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***Minutes***

***Special Council Meeting***

***2 November 2021***

**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.

**Table of Contents**

[Declaration of Opening 3](#_Toc87527170)

[Present and Apologies and Leave of Absence (Previously Approved) 3](#_Toc87527171)

[1. Public Question Time 4](#_Toc87527172)

[2. Addresses by Members of the Public 4](#_Toc87527173)

[3. Disclosures of Financial Interest 4](#_Toc87527174)

[4. Disclosures of Interests Affecting Impartiality 5](#_Toc87527175)

[4.1 Councillor Smyth – Item 8 - Consideration of tender: RFT21NB05 – Rehabilitation of Mooro Drive, Mount Claremont 5](#_Toc87527176)

[4.2 Councillor Smyth – Item 9 - Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands 5](#_Toc87527177)

[4.3 Councillor Smyth – Item 10 - Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands 6](#_Toc87527178)

[4.4 Councillor Coghlan – Item 9 - Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands 6](#_Toc87527179)

[4.5 Councillor Coghlan – Item 10 - Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands 7](#_Toc87527180)

[5. Declarations by Members That They Have Not Given Due Consideration to Papers 7](#_Toc87527181)

[6. Appointment of Delegates & Deputy Delegates to WALGA Central Metropolitan Zone 7](#_Toc87527182)

[7. Appointment of Delegates & Deputy Delegates to Metropolitan Regional Road Group – West Sub Group 13](#_Toc87527183)

[8. Consideration of tender: RFT21NB05 – Rehabilitation of Mooro Drive, Mount Claremont 18](#_Toc87527184)

[9. Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands 22](#_Toc87527185)

[10. Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands 37](#_Toc87527186)

[Declaration of Closure 42](#_Toc87527187)

**City of Nedlands**

**Minutes of a special meeting of Council held in the Council chambers, Nedlands on Tuesday 2 November 2021 at 5pm for the purpose of:**

1. **Appointment of Delegates & Deputy Delegates to WALGA Central Metropolitan Zone**
2. **Appointment of Delegates & Deputy Delegates to Metropolitan Regional Road Group – Western Subgroup**
3. **Consideration of tender: Mooro Drive – Norfolk to Camelia**
4. **Consideration of Responsible Authority Report for Mixed Use Development at 119 Broadway, Nedlands**
5. **Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands**

# Declaration of Opening

The Presiding Member declared the meeting open at 5pm and drew attention to the disclaimer below.

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

**Councillors** Mayor F E M Argyle (Presiding Member)

Councillor B Brackenridge Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry (from 5.20pm) Coastal Districts Ward

Councillor L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett (from 5.08pm) Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

Councillor J D Wetherall Hollywood Ward

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

Mrs R Jahmeerbacus Acting Director Corporate & Strategy

Mr T G Free Director Planning & Development

Mr A D Melville Acting Technical Services

Ms M E Granich Executive Manager Community

Mrs N M Ceric Executive Officer

**Public** There were 1 member of the public present and 1 online.

**Press** Nil.

**Leave of Absence** Nil.

**(Previously Approved)**

**Apologies** Nil

**Disclaimer**

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

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

# Public Question Time

A member of the public wishing to ask a question should register that interest by notification in writing to the CEO in advance, setting out the text or substance of the question. The order in which the CEO receives registrations of interest shall determine the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

Nil.

# Addresses by Members of the Public

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

Nil.

# Disclosures of Financial Interest

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

There were no disclosures of financial interest.

# 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 Smyth – Item 8 - Consideration of tender: RFT21NB05 – Rehabilitation of Mooro Drive, Mount Claremont

Councillor Smyth disclosed an impartiality interest in Item 8 - Consideration of tender: RFT21NB05 – Rehabilitation of Mooro Drive, Mount Claremont. Councillor Smyth disclosed that her home is located at Norfolk Rise however Norfolk Rise is the nominal termination point and not the subject of any work in this procurement, 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 Smyth – Item 9 - Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands

Councillor Smyth disclosed an impartiality interest in Item 9 - Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands. Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised that she would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as he believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

## Councillor Smyth – Item 10 - Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands

Councillor Smyth disclosed an impartiality interest in Item 10 - Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands. Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised that she would not stay in the room and debate the item or vote on the matter.

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Please Note that although not participating in the debate Councillor Coghlan intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

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

Nil.

# Appointment of Delegates & Deputy Delegates to WALGA Central Metropolitan Zone

|  |  |
| --- | --- |
| **Council** | 2 November 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Officer** | Nicole Ceric – Executive Officer |
| **CEO** | Bill Parker |
| **Attachments** | 1. WALGA Elected Member Prospectus – Becoming a Zone Delegate or State Councillor |

Councillor McManus nominated Councillor Senathirajah as the delegate and Councillor Combes as the Deputy Delegate.

Councillor Senathirajah accepted the nomination and Councillor Combes declined the nomination.

Prior to the meeting the CEO received the following nominations:

Councillor Bennett nominated Councillor Smyth to be the Delegate.

Councillor Smyth nominated Councillor Bennett as the Deputy Delegate.

Councillor Bennett and Councillor Smyth both accepted the nominations.

Councillor Bennett joined the meeting 5.08pm.

Councillor Coghlan nominated herself as the 2nd Deputy Delegate.

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

Moved – Councillor Youngman

Seconded – Councillor Wetherall

**Council Resolution**

**That Council:**

1. **appoints Councillor Smyth as Council’s 1st Delegate and Councillor Senathirajah as Council’s 2nd Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2023; and**
2. **appoints Councillor Bennett as 1st Deputy Delegate and Councillor Coghlan as 2nd Deputy Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2023, and to vote on behalf of the absent Delegate.**

**CARRIED 11/1**

**(Against: Cr. Mangano)**

Recommendation to Council

That Council:

1. appoints (insert name) as Council’s 1st Delegate and (insert name) as Council’s 2nd Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2023; and
2. appoints (insert name) as 1st Deputy Delegate and (insert name) as 2nd Deputy Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2023, and to vote on behalf of the absent Delegate.

