

# Minutes

## Special Council Meeting 17 May 2022

### Attention

**These Minutes are subject to confirmation.**

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

## Information

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](mailto: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](#)

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](#)

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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## 1. Declaration of Opening

The Presiding Member declared the meeting open at 7:30pm and drew attention to the disclaimer on page 2.

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

<b>Councillors</b>	Mayor F E M Argyle Councillor B Brackenridge Councillor R A Coghlan Councillor R Senathirajah Councillor K A Smyth Councillor F J O Bennett Councillor A W Mangano Councillor B G Hodsdon	(Presiding Member) Melvista Ward Melvista Ward Melvista Ward Coastal Districts Ward Dalkeith Ward Dalkeith Ward Hollywood Ward
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<b>Staff</b>	Mr M R Cole Mr T G Free Mr A D Melville Mrs N M Ceric (online)	Acting Chief Executive Officer Director Planning & Development Acting Technical Services Executive Officer
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**Public Gallery** There were 4 members of the public present and 5 online.

**Press** Nil.

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

<b>Apologies</b>	Councillor H Amiry Councillor L J McManus Councillor O Combes Councillor J D Wetherall Councillor N R Youngman Mr W R Parker	Coastal Districts Ward Coastal Districts Ward Hollywood Ward Hollywood Ward Dalkeith Ward Chief Executive Officer
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### 3. Public Question Time

#### 3.1 Mr Ken Perry

Mr Ken Perry, asked the following question in relation to item 8 - PD25.05.22 Consideration of Development Application for Mixed Use Development (11 Multiple Dwellings, 12 Holiday Accommodation, 3 Offices and Café) at 24 Leura Street, Nedlands

##### **Question 1**

How can Council Staff be allowed to recommend the approval of a plot ratio bonus when there has been no assessment of its value, (and hence loss to the community) nor of any offsetting community benefits?

##### **Answer 1**

Fundamentally, all plot ratio, regardless of whether it is above or below that shown in the Acceptable Outcomes table, has to meet Element Objective O2.5.1 of the R-Codes, which states "*The overall bulk and scale of development is appropriate for the existing or planned character of the area.*" The consideration is only on the impact of the built form.

Plot ratio is an indicator of building size, but not by itself a sign of overdevelopment. The main consideration for plot ratio is how a building fits into its setting. In this case, officers assessed the setbacks, visual privacy and street presentation and considered that the building was designed such that it fit into the planned character of the area without detrimental bulk and scale impacts to surrounding properties.

Part 2.8 of the R-Codes Volume 2 provides examples of community benefits that may be linked to development incentives such as plot ratio and height. It specifically includes benefits such as affordable housing, dwelling diversity, and energy efficient design, all of which are demonstrated by this development.

The report recommends that if approval is granted, the following conditions be imposed:

- Condition 25 – 5 star Green Star energy efficiency requirements
- Condition 26 – Average 7 star NatHERS rating
- Condition 28 – 16 Electric electric vehicle charging bays
- Condition 30 – Requirement for Units on Level One to form part of National Rental Affordability Scheme
- Condition 15 – 8 Units to meet Specialist Disability Accommodation requirements.

### 3.2 Ms Irene Tan

Ms Irene Tan asked the following questions in relation to item 10 - CPS23.05.22 Response to Minister for Lands – Tawarri Hot Springs:

Madam Mayor and Councillors,

In the light of the fact that Council's decision on the Item tonight will have final and far reaching consequences for the City and her people; my questions have one main purpose; and that is to try to ensure that ALL Elected Members present tonight are fully aware of the background to the problem they have been tasked to handle, know possible outcomes they may not have thought of, and are conscious of the irreversible consequences of each Member's actions and decisions tonight.

The questions have no intent, perceived or otherwise, to "reflect adversely" on any member of Council or Administration.

#### Question 1

Is Council fully aware that a wrong decision tonight could very well see State Approval of a tourist attraction of epic proportions on the site? – and I am not referring to the THS proposal or a New Hot Springs facility only?

