR will be forwarded to DAP on 28 June 2023 with the Officer Recommendation only.

**Conclusion**

Council is requested to consider the proposed development as the Responsible Authority. It is requested that Council makes a recommendation to the JDAP to either approve, refuse or defer the application.

The development proposed provides a high level of amenity for future occupants and is consistent with the density of development permitted on the site and the wider locality. The siting, mass and scale of the development proposed will be softened by quality onsite landscaping; including large trees adjacent to side and front lot boundaries which will compliment the canopy provided by street trees to be retained within the verge; maintaining the landscape character within the precinct.

Where necessary, conditions are recommended to ensure the development meets policy objectives with respect to impacts on neighbouring sites, sustainability, noise management, waste management, etc., and to ensure that the construction process is well managed to minimise detrimental amenity impacts to nearby residents.

**Further Information**

Nil.

# TS07.06.23 Smyth Road Rehabilitation Variations

|  |  |
| --- | --- |
| **Meeting & Date** | Council Meeting – 27 June 2023 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Report Author** | Peter Seed – Project Manager |
| **Director** | Matthew MacPherson – Director Technical Services |
| **Attachments** | Nil. |

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

Moved – Councillor Combes

Seconded – Councillor Hodsdon

**That the Recommendation be adopted.**

(Printed below for ease of reference)

**CARRIED UNANIMOUSLY 10/-**

**Council Resolution / Recommendation**

**That Council approve a budget transfer of $219,500 from the Rochdale Road Rehabilitation project to the Smyth Road Rehabilitation Project.**

**Purpose**

The purpose of this report is to seek a transfer of funds from the Rochdale Road Rehabilitation Project to Smyth Road Rehabilitation Project due to the poor structural makeup of the pavement.

**Voting Requirement**

Absolute Majority.

**Background**

The City of Nedlands is currently undertaking road rehabilitation works on Smyth Road between Aberdare Road and Carrington Street as part of the 2022/23 Capital Works Program. These works are required to rectify structure failures within the road’s base course leading to pot holing and asphalt failure. Foam Bitumen Stabilisation (FBS) is being used to repair the sub-standard pavement.

FBS is the process of blending the existing road material and binding it with foamed bitumen and cement. This creates a solid mass and can be undertaken quicker than traditional road reconstruction works.

During the rectification works the City has also upgraded the drainage system and replaced cracked and damaged kerbs. The design was undertaken by BG&E and construction works are being undertaken by DM Roads.

Due to the inadequate structural makeup of the road, several variations are required. The variations have been assessed as fair and reasonable. The works are expected to be completed by the end of June 2023.

**Discussion**

Prior to construction commencing, 6 core samples were taken along the length of the road to aid in the identification and classification of the roads structural make up (asphalt thickness, base thickness and material, subbase thickness and material).

Administration provided the Contractor with instruction to undertake further investigations into the road makeup during construction to confirm the extent of inadequate materials within the roads structure. This investigation was undertaken by taking a 100kg sample of the road for laboratory testing and by exposing larger areas of the roads structure using the profiling machine at 5 locations along the length of the road. The core samples taken during the design process at selected intervals along the length of the road provided an indication of the road’s make up - but did not represent the condition of the entire 1.2km length of rehabilitation works.

This testing showed that the structural makeup of the road was inadequate in certain sections and consisted of a fine powdery limestone that did not meet the FBS Australian Standards. The recommendation from the design consultant was that an additional 60mm of material (10 and 20mm aggregate) was required to be added to the roads surface and blended to a depth of up to 310mm. This represents a 40% increase to the FBS works and slowed FBS works on site considerably. A profiling machine was used between the cores, which allowed the City to better pinpoint the conforming and non-conforming sections of Smyth Road. By checking in between the core testing sites it allowed the City to understand the extent of the non-conforming areas. Having a better understanding of the non-conforming areas meant that less additional material was required.

Excluding On costs an additional $219,500 in funding over the existing $1,940,000 budget is required for the construction variations.