**Executive Summary**

The purpose of this report is for Council to appoint two delegates and two deputy delegates to the WALGA Central Metropolitan Zone to represent the City of Nedlands. The City of Nedlands is a member of the Central Metropolitan Zone of the W.A. Local Government Association (WALGA) and meetings are held on the last Thursday of every second month at 6.00 p.m. on a rotational basis at the offices of member Councils. Meetings are convened by WALGA.

**Voting Requirements**

Absolute Majority Required.

**Background**

The relationship between State Council and the Zones within the Western Australian Local Government Association is a critical one in the political representation of Local Government at the State and Federal levels. Zones have an integral role in shaping the political and strategic direction of Local Government as a sphere of government. Not only are Zones responsible for bringing relevant local and regional issues to the State decision making table, but they are also a key player in developing policy and legislative initiatives for Local Government. Zones have a direct relationship with the State Council of the Association, Policy Teams and Policy Forums and the Secretariat of the Association.

There are 12 Country Zones and 5 Metropolitan Zones. These include Avon-Midland Country Zone, Central Country Zone, Central Metropolitan Zone, East Metropolitan Zone, Esperance-Eastern Goldfields Country Zone, Gascoyne Country Zone, Great Eastern Country Zone, Great Southern Country Zone, Kimberley Country Zone, Murchison Country Zone, North Metropolitan Zone, Northern Country Zone, Peel Country Zone, Pilbara Country Zone, South Metropolitan Zone, South East Metropolitan Zone, South West Country Zone.

The primary role of Zones is to elect a State Council representative; consider the State Council agenda; and provide direction/feedback to their State Councillor. The role/functions of a Zone may include developing/advocating positions on regional issues affecting Local Government; progressing regional Local Government initiatives; identifying relevant issues for action by WALGA; networking and sharing information; and contributing to policy development through Policy Teams and Policy Forums.

Under the representational framework of the Association, Member Local Governments have the capacity to be directly involved in the development of policy for Local Government. Member Local Government can access the Association through the State Council, Secretariat, Policy Teams and Policy Forums, or alternatively can access the Association through their respective Zones.

Zones provide critical input into the business which is considered by State Council.

This input occurs in two ways:

1. Passing resolutions on items contained on the State Council agenda, which are then included in a “Summary Resolution Document” and distributed to all State Councillors; and
2. Generating new agenda items for consideration by State Council. Resolutions on the State Council Agenda.

Prior to State Council meetings, Zones are required to meet to consider the items contained on the agenda. For Zones to have an input into the decision making of State Council on a particular item, it must pass an advisory resolution. This resolution will either: support the recommendation contained within the agenda item, oppose the recommendation or propose an amendment to the recommendation.

Advisory resolutions from Zones are an important component of the State Council decision making process.

The outputs from Zones are a significant component of the political advocacy activities of the Association. Zones are the key bodies within their regional areas for developing policy which has local and regional significance to Local Government. They will also often identify important issues which are relevant to all other Local Governments and should be put on the state agenda. Zones resolutions can be referred to the Association for a number of actions. These include Inclusion as a business item on the next State Council agenda; Referral to a relevant Policy Team for consideration; and Referral to the Secretariat for action.

Both individual Member Local Governments and Zones can request that a matter be referred to State Council for consideration. Matters to be submitted to State Council should generally have state-wide relevance to Local Government or be relevant to a significant majority of Local Governments.

Where a matter is referred from a Member Local Government or Zone to State Council, it will normally be listed for consideration at the next meeting of State Council. The Secretariat will undertake all necessary research on the issue, prepare a report and make a recommendation. Recommendations may be in favour or opposed to the issue or may propose that the matter be referred to a Policy Team or Policy Forum for more detailed research and consideration. The item will then be listed in the State Council agenda and distributed to all Local Governments for consideration at Zone meetings.

Advisory resolutions arising from Zones will be included in the deliberations undertaken by State Council on the issue prior to an Association resolution. Where State Council resolves to support a position on an issue put forward by a Member Local Government or Zone, this becomes the official position of the Association and will be progressed in accordance with advocacy or representational processes.

In the event that a Zone identifies an issue which requires urgent consideration by State Council, the State Council agenda has been structured to allow individual State Councillors to raise these issues from the floor of the meeting. An „emerging issues‟ section has been incorporated at the beginning of each meeting which permits urgent business or emerging issues to be discussed prior to the commencement of the formal agenda. This allows all State Councillors to be informed of significant matters which are emerging and may have a direct impact on Local Government. Generally, motions are not forthcoming from the emerging issues discussion unless the matter is deemed significant enough to warrant immediate action and State Council considers itself sufficiently informed to resolve on a course of action.

The WA Local Government Association is committed to supporting the country and metropolitan Zones in achieving their regional and state objectives. A recent policy adopted by the Association seeks to ensure that senior Secretariat officers are in attendance at all Zone meetings (where possible), whether these are convened on an in-person basis, or via teleconference or videoconference.

In addition, there is a specific officer who has been appointed to act as a conduit between Zones and the Association. The Liaison Officer is the point-of-contact for Zone Secretaries and is responsible for progressing the resolutions arising from each Zone within the Association and State Council. This includes directing issues to the relevant business area of the Association, tracking and reporting to the Zone on actions being taken, and ensuring that all matters are appropriately handled and completed within agreed timeframes.

**Key Relevant Previous Council Decisions:**

Council Meeting – 22 September 2021

“Council Resolution / Recommendation to Council

That Council:

1. appoints Mayor as Council’s 1st Delegate and Councillor Smyth as Council’s 2nd Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2021; and
2. appoints Councillor Coghlan as 1st Deputy Delegate and Councillor Bennett as 2nd Deputy Delegate to the Central Metropolitan Zone of the Local Government Association for the period ending immediately prior to the next Local Government Elections in 2021, and to vote on behalf of the absent Delegate.”

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

**Legislation / Policy**

WALGA Central Metropolitan Zone Standing Orders

**Budget/Financial Implications**

Within current approved budget: Yes  No

Requires further budget consideration: Yes  No

**Risk Management**

Nil.

**Discussion**

Council resolved to rejoin WALGA. Therefore, this report enables Council to participate in WALGA’s decision making.

**Conclusion**

Therefore, it is recommended that Council appoint the required delegates and deputy delegates to the WALGA Central Metropolitan Zone.