- Even if the THS proposal falls through, do Members not understand that a past Council decision has opened the site for possible commercial development of any kind and at any time well into the distant future, because it is now unprotected Unallocated Crown Land?
- Does this Council not understand that any attempt at this late stage to try and prevent development, commercial or otherwise, on the site would now be no more effective than trying to kill the proverbial Bull elephant with a fly swat; because on 26 June 2018, Council actually gave that Bull elephant indefinite free entry on to the Tawarri site?

#### Answer 1

Yes, Elected Members are aware of the situation.

#### Question 2

Are Elected Members aware that there is no justification for a recent public statement that the State has "stolen" the Tawarri site from Nedlands? Do Councillors not know that, in fact, as Crown Land, the State actually owns the said land; and this City only acted as a "guardian" of that land?

#### Answer 2

Elected Members are aware of the status of the land.

#### Question 3

Are Elected Members not aware that the State can never, ever remove or change a Classification of Land from "A Class Reserve" UNLESS and UNTIL requested to do so by the Council concerned and that Nedlands Council actually did so on 26 June 2018.

**Answer 3**

Yes, Elected Members are aware.

**Question 4**

Are Elected members not aware that had Council itself NOT done so - in order for the preferred Tender by THS PTY Ltd to proceed, that valuable and loved site would still be protected for Community Use only today?

**Answer 4**

Yes, Elected Members are aware of the status of the land.

**Question 5**

Are Elected Members aware that:

- a. the initial approval of the THS proposal for Tawarri was made by Nedlands Council itself, and not by the State; and
- b. that Council in the past and until of late, has actually consistently supported the THS proposal?

What justification does this Council then have for its sudden recent rejection of the proposal?

**Answer 5**

Council considered all submissions at its meeting of 26 March 2022 before making its decision.

**Question 6**

Are Elected Members aware that all Council members, on 25 July 2018, received an email expressing grave concerns about Council's decision; and requesting that the Tawarri site remain under "A Class Reserve"? Council's response was a cursory "Thank you" from then Mayor Max Hipkins that advised the "email (had) been placed on-file, for further reference" (dated 1 August 2018).

**Answer 6**

Council members at that time would have been aware of this email.

**Question 7**

Are Elected Members aware that, had Council, at that time, heeded that email and taken proper action to rescind their fateful decision of 26 June 2018, we would not be here today? Why then do Councillors in the know keep criticising the State in public and antagonising it unnecessarily at this point in time? Is this prudent and justifiable behaviour?

**Answer 7**

It would be inappropriate to comment on decisions made by Council in the past.

**Question 8**

Do Elected Members thus not realise that they have other recourse other than to quietly move Forward and face the onerous Duty of salvaging what they can from the irreparable damage Nedlands Council itself has caused on the Tawarri site?

**Answer 8**

This is a matter for Elected Members to consider tonight.

**Question 9**

Does Council finally accept that fact that the Tawarri site as a protected area for Community Use is gone – the result of a grave error in judgement by a past Council in 2018 – and that this City could end up losing more.

**Answer 9**

It would be inappropriate to comment on decisions made by Council in the past.

**Question 10**

Has Council factored in a possible and as yet Unknown Risk – that should the THS proposal fail, due in part or otherwise by a decision of this Council, could there be possible unforeseen and unexpected legal action taken against this City to recover 5 years of invested time and money?

**Answer 10**

Developers are aware that any proposal requires a number of approvals. That process has been followed.

**Question 11**

Will Council finally accept responsibility for all that has happened to Tawarri, and in the ensuing Notice of Motion exercise proper damage control for Council's past decisions, save what they really can of the Tawarri site and get the best possible outcome for this City, given the Hon Minister's clear and stated alternative?

**Answer 11**

This is a matter for Elected Members to consider tonight.