To ensure the inadequate pavement could meet the design life of 40 year additional depth of FBS, aggregate material, material wastage and labour was required. By increasing the depth of FBS required it increases the amount of bitumen (40% increase) used in production and decreases the installation rate on site (decrease of 50%). A double primer seal layer is required to provide extra protection for the FBS surface requiring additional bitumen and aggregate to be installed. Due to the closures at Aberdare and Smyth Road Roundabout the Contractor was required to provide an extra 2 Variable Messaging Signs for.

The City has reviewed the pricing and determined it is fair and reasonable.

|  |  |
| --- | --- |
| Summary of costs (excluding on costs) | |
| Approved Budget | $1,940,000 |
| Construction Contract | $1,751,300 |
| Variations pending | $407,900 |
| Required additional funding above budget | $219,500 |
| Proposed new Budget | $2,159,500 |

**Consultation**

A Current Issues Briefing Note was circulated to elected members on 9th June 2023 regarding this matter and highlighting that a report to Council would be forthcoming.

**Strategic Implications**

This item relates to the following elements from the City’s Strategic Community Plan.

**Vision** Our city will be an environmentally-sensitive, beautiful and inclusive place.

**Values** **Healthy and Safe**

Our City has clean, safe neighbourhoods where public health is protected and promoted.

**High standard of services**

We have local services delivered to a high standard that take the needs of our diverse community into account.

**Easy to Get Around**

We strive for our City to be easy to get around by preferred mode of travel, whether by car, public transport, cycle or foot.

**Priority Area**

* Renewal of community infrastructure such as roads, footpaths, community and sports facilities
* Working with neighbouring Councils to achieve the best outcomes for the western suburbs as a whole

**Budget/Financial Implications**

The budget allocated for these works is $1,940,000. The Contract Value is $1,751,264. The potential variations for construction works total $407,900.

The Administration is requesting a further $219,500 in funding above the budget value.

**Legislative and Policy Implications**

The works were to be delivered under this Contract are in line with the City of Nedlands Assets Management Policy.

**Decision Implications**

It is proposed to utilise funds from the Rochdale Road Rehabilitation project to cover the budget deficit in Smyth Road in the current financial year. A transfer of approx. $219,500 is required this Financial Year.

Rochdale Road will be delayed having it finish in the 2023/24, with an additional budget allocation included in the 2023/24 budget to complete the project.

Furthermore, MRRG have approved a further $115,800 in additional funding for Rochdale Road, which will assist to offset the amount of Municipal Funding required overall.

**Conclusion**

By endorsing the above recommendation, the Council will be ensuring the roadway will be constructed according to the mix design and last for the 40 year design life.

**Further Information**

Nil.

# Confidential Items

Confidential items were discussed at this point.

Closure of Meeting to the Public

Moved – Councillor Hodsdon

Seconded - Councillor Coghlan

**That the meeting be closed to the public in accordance with Section 5.23 (d) of the Local Government Act 1995 to allow confidential discussion on the following Items.**

**CARRIED UNANIMOUSLY 10/-**

The meeting was closed to the public at 10.15 pm.

Councillor Bennett retired from the meeting at 10.16 pm.

# CEO16.06.23 CONFIDENTIAL Determination Report 6982/22

A confidential report has been circulated to Council Members separately.

Moved – Councillor Hodsdon

Seconded - Councillor Smyth

**That the meeting be reopened to members of the public and the press.**

**CARRIED UNANIMOUSLY 9/-**

The meeting was reopened to members of the public and the press at 10.20 pm.

In accordance with Standing Orders 12.7(3) the Presiding Member read out the motions passed by the Council whilst it was proceeding behind closed doors and the vote of the members to be recorded in the minutes under section 5.21 of the Local Government Act 1995.

Moved – Councillor McManus

Seconded – Councillor Combes

Council Resolution

That Council Adopt the Confidential Recommendation.

**CARRIED UNANIMOUSLY 9/-**

# Declaration of Closure

There being no further business, the Presiding Member declared the meeting closed at 10.20 pm.