# Appointment of Delegates & Deputy Delegates to Metropolitan Regional Road Group – West Sub Group

|  |  |
| --- | --- |
| **Council** | 2 November 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under *section 5.70 Local Government Act 1995*** | Nil. |
| **Officer** | Nicole Ceric – Executive Officer |
| **CEO** | Bill Parker |
| **Attachments** | Nil. |

Prior to the meeting the CEO received the following nominations:

Councillor Smyth nominated Councillor Bennett to be the Delegate and herself as the deputy delegate.

Councillor Bennett accepted the nomination.

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

Moved – Councillor Wetherall

Seconded – Councillor Coghlan

**Council Resolution**

**Council approves Councillor Bennett to be the appointed Council Member representative and Councillor Smyth to be the deputy Council Member representative to the Metropolitan Regional Road Group West Sub-Group.**

**CARRIED 11/1**

**(Against: Cr. McManus)**

Recommendation to Council

Council approves Councillor (insert name) to be the appointed Council Member representative and Councillor (insert name) to be the deputy Council Member representative to the Metropolitan Regional Road Group West Sub-Group.

**Executive Summary**

The Metropolitan Regional Road Group (MRRG) – West Sub-Group requires one Elected Member and one Technical Officer Representative from each Local Government. The purpose of this report is for Council to nominate an Elected Member to replace Councillor Hodsdon as the representative for the City of Nedlands.

**Voting Requirement**

Simple Majority.

**Discussion**

**State Road Funds to Local Government Agreement**

The State Road Funds to Local Government Agreement 2018/19 to 2022/23 provides the framework for distribution of State funds available from State Government for local roads. The State Road Funds to Local Government Advisory Committee (SAC) oversees, monitors and recommends to the Minister for Transport the distribution of State funds under the Agreement.

Regional Road Groups, under the Agreement, are responsible for developing regional specific policies and procedures within the overarching framework to suit local circumstances. Membership of Regional Road Groups is to comprise elected Local Government representatives (Councillors and Commissioners as appointed under the Local Government Act) with all local governments being represented.

In some Regions it is necessary for logistical reasons to form Sub-Groups. These Sub-Groups will also be made up of Local Government elected representatives and will provide delegates to represent the Sub-Groups at the Regional Road Groups.

The Regional Road Groups will make recommendations to SAC in relation to the Annual Local Government Roads Program for their region. This may include advice in relation to State and Federal Black Spot Programs, amendments to Roads 2030 Strategy or its updated equivalent document, the Functional Road Hierarchy and three-year work projections.

**Local Government Managed Programs**

Local Government Managed Programs comprise the following:

* Direct Grants
* Road Project Grants
* State and Federal Black Spot
* Strategic and Technical Support

**Sub-Groups**

The Metropolitan Regional Road Group Policies and Practices provides information on the structure of Sub-Groups. The Metropolitan Local Governments are divided into 6 Sub-Groups comprising:

* North West
* West
* Central
* East
* South East and
* South West

The City of Nedlands is included in the West Sub-Group which also comprises:

* Town of Cambridge
* Town of Claremont
* Town of Cottesloe
* Town of Mosman Park and
* Shire of Peppermint Grove

Each Sub-Group shall consist of an Elected Member and Technical Officer Representative from each attending Local Government.

The Sub-Groups shall meet regularly and at least twice yearly. The Agenda should include an item to review all current funded projects. Quarterly Expenditure Reports are distributed by MRWA to each Local Government and the respective Sub-Group Technical Representatives to assist with the review. Local Governments shall provide an update on projects and report any projects that are at risk.

**Technical Group**

The Technical Group is made up of nominated Local Government Technical Officers appointed by each of the Metropolitan Sub-Groups.

The role of the Technical Group is to review the annual rate of expenditure; assist in the development and review of future year Programs prior to endorsement by the Elected Members; review the MRRG Policies and Practices document and the Improvement and Rehabilitation Road Project Submission Guidelines; and provide advice to Sub-Group members on MRRG matters.

The Group shall meet prior to the elected member meetings.

The Chair and Deputy Chair are elected for a two-year term in line with Local Government Elections.

**Elected Members**

Elected members are the decision-making body for the MRRG. Elected Member representatives are appointed by each of the Sub-Groups to attend the Elected Member meeting.

The MRRG Elected Members shall meet at least twice yearly, with Technical Representatives also attending. Only the Elected Members have voting rights.

The Chair and Deputy Chair are elected for a two-year term in line with Local Government Elections.

**Meetings**

The Technical Committee and Elected Members meetings shall meet at least twice yearly, generally in March/ April and October/November.

Sub-Group meetings are held prior to the Technical and Elected Members Meetings with Minutes forwarded to MRWA for inclusion in the Agenda Papers for the Technical and Elected Members meetings.

**Background**

**Key Relevant Previous Council Decisions:**

Special Council Meeting – 5 November 2019

“Council Resolution

Council approves Councillor Hodsdon to be the appointed Council representative to the Metropolitan Regional Road Group West Sub-Group.”

**Consultation**

Required by legislation: Yes  No

Required by City of Nedlands policy: Yes  No

**Legislation / Policy**

* State Road Funds to Local Government Agreement 2018/19 to 2022/23
* Metropolitan Regional Road Group Policies and Practices

**Budget/Financial Implications**

Within current approved budget: Yes  No

Requires further budget consideration: Yes  No

**Risk Management**

If the Council fails to nominate an Elected Member the City of Nedlands will be not be sufficiently represented in the assessment of MRRG funding applications.

# Consideration of tender: RFT21NB05 – Rehabilitation of Mooro Drive, Mount Claremont

|  |  |
| --- | --- |
| **Council** | 2 November 2021 |
| **Applicant** | City of Nedlands |
| **Employee Disclosure under section 5.70 Local Government Act 1995** | Nil. |
| **Director** | Andrew Melville - Acting Technical Services |
| **CEO** | Bill Parker |
| **Attachments** | Nil. |
| **Confidential Attachments** | 1. RFT21NB05 Evaluation and Recommendation Report Mooro Drive |

**Councillor Smyth – Impartiality Interest**

Councillor Smyth disclosed that her home is located at Norfolk Rise however Norfolk Rise is the nominal termination point and not the subject of any work in this procurement, 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.