#### **4. Addresses by Members of the Public**

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

Mr Ken Perry, spoke in opposition to the recommendation for PD25.05.22 Consideration of Development Application for Mixed Use Development (11 Multiple Dwellings, 12 Holiday Accommodation, 3 Offices and Café) at 24 Leura Street, Nedlands.

The Presiding Member granted Mr Perry a further 2 minutes to conclude his address.



## **5. Disclosures of Financial / Proximity 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 affecting impartiality.

## **6. 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*.

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.

There were no disclosures of financial interest.

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

Nil.

**8. PD25.05.22 Consideration of Development Application for Mixed Use Development (11 Multiple Dwellings, 12 Holiday Accommodation, 3 Offices and Café) at 24 Leura Street, Nedlands**

<b>Meeting &amp; Date</b>	Special Council Meeting - 17 May 2022
<b>Applicant</b>	G Living Pty Ltd
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants.
<b>Report Author</b>	Roy Winslow – Manager Urban Planning
<b>Director/CEO</b>	Tony Free – Director Planning and Development
<b>Attachments</b>	1. RAR and Attachments

Moved – Councillor Smyth  
Seconded – Councillor Mangano

**That a 5-minute recess be called to allow time for refusal reasons to be prepared.**

**CARRIED UNANIMOUSLY 8/-**

The meeting adjourned at 8.04pm and reconvened at 8.06pm with the following people in attendance:

<b>Councillors</b>	Mayor F E M Argyle	(Presiding Member)
	Councillor B Brackenridge	Melvista Ward
	Councillor R A Coghlan	Melvista Ward
	Councillor R Senathirajah	Melvista Ward
	Councillor K A Smyth	Coastal Districts Ward
	Councillor F J O Bennett	Dalkeith Ward
	Councillor A W Mangano	Dalkeith Ward
	Councillor B G Hodsdon	Hollywood Ward

<b>Staff</b>	Mr M R Cole	Acting Chief Executive Officer
	Mr T G Free	Director Planning & Development
	Mr A D Melville	Acting Technical Services
	Mrs N M Ceric (online)	Executive Officer

**Public Gallery** There were 4 members of the public present and 5 online.

**Regulation 11(da) - Council did not consider that the bulk and scale of the proposed development was in keeping with the future character of the area and would have an overall negative impact on the current amenity of the location.**

Moved – Councillor Mangano  
Seconded – Councillor Hodsdon

## **Council Resolution**

**That Council:**

- 1. Refuse DAP Application reference DAP/21/02103 and accompanying plans date stamped 9 May 2022 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the City of Nedlands Local Planning Scheme No. 3 for the following reasons:**
  - 1. The proposed bulk and scale of the development is inconsistent with the existing context and intended future character of the local area. The height and plot ratio of the proposal would alter future built form and character beyond that contemplated by the current density coding, thereby setting the built form of future development prior to implementation of a strategy or desired controls.**
  - 2. The development provides insufficient car parking to cater for the expected use of the development and will negatively impact the amenity of the locality through an overreliance on street parking.**
  - 3. The development provides insufficient deep soil areas and on-structure planter box dimensions, rendering the landscaped areas unable to sustain healthy plant and tree growth.**

**Reasons: The expected built form within the area is expressed through Volume 2 of the R-Codes. The proposed development exceeds the plot ratio and height controls of the Acceptable Outcomes of the R-Codes and will alter the expected built form of the area in a way that will influence future development. In this way, the proposal will set a scale of development beyond that contemplated by the R-Codes without a considered and strategic approach. The plot ratio and height create unacceptable bulk and scale impacts to adjoining properties and the two streetscapes by virtue of reduced boundary setbacks and unacceptable massing.**

**The car parking provided is insufficient to cater for the expected use of the development and will create an over-reliance on street parking within a neighbourhood that already has parking difficulties.**

**The landscaping will not provide adequate tree canopy and will diminish the green leafy suburb feel of the immediate locality.**

**Lack of natural light to the south facing apartments.**

**Concerns re waste collection in narrow laneway to the rear of the development.**

**Sets an unwanted precedent in the area.**

**2. appoints Mayor Argyle and Councillor Hodsdon to coordinate Council's submission and presentation to the Metro Inner-North JDAP.**

