**Agenda**

**Special Council Meeting**

**8 February 2022**

**Notice of Meeting**

**To Mayor & Councillors**

A Special Meeting of the City of Nedlands is to be held on Tuesday 8 February 2022 in the Council chambers at 71 Stirling Highway Nedlands commencing at 5.30pm for the purpose of Consideration of Responsible Authority Report for Reconsideration of Mixed Use Development – 135 Broadway, Nedlands.



Bill Parker

Chief Executive Officer

3 February 2022

**Information**

Special 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

**Public Question Time**

Public question time at a Special 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 will declare the meeting open at 5.30pm and will draw attention to the disclaimer below.

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

**Leave of Absence** None.

**(Previously Approved)**

**Apologies** None as at distribution of this agenda.

# Public Question Time

Public questions submitted to be read at this point.

# Addresses by Members of the Public

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

# Disclosures of Financial 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.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently, a member who has made a declaration must not preside, participate in, or be present during any discussion or decision-making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

# Disclosures of Interests Affecting Impartiality

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

Council Members and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x ….. I disclose that I have an association with the applicant (or person seeking a decision). This association is ….. (nature of the interest).

As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

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

Members who have not read the business papers to make declarations at this point.

# PD05.02.22 Consideration of Responsible Authority Report for Reconsideration of Mixed Use Development – 135 Broadway, Nedlands

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| --- | --- |
| **Meeting & Date** | Special Council Meeting – 8 February 2022 |
| **Applicant** | Urbanista Town Planning |
| **Employee Disclosure under section 5.70 Local Government Act 1995**  | The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff and the proponents or their consultants. |
| **Report Author** | Roy Winslow, Manager Urban Planning |
| **Director/CEO** | Tony Free, Director Planning and Development |
| **Attachments** | 1. Responsible Authority Report and Attachments.
 |

**Purpose**

The purpose of this report is for Council to make a recommendation as the responsible authority to the Metro Inner-North Joint Development Assessment Panel (JDAP) on the reconsideration of the mixed use development at 135 Broadway, Nedlands that was refused by the JDAP on 20 August 2021.

**Recommendation**

**Council adopts as the Responsible Authority the following recommendation for the reconsideration of the mixed use development at 135 Broadway, Nedlands:**

**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 178 of 2021, resolves to:**

1. **Accept that the DAP Application reference DAP/19/01655 as detailed on the DAP Form 2 dated 27 April 2021 is appropriate for consideration in accordance with regulation 17 of the *Planning and Development (Development Assessment Panels) Regulations* 2011;**
2. **Reconsider its decision dated 20 August 2021 and SET ASIDE the decision and substitute a new decision for DAP Application reference DAP/19/01655 and Amended Development Plans** **(Attachment 2) in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the *Planning and Development (Local Planning Schemes) Regulations 2015* and the provisions of the City of Nedlands Local Planning Scheme No.3 and pursuant to clause 24(1) and 26 of the Metropolitan Region Scheme subject to the following conditions**

**Amended conditions**

1. **Amend Condition 3**

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

1. **Amend Condition 8**

**“The acoustic report prepared Hewshott Acoustics International and date stamped 13 January 2022 forms part of this approval. The 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.”**

1. **Amend Condition 12**

**“The waste management plan prepared by Talis Consultants and date stamped 13 January 2022 forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands.”**

1. **Amend Condition 14**

**“The landscape plan prepared by Propagule and date stamped 13 January 2022 forms part of this development approval and shall be implemented and maintained at all times to the satisfaction of the City of Nedlands.”**

1. **Amend Condition 20**

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

1. **Delete Condition 13**

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

**New Conditions:**

1. **Insert new Condition 1**

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

1. **Insert new Condition 8**

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

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

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

1. **Renumber all conditions accordingly.**

**Voting Requirement**

Simple Majority.

**Background**

**Original Approval**

The original development application for a mixed use development at 135 Broadway, Nedlands was approved by the JDAP on 6 April 2020. The development as approved proposed 20 serviced apartments, 8 multiple dwellings and a café.

**Application for Modifications**

Modifications to the approved development were lodged as a “Form 2” application in April 2021. A “Form 2” application seeks to approve modifications to a current JDAP approval that are not considered to substantially change the development from what was previously approved. The modifications proposed included a change of the approved use due to removal of the serviced apartments and replacement with additional multiple dwellings. Other changes included removal of the café from the ground floor and replacement with a residents’ amenity gym and removal of the communal open space from the fifth floor.