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

Moved – Councillor Wetherall

Seconded – Councillor McManus

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

(Printed below for ease of reference)

**CARRIED 11/1**

**(Against: Cr. Mangano)**

**Council Resolution / Recommendation to Council**

**Council:**

1. **approves the award of the contract for Rehabilitation of Mooro Drive Mount Claremont, to West Coast Profilers Civil, in accordance with the City’s Request for Tender number RFT21NB05 and comprising of that request, the City’s Conditions of Contract, the West Coast Profilers Civil tender submissions inclusive of the Schedule of Rates, and all post tender clarifications and negotiations;**
2. **instructs the CEO to arrange for a Letter of Acceptance and a Contract document to be sent to West Coast Profilers Civil PTY. LTD to be executed; and**
3. **instructs the CEO to arrange for all other tender respondents to be advised of the tender outcome.**

**Executive Summary**

The City commenced a tender process to test the market and publicly invited bids from suitably qualified and experienced contractors to provide civil construction services for the rehabilitation of Mooro Drive. Mooro Drive rehabilitation forms part of the Capital Works Program for renewal in 21/22.

Two submissions were received by the closing date of Monday 4th October 2021 from 10 requests.

This tender process has now been finalised and Council is requested to accept the evaluation and recommendation for award of the new contract to West Coast Profilers Civil PTY. LTD. The attached RFT21NB05 Tender Evaluation and Recommendation Report is provided to assist you in your decision.

**Voting Requirement**

Simple Majority.

**Discussion/Overview**

The request for tender was advertised in the WALGA e-quotes system during the period 13 September to 4 October 2021. The City approached 10 companies and received a total of 2 submissions. The submissions were rated against the following criteria, Relevant experience (30%), Key personnel skills and experience (30%) and Project Methodology (40%).

Subsequent to the closure of the tender period, the evaluation panel completed the analysis and evaluation of the submissions. At the conclusion of the process West Coast Profilers Civil was nominated as the preferred supplier for this package of works.

West Coast Profilers Civil demonstrated a good capacity to deliver the proposed works and have completed similar local government projects. West Coast Profilers Civil have experienced and qualified personnel, giving confidence that they can complete the works safety and to an appropriate standard.

Officers identified that there was significant cost overrun with the original submission from the tenderer. There is currently a high demand for civil contractors within the market, and this is reflected in the lack of submissions for the works and higher than estimated tendered prices.

Negotiations with the tenderer were completed following their submission, and negotiations under Local Government Act requirements were completed to revise the scope of works and costs to enable the delivery of a portion the works within the allocated budget.

West Coast Profilers Civil submitted a modified program and scope to deliver the works between John 23rd Ave and Norfolk Rise. By reducing the scope, the works can be completed within the allowable timeframes and closer to the allocated budget.

Works are expected to start by 20 December 2021 and completed by 4 February 2022. The tenderer provided a detailed program of works that complied with the required project completion date.

References provided by the City of Albany and City of Joondalup both recommended West Coast Profilers Civil services, and both have engaged this Contractor for similar works.

Following the due diligence processes that the City has undertaken, the City is confident that West Coast Profilers Civil are capable of completing the scope of work to the required standards, and their offer represents good value for money to the City within the market.

**Key Relevant Previous Council Decisions:**

Nil.

**Consultation**

No consultation is required as part of these works. Notification will be provided to all affected residents, schools and businesses prior to the works starting.

**Strategic Implications**

**How well does it fit with our strategic direction?**

These works are listed within the endorsed Capital Works Program for 2021/22.

**Who benefits?**

Road users, pedestrians and homeowners in the area benefit from the award of this contract, as it will ensure the City’s roads, pathways, driveway aprons and drainage are well maintained and perform to a high standard.

**Does it involve a tolerable risk?**

The RFT and Minor Works Contract Conditions are set up to ensure the contractor is accountable for the delivery of the program. The Contractor has submitted risks and mitigation strategies to minimise risk to the project and ensure delivery by the required completion date. The risks have been reviewed and are considered to be acceptable.

**Do we have the information we need?**

Specialist City officers have the necessary skills to expertly advise Council on the best contractor to supply the services at best value to the City. The scope of works has been modified to meet budget expectations and the tender submission manages risk elements of this work.

**Does this affect any CEO Key Result Areas?**

No.

**Budget/Financial Implications**

**Can we afford it?**

The Budget allocated for these works is $455,868. The Tendered price is higher than the estimate, due to the high demand for civil works contractors and inadequate initial budget estimate methodologies which now under review.

Additional funds will be sought at the mid-year budget review to source the additional funding for the project totaling $15,442.10.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Company** | **Tender Price (ex GST)** | **Negotiated Price (ex GST)** | **Budget** | **Difference** |
| West Coast Profilers Civil PTY. LTD | $862,469.10 | $471,310.10 | $455,868.00 | -$15,442.10 |

**How does the option impact upon rates?**

Nil.

**Conclusion**

West Coast Profilers Civil have completed road rehabilitation and civil services for other metropolitan local governments, have the required skills and experience necessary to complete the works, and are therefore the recommended tenderer for this package of works.

West Coast Profilers Civil will provide an as new road pavement, pathways, kerbing, driveway aprons, drainage, and a roundabout.

In order to continue to provide effective ongoing maintenance, to preserving the safety and condition of the road pavement and associated infrastructure, it is recommended that Council award this RFT to West Coast Profilers Civil.

# Consideration of Responsible Authority Report for 14 Multiple Dwellings, Office and Consulting Room at 119 Broadway, Nedlands

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

**Councillor Coghlan – Impartiality Interest**

Councillor Coghlan disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that his impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Coghlan advised that she would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate Councillor Coghlan intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

**Councillor Smyth– Impartiality Interest**

Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised that she would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as he believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

Councillor Coghlan and Councillor Smyth left the meeting at 5.20pm.

Moved – Councillor Brackenridge

Seconded – Councillor Senathirajah

That the Recommendation to Council be adopted.

(Printed below for ease of reference)

Councillor Amiry joined the meeting at 5.20pm.

Amendment

Moved - Councillor Youngman

Seconded - Councillor Senathirajah

That an additional condition be added as follows:

The western-facing balustrades to Units 201, 301, 401 and 501 shall be solid material or obscure glazed to provide visual screening of the balcony areas when viewed from adjoining properties, with all other balustrades on the western elevation to be constructed in accordance with the approved plans.

Rationale for additional condition:

The owner of the property immediately behind this site has spoken at Council and at the JDAP about her 3 small children who are NDIS recipients and have a very strong need for privacy in their own backyard. Without this amendment one child in particular may not be able to play in her own backyard.

The AMENDMENT was PUT and was

CARRIED UNANIMOUSLY 11/-

The Substantive was PUT and was

Lost 3/8

(Against: Mayor Argyle Crs. Brackenridge Amiry Bennett Mangano Youngman Combes & Hodsdon)

**Regulation 11(da) – Reasons added to Resolution.**

Moved – Councillor Youngman

Seconded – Councillor Mangano

**Council:**

1. **notes as the Responsible Authority the following recommendation for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands:**

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

**Refuse DAP Application reference DAP/21/01994 and development plans dated 7 October 2021 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Nedlands Local Planning Scheme No.3 and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme for the following reasons:**

1. **The development has not been modified to address the reason for deferral relating to the width of the deep soil area being increased to ensure sufficient area and volume to sustain healthy plant and tree growth.**
2. **The rear setback does not provide for adequate graduated separation or appropriate transition between the site and neighbouring properties affected by different density codes (from R-AC3 to R60). This exacerbates building bulk and does not allow for sufficient landscaping to reduce bulk and provide appropriate screening.**
3. **The development does not adequately minimise the extent of overshadowing or overlooking to private open space and major openings on the adjoining properties to the south and southwest.**
4. **The development via excessive plot ratio represents an over development of the site.**
5. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands.**
6. **appoints Councillor Brackenridge and Councillor Bennett to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the 14 Multiple dwellings, office and consulting room at 119 Broadway, Nedlands**

**Rationale**

**The RAR concludes that the deep soil area proposed for the development has not been modified as a result of the deferral. Whilst the approach proposed to utilise appropriate plant species to suit the conditions is noted, Council does not consider this a sufficient response to the JDAP concern. As the development has not increased the deep soil width along the western elevation, refusal is recommended.**

**Changes to the western (rear) setback have been limited to the upper level (Level 5). Whilst this is an improvement compared to the original proposal, there is no change to the setback of the building on lower levels. The absence of an increased setback is linked to the lack of change on deep soil area. The overall impact is a reduced amenity to western neighbouring properties caused by building bulk, lack of landscape buffering and visual privacy incursions.**

**Whilst the acceptable outcomes of the R-Codes are focussed on there being no ‘limit’ for overshadowing in the R-AC3 density code, the element objectives relate to minimising the extent of overshadowing on private open space and major openings in mid-winter. This development does not minimise overshadowing with the multiple dwelling building immediately to the south to be in shade all day on 21 June. The building will also cast considerable shadow in the morning on properties to the southwest. Council contends that the amenity of adjoining properties is adversely affected by this development.**

**Overlooking from the development has not been completely addressed on the middle levels of the building. Whilst the northern and southern overlooking has been addressed by obscure glazing of windows, the western interface will continue to create overlooking into adjoining properties. Greater setbacks are considered appropriate to ensure appropriate visual privacy is provided.**

The Mayor adjourned the meeting to allow additional wording to be drafted as requested.

The meeting adjourned at 5.44pm and reconvened at 5.48pm with the following people in attendance:

**Councillors** Mayor F E M Argyle (Presiding Member)

Councillor B Brackenridge Melvista Ward

Councillor R A Coghlan Melvista Ward

Councillor R Senathirajah Melvista Ward

Councillor H Amiry Coastal Districts Ward

Councillor L J McManus Coastal Districts Ward

Councillor K A Smyth Coastal Districts Ward

Councillor F J O Bennett Dalkeith Ward

Councillor A W Mangano Dalkeith Ward

Councillor N R Youngman Dalkeith Ward

Councillor O Combes Hollywood Ward

Councillor B G Hodsdon Hollywood Ward

Councillor J D Wetherall Hollywood Ward

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

Mr E K Herne Director Corporate & Strategy

Mr T G Free Director Planning & Development

Mr A D Melville Acting Technical Services

Ms M E Granich Executive Manager Community

Mrs N M Ceric Executive Officer

**Public** There were 1 members of the public present and 1 online.

**Press** Nil.

**4. That in the event that the JDAP decides to approve the application Council requests the following additional condition be included:**

**The western-facing balustrades to Units 201, 301, 401 and 501 shall be solid material or obscure glazed to provide visual screening of the balcony areas when viewed from adjoining properties, with all other balustrades on the western elevation to be constructed in accordance with the approved plans.**

**CARRIED UNANIMOUSLY 11/-**

**Council Resolution**

**Council:**

1. **notes as the Responsible Authority the following recommendation for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands:**

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

**Refuse DAP Application reference DAP/21/01994 and development plans dated 7 October 2021 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Nedlands Local Planning Scheme No.3 and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme for the following reasons:**

1. **The development has not been modified to address the reason for deferral relating to the width of the deep soil area being increased to ensure sufficient area and volume to sustain healthy plant and tree growth.**
2. **The rear setback does not provide for adequate graduated separation or appropriate transition between the site and neighbouring properties affected by different density codes (from R-AC3 to R60). This exacerbates building bulk and does not allow for sufficient landscaping to reduce bulk and provide appropriate screening.**
3. **The development does not adequately minimise the extent of overshadowing or overlooking to private open space and major openings on the adjoining properties to the south and southwest.**
4. **The development via excessive plot ratio represents an over development of the site.**
5. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands.**
6. **appoints Councillor Brackenridge and Councillor Bennett to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the 14 Multiple dwellings, office and consulting room at 119 Broadway, Nedlands**

**4. That in the event that the JDAP decides to approve the application Council requests the following additional condition be included:**

**The western-facing balustrades to Units 201, 301, 401 and 501 shall be solid material or obscure glazed to provide visual screening of the balcony areas when viewed from adjoining properties, with all other balustrades on the western elevation to be constructed in accordance with the approved plans.**