Council considered a Responsible Authority Report (RAR) on the proposed changes at its Committee Meeting held on 10 August 2021. At this meeting, Council resolved to recommend that the JDAP refuse the application as the proposal represented substantial changes to the previous development approval in a manner inconsistent with the Planning and Development (Development Assessment Panels) Regulations 2011.

On 20 August 2021, the JDAP resolved to refuse the application on the grounds that:

“…the deletion of the ground floor café and its replacement with a ground floor ‘residents’ amenity gym would amount to a substantial change under clause 17(1)(c) of the DAP Regulations…the change would result in a not permitted residential use on the ground floor in the ‘Mixed Use’ Zone with a frontage to Broadway being the primary street contrary to item 32.4 of Table 6 of the City of Nedlands Local Planning Scheme 3. This change and other changes including the communal open space would not maintain the substance of the original approval granted in April 2020.”

**State Administrative Tribunal and Revised Plans**

This decision was subsequently the subject of an application for review to the State Administrative Tribunal. Mediation of the matter has taken place with the result that the Tribunal has ordered a reconsideration of the decision based on revised plans. The revised plans (dated 13 January 2022) are based on the proposal put to the JDAP on 20 August 2021, with the following key changes:

* Modified car parking with identification of the vacant bays used for the car stacker and the addition of one extra car bay bringing the total to 33 and 4 visitor bays.
* Deletion of the 52m² resident gym and replacement with an 80m² Office, with kitchenette, storage and toilet.
* Provision of 2 commercial bins and bulk waste store on the northern side of the visitor car bays.
* Reduction in the size of Apartment 6 on the second level from 144m² to 91m² and inclusion of a 66m² Communal Lounge and 18m² courtyard, totaling 85m².
* The plot ratio increases to 2.30, from 2.28 as originally approved.

The SAT has invited the JDAP to reconsider its decision to refuse the “Form 2” application in accordance with section 31 of the State Administrative Tribunal Act 2004. As part of the reconsideration, the City is required to update its Responsible Authority Report (RAR) to reflect the 13 January 2022 revised plans.

**Discussion**

The attached RAR outlines the merits of the revised application. In summary, there is no longer a legal impediment to approval of the modifications, as the main concerns of the lack of commercial activity on the ground floor has been addressed. The secondary concern of a lack of communal open space has similarly been addressed.

Administration has assessed the revised plans against the Residential Design Codes and advise Council that the modifications now proposed to the development are consistent with the element objectives of the Codes. Critically, issues associated with noise attenuation of the new communal open space along the northern side of the building have been addressed.

It is recommended that Council support the amended plans and adopt the officer recommendation as its recommendation to the JDAP.

**Consultation**

The submissions received during advertising of the original modifications in May and June 2021 have been incorporated into the current RAR. The immediate neighbour to the north has met with Administration to view the revised plans and discuss concerns.

**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;

Encouraging sustainable building.

**Budget/Financial Implications**

Nil.

**Legislative and Policy Implications**

Council is requested to make a recommendation to the JDAP as the “responsible authority” in accordance with the Planning and Development (Development Assessment Panels) Regulations 2011. The final determination of the application will be undertaken by the JDAP.

This application is subject to a current matter before the State Administrative Tribunal (SAT). In accordance with section 31 of the State Administrative Tribunal Act 2004, the JDAP has been invited by the SAT to reconsider its refusal decision. In the event that approval is not forthcoming in a manner acceptable to the applicant, the matter will revert to the SAT for a final hearing and determination.

**Decision Implications**

Council is providing a recommendation only in this case. The JDAP will have the ability to consider Council’s recommendation and either resolve to accept it or substitute an alternative resolution.

**Conclusion**

In inviting the JDAP to reconsider its decision to refuse the “Form 2”, the SAT appears to be indicating that the issues that prevented approval of the Form 2 application in August 2021 have been sufficiently addressed. Subsequently, Administration has reviewed the amended plans lodged on 13 January 2022 based on the understanding that there is no longer a legal impediment to approval being granted.

The amended plans have addressed the primary concerns of the JDAP. These included the land use on the ground floor, which is now commercial in nature, consistent with other similar developments on Broadway. The other main concern related to the lack of communal open space. This has now been addressed through inclusion of an 85m² communal area on the second floor.

Given the concerns of JDAP have been addressed, Administration has recommended approval of the modifications to the approved plans in accordance with the plans and supporting information date stamped 13 January 2022. As there is an existing approval in place, the recommendation has been drafted to amend the original conditions granted on 6 April 2020.

# Declaration of Closure

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