**Rationale**

**The RAR concludes that the deep soil area proposed for the development has not been modified as a result of the deferral. Whilst the approach proposed to utilise appropriate plant species to suit the conditions is noted, Council does not consider this a sufficient response to the JDAP concern. As the development has not increased the deep soil width along the western elevation, refusal is recommended.**

**Changes to the western (rear) setback have been limited to the upper level (Level 5). Whilst this is an improvement compared to the original proposal, there is no change to the setback of the building on lower levels. The absence of an increased setback is linked to the lack of change on deep soil area. The overall impact is a reduced amenity to western neighbouring properties caused by building bulk, lack of landscape buffering and visual privacy incursions.**

**Whilst the acceptable outcomes of the R-Codes are focussed on there being no ‘limit’ for overshadowing in the R-AC3 density code, the element objectives relate to minimising the extent of overshadowing on private open space and major openings in mid-winter. This development does not minimise overshadowing with the multiple dwelling building immediately to the south to be in shade all day on 21 June. The building will also cast considerable shadow in the morning on properties to the southwest. Council contends that the amenity of adjoining properties is adversely affected by this development.**

**Overlooking from the development has not been completely addressed on the middle levels of the building. Whilst the northern and southern overlooking has been addressed by obscure glazing of windows, the western interface will continue to create overlooking into adjoining properties. Greater setbacks are considered appropriate to ensure appropriate visual privacy is provided.**

Recommendation to Council

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands included at Attachment 1; and
2. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 14 Multiple Dwellings, Office and Consulting Rooms at 119 Broadway, Nedlands.

**1.0 Executive Summary**

The purpose of this report is for Council to consider the Development Assessment Panel application that proposes a mixed-use development comprising of 14 multiple dwellings, office and consulting room at 119 Broadway, Nedlands. Council is requested to make its recommendation to the Joint Development Assessment Panel (JDAP) as the Responsible Authority. Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 3 November 2021. The application is scheduled to be considered by the JDAP on 16 November 2021.

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

The application was considered by Council on 10 August 2021. Council resolved to recommend the JDAP defer the application to allow for the following matters to be addressed:

1. Reduction in plot ratio to allow for a greater articulation and separation from upper levels for the western elevation of the building to the rear boundary of the property;
2. Addressing of visual privacy on the western elevation; and
3. Addressing of Deep Soil Area in order to demonstrate healthy tree growth.

JDAP subsequently deferred the application for 90 days at its meeting of 20 August 2021 to allow the above matters to be addressed.

Revised plans have now been lodged that address concerns with the western interface. Administration recommends that the application be approved with conditions.

**2.0 Application Details**

The proposal is for a Mixed-Use development over 6 storeys comprising of 14 Multiple Dwellings (initially 15), Consulting Rooms (Specialised Gym) and Office with Basement Parking at No.119 (Lot 551) Broadway, Nedlands. The proposed development is designed for specialist disability accommodation, which will meet the NDIS guideline requirements for residents who require high physical support.

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

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

The table below provides an overview of how the deferral matters have been addressed by the revised plans:

|  |  |  |
| --- | --- | --- |
| **Deferral Reason** | **Modification Made** | **Assessment Status** |
| Reduction in plot ratio to allow for greater articulation and separation from upper levels for the western elevation of the building to the rear boundary of the property; | The number of apartments has been reduced from 15 to 14 and the plot ratio decreased from 2.26 (1,988m2) to 2.22 (1,958m2). This is still above the 2.0 acceptable outcome plot ratio for R-AC3, but generally consistent with other approved developments on Broadway (approved at 2.01 – 2.31).  The reduction in 1 apartment on the upper floor has enabled increased rear setbacks of 9.6m for the building, 7.1m for the balcony and 6.2m for the landscape planter.  In addition to setback changes, different materials and colours have been used for the upper floor to reduce the visual impact of bulk and scale when viewed from the properties to the west. |  |
| Increase setbacks to the west in order to address the minimum setbacks for visual privacy; | The reduction of one apartment on the upper floor has enabled increased rear setbacks of 9.6m for the building, 7.1m for the balcony and 6.2m for the landscape planter.  All other levels retain the original setbacks. |  |
| Increase deep soil area in order to meet the minimum width to sustain healthy tree growth | No increase in the deep soil area is proposed. The proposal will rely on the selection of appropriate plant species to provide appropriate screening and visual relief to the development. | 🗶 |

**3.0 Consultation**

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

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

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

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

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

Due to the time limitations of the deferral, full advertising of the revised plans has not been possible. However, the revised plans were presented to an adjoining property owner who has previous made a presentation to the JDAP on this application. This party has noted the amendments to the western interface but remains against the proposal due in part to the following concerns:

* The setbacks for Levels 1-4 have not been modified. Setbacks should be 3m to the lower floors, 6m to the middle floors and 9m to the upper floors;
* The bulk and size of the floors below Level 5 remain unchanged with overshadowing being an issue;
* The design of all levels below Level 5 remains unchanged with the issues relating to overlooking not being addressed; and
* There is no change to the deep soil area to meet the minimum width to sustain healthy tree growth.

**4.0 Design Review**

The amended plans have not been considered by the Design Review Panel due to the changes being as a result of a JDAP deferral and not at the request of the design review. Details of the design review undertaken to date are included in the RAR.

**5.0 Recommendation to JDAP**

**Approve** DAP Application reference DAP/19/01994 and accompanying plans date stamped 7 October 2021 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015*, and the provisions of the City of Nedlands Local Planning Scheme No. 3, and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme subject to the following conditions:

**Conditions**

General

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. The development shall at all times comply with the application and the approved plans (stamped received 7 October 2021), subject to any modifications required as a consequence of any conditions of this approval.
4. The development, hereby approved, shall at all times comply with the requirements of a ‘Residential – Multiple Dwellings’, ‘Office’ and ‘Consulting Rooms’ use, as defined in the City of Nedlands Local Planning Scheme No. 3.

Visual Privacy

1. All screening and obscure glazing shown on the approved plans to be installed prior to occupation and maintained at all times thereafter.
2. The side and rear boundary fence, located on Level 1 (abutting the Neurozone Terrace) shall be screened to a minimum 1.6m above finish floor level. Screening must be a minimum 75 per cent obscure, permanently fixed and made of durable material and restrict view in the direction of the adjoining landowners at No.117 Broadway, No.121 Broadway & No.50 Kingsway, Nedlands.

Materials and Finishes

1. Prior to the lodgement of a Building Permit, the materials, finishes and colours (as shown and annotated on the approved plans) shall be shown on the Building Permit plans (unless otherwise approved by the City), enacted prior to practical completion of the development and thereafter remain in place for the life of the development to the satisfaction of the City.
2. Prior to occupation of the development, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the buildings shall be located or screened so as not to be visible from beyond the boundaries of the development site to the satisfaction of the City.
3. Prior to occupation of the development the finish of the parapet walls is to be finished in accordance with the hereby approved plans.

Landscaping and Water Efficiency

1. Prior to the lodgement of a Building Permit, a revised Landscaping Plan shall be submitted to and approved by the City to ensure all plant selections can sustain healthy growth in the conditions provided in order to achieve effective screening and/or reduce visual impact (as appropriate).
2. Prior to occupation, a Landscape Management Plan, shall be submitted and approved by the City of Nedlands. It shall in addition to include a comprehensive maintenance plan for all proposed landscaping on the site and contingencies for replacement of dead and diseased plants. Landscaping shall be installed and maintained in accordance with that plan, or any modifications approved thereto, for the lifetime of the development thereafter, to the satisfaction of the City of Nedlands.
3. Prior to occupation, all communal and private open space areas shall include a water tap for the purpose of irrigation.
4. Prior to excavation works commencing, the owner shall take reasonable endeavours to obtain agreement from the property owner at 50 Kingsway, Nedlands to undertake an arborist report investigating opportunities to minimise adverse health effects to the trees retained within the property boundary of 50 Kingsway, Nedlands. If agreement is achieved with the owner of 50 Kingsway, Nedlands, a copy of the arborist report shall be provided to the City of Nedlands prior to construction commencement and be included in the appointed contractor’s construction management plan.
5. Prior to occupation, the development shall incorporate efficient water appliances and irrigation systems to minimise water consumption to the satisfaction of the City of Nedlands.

Waste Management

1. The waste management plan prepared by Talis Consultants dated 9 April 2021, or as subsequently amended by approval of the City of Nedlands, forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands.
2. Prior to occupation of the development, the applicant or landowner shall enter into a Deed of Indemnity with the City, which indemnifies both the City and its waste collection contractors from claims relating to damage caused through the collection process.

Building and Construction

1. All stormwater generated on site is to be retained on site. An onsite storage/infiltration system is to be provided within the site for a 1 in 100-year storm event. No stormwater will be permitted to enter the City of Nedlands’s stormwater drainage system unless otherwise approved.
2. Prior to the issue of a Building Permit, a geotechnical report and engineering design addressing the development area is to be prepared by suitably qualified practitioners at the applicant’s cost and submitted to the City of Nedlands and be implemented to the satisfaction of the City of Nedlands. The design will give due consideration to any potential impacts on neighbouring properties including but not limited to: ground water management, excavation or modifications to existing ground levels; vibration or consolidation of material throughout the demolition and construction phase of the project. The engineering design will identify any remedial treatments required to mitigate any adverse impacts and will be lodged with the building permit application, together with certification that the design is suitable for the site conditions as determined by the geotechnical report.
3. Prior to the issue of a Demolition Permit or Building Permit, a Demolition and 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. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.
4. Prior to the commencement of excavation works, a Dilapidation Report prepared by suitably qualified practitioners shall be submitted to the City of Nedlands for approval, and the owners of the adjoining properties listed below detailing the current condition and status of all buildings (both internal and external together with surrounding paved areas and rights of ways), including ancillary structures located upon these properties:
   1. Lot 2 (No.1-10/117) Broadway, Nedlands;
   2. Lot 552 (No.1-6/121) Broadway, Nedlands;
   3. Lot 564 (No.50) Kingsway, Nedlands;
   4. Lot 565 (No.48) Kingsway, Nedlands; and
   5. Lot 563 (No.52) 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.

Noise

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

Lighting and Energy Efficiency

1. External lighting shall comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.
2. The development, hereby approved, shall at Building Permit stage demonstrate a minimum NATHERS rating of 6.5 stars, or one significant energy efficiency initiative described in State Planning Policy 7.3 – Residential Design Codes Volume 2 - Apartments to the satisfaction of the City of Nedlands.

Vehicle Access and Parking

1. Prior to occupation of the development, all car parking bays designated for visitors/staff shall be clearly marked or signage provided and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.
2. Prior to occupation of the development, a car parking management plan is to be submitted and approved by the City of Nedlands that sets out the management arrangements for allocation of resident and employee parking, control of commercial / resident visitor parking and access by service vehicles.
3. Prior to occupation of the development, all bicycle parking spaces shall be provided in accordance with Australian Standard for AS 2890.3:2015 - Bicycle parking to the satisfaction of the City of Nedlands. The bicycle parking spaces shall be installed and remain in place for the duration of the development.
4. All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, 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.
5. The vehicle ramp to the basement and circulation areas are to be constructed in accordance with Australian Standard 2890.1-2004 - Off-street car parking to the satisfaction of the City of Nedlands.

Universal Access

1. Prior to issue of a building permit for construction of the building, a minimum of three (3) dwellings, shown on the hereby approved development plans shall meet, as a minimum, ‘Silver Level’ requirements as defined in the *Liveable Housing Design Guidelines*.

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

**7.0 Conclusion**

The development has been modified as a result of the 20 August 2021 deferral to primarily increase the setbacks of the upper floor and reduce the number of dwellings from 15 to 14. The reduced upper storey footprint work together with changes to the western face to effectively reduce building bulk when viewed from properties in Kingsway. Visual privacy has also been addressed by the changes made. The remaining outstanding matter from the deferral is the width of the deep soil area at the rear of the site. No changes are proposed to the minimum width of this area, with the response dependent upon a condition of approval requiring species selection to be appropriate for the conditions provided. Administration accepts that this matter can be appropriately addressed by a condition of approval rather than further deferral or refusal.

# Consideration of Responsible Authority Report for Amendments to Approved Multiple Dwelling Development at 20 Cooper Street, Nedlands

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

**Councillor Coghlan – Impartiality Interest**

Councillor Coghlan disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that his impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Coghlan advised that she would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate Councillor Coghlan intended to listen to Public Questions and Addresses as she believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

**Councillor Smyth– Impartiality Interest**

Councillor Smyth disclosed that she is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 16 November 2021. As a consequence, there may be a perception that her impartiality on the matter may be affected. In accordance with recent legal advice from McLeods released to the local government sector in relation to a recent Supreme Court ruling, Councillor Smyth advised that she would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate Councillor Smyth intended to listen to Public Questions and Addresses as he believed this is a neutral position and does not predispose a bias for the JDAP.

A similar declaration will be sent to the DAP administration prior to the scheduled MINJAP meeting.

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

Moved – Councillor Senathirajah

Seconded – Councillor Brackenridge

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

(Printed below for ease of reference)

**CARRIED 8/3**

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

**Council Resolution / Recommendation to Council**

**Council:**

1. **adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for amendments to the approved development of 10 Multiple Dwellings at 20 Cooper Street, Nedlands; included at Attachment 1; and**
2. **instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for amendments to the approved development of 10 Multiple Dwellings at 20 Cooper Street, Nedlands.**

**1.0 Executive Summary**

The purpose of this report is for Council to consider a Joint Development Assessment Panel (JDAP) application at 20 Cooper Street, Nedlands. This application is for modifications to an already approved development for 10 multiple dwellings.

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 (RAR) and lodged with the DAP Secretariat on 3 November 2021. The JDAP will consider the application at a meeting scheduled for 16 November 2021.

Administration recommends Council adopt the Officer Recommendation for approval.

**2.0 Background**

History

An application for 10 multiple dwellings was previously considered at the Joint Development Assessment Panel (JDAP) meeting held on 7 September 2020. The JDAP resolved to approve the application, subject to conditions. A copy of the determination and approved plans is included in Attachment 1.

Site Description

The site is located within the street block bounded by Cooper Street to the north, Broadway to the east, Clark Street to the south and Bruce Street to the west. The site is coded R60.

The site is 911m² in area and is located south of Cooper Street. With respect to topography, the site slopes from west to east by approximately 1m. The site has two Queensland Box Trees within the street verge.

**3.0 Application Details**

Amendments are proposed to the previously approved development of 10 multiple dwellings at 20 Cooper Street, Nedlands.

The proposed modifications to the approved development are summarised below:

* Increase in resident car parking bays from 11 to 19 using car stackers.
* Increase in the overall roof height from 10.5m to 10.8m.
* Reduction in visitor parking from 3 to 2 spaces.
* Increase in deep soil planting area from 12% to 19% of the site area.
* Inclusion of planter boxes above the car stackers abutting Units 4 & 7.
* Landscaping changes to the garden along the eastern boundary.
* Reconfiguration of resident stores and bin stores.
* Amalgamation of the balcony and corridor to Unit 10 into one larger balcony to allow for an increased outdoor living area for Unit 10. A gate has also been added to the corridor to enter Unit 10.
* Addition of a new pedestrian path from the garden area along western boundary between the car stackers.
* Minor modifications of the entry doors to Units 3, 5 and 9.

An application made for an amendment is not an application for a review or reconsideration of the original decision. The assessment is based on the extent of the amendments sought.

**4.0 Consultation**

Public Consultation

The application was advertised for a period of 28 days from 17 September 2021 until 15 October 2021.

At the close of advertising, a total of four submissions were received. Three submissions objected to the proposal and one submission supported the proposal. Of the three objections received, two submissions provided reasons for the objection and one submission did not provide any reasons.

The main concerns raised in the objections included:

* Reduction in visitor bays;
* Use of car stackers;
* Use of shared driveway; and
* Waste management.

Each of these issues are discussed in the Responsible Authority Report. All submissions on this proposal have been given due regard in this assessment in accordance with clause 67(y) of *Planning and Development (Local Planning Schemes) Regulations 2015.*

**5.0 Recommendation to JDAP**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 3 November 2021. The following is the officer recommendation that is 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. The officer recommendation will be contained in the rear of the report.

**Officer Recommendation**

1. **Accept** that the DAP Application reference DAP/20/01780 as detailed on the DAP Form 2 dated 1 September 2021 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations 2011*;
2. **Approve** DAP Application reference DAP/20/01780 and accompanying plans date stamped 26 October 2021 (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 Clause 16 of the City of Nedlands Local Planning Scheme No. 3, for the amendments to the approved development (10 multiple dwellings) at 20 Cooper Street, Nedlands.

**Amended Conditions**

1. All recommendations contained within the revised 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 the lodgement of a Building Permit, a revised Acoustic Report shall be submitted and approved to the satisfaction of the City. The assessment shall include assessment on the chosen mechanical plant equipment for the car stackers and air conditioning units which demonstrates compliance with the requirements of the *Environmental Protection (Noise) Regulations 1997.*
3. The revised waste management plan prepared by Talis Consultants dated August 2021 forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands. Thereafter, the amended waste management forms part of this development approval and shall be complied with at all times to the satisfaction of the City.

**New Conditions**

1. Landscaping shall be installed and maintained in accordance with the approved landscaping plan prepared by Propagule, date stamped 18 October 2021. Any modifications to the plans are subject to approval by the City of Nedlands.
2. Prior to the lodgement of a Building Permit, a Car Parking Management Plan shall be submitted to the satisfaction of the City of Nedlands. Thereafter, the Car Parking Management Plan forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands.

All other conditions and requirements detailed on the previous approval dated   
7 September 2020 shall remain unless altered by this application.

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 3 November 2021.

**6.0 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 deemed minor in nature. The proposal is considered to appropriately address the Element Objectives of the R-Codes, objectives of the ‘Residential’ zone and matters to be considered under clause 67 of the *Planning and Development (Local Planning Schemes) Regulations 2015*. Approval of the amendments is recommended.

# Declaration of Closure

There being no further business, the Presiding Member declare the meeting closed at 5.58pm.