**CARRIED UNANIMOUSLY 8/-**

## Recommendation

That Council:

Adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the Mixed Use Development (11 Multiple Dwellings, 12 Holiday Accommodation, 3 Offices and Café) at 24 Leura Street, Nedlands as follows:

It is recommended that the Metro Inner-North Joint Development Assessment Panel resolves to:

Approve DAP Application reference DAP/21/02103 and accompanying plans date stamped 9 May 2022 in accordance with Clause 68 of Schedule 2 (Deemed Provisions) of the Planning and Development (Local Planning Schemes) Regulations 2015 and the provisions of the City of Nedlands Local Planning Scheme No. 3 subject to the following conditions:

### Conditions

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 four (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. This approval is for 'Residential (Multiple Dwelling)', 'Holiday Accommodation', 'Office' and 'Restaurant/Café' land uses as defined under the City of Nedlands Local Planning Scheme No. 3 and shown on the approved plans. The subject land may not be used for any other use without prior approval of the City of Nedlands.

### Noise

4. Prior to the issue of a Building Permit, the applicant is to lodge with the City a revised acoustic report prepared by a suitably qualified and licenced acoustic consultant demonstrating compliance of the development with the requirements of the Environmental Protection (Noise) Regulations 1997, with all recommendations within the report to be detailed on the building permit plans to the satisfaction of the City of Nedlands.

5. Prior to the issue of a Building Permit, a Noise Management Plan limiting the hours of operation of the communal areas, as recommended in the Lloyd George acoustic report, is to be prepared and approved by the City of Nedlands and thereafter implemented at all times.
6. Prior to occupation of the development, a Short Stay Management Plan including contact information for building management is to be provided and approved by the City of Nedlands and thereafter implemented at all times.

#### Waste Management

7. Prior to the issue of a building permit, an amended Waste Management Plan must be prepared and approved by the City. The approved Waste Management Plan shall be complied with at all times to the satisfaction of the City of Nedlands.

#### Design

8. Prior to occupation of the development, all air-conditioning plant, satellite dishes, antennae and any other plant and equipment to the roof of the building shall be located or screened to the satisfaction of the City of Nedlands.
9. Prior to occupation of the development the finish of the parapet walls is to be finished in accordance with the hereby approved plans.
10. All screening and obscure glazing shown on the approved plans to be installed prior to occupation and maintained at all times thereafter.

#### Building

11. Prior to the issue of a Demolition Permit and/or a Building Permit, a Demolition and/or Construction Management Plan (whichever is appropriate) shall be submitted and approved to the satisfaction of the City. The approved Demolition and Construction Management Plans shall be observed at all times throughout the relevant demolition or construction process to the satisfaction of the City.
12. Prior to the issue of a Building Permit, a geotechnical report covering the development area is to be prepared by a suitably qualified practitioner at the applicant's cost, to the satisfaction of the City of Nedlands. The report 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 geotechnical report 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 outlined in the geotechnical report.

13. Prior to the commencement of excavation works, a dilapidation report 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:
  - a. Lot 311 (No. 20) Leura Street, Nedlands
  - b. Lot 284 (No. 31) Hampden Road, Nedlands
  - c. Lot 283 (No. 29) Hampden Road, 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.

14. External lighting shall comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting to the satisfaction of the City of Nedlands.
15. Prior to the issue of a building permit, a minimum of eight (8) units are to be designed at building permit stage to the Specialist Disability Accommodation (SDA) requirements and implemented prior to occupation and to the satisfaction of the City of Nedlands.
16. 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' stormwater drainage system unless otherwise approved.
17. All building works to be carried out under this development approval are required to be contained within the site boundaries of the subject lot.

#### Landscaping

18. Prior to occupation, the approved landscaping plan submitted by propagule and stamped received 19 April 2022, including any modifications approved by the City of Nedlands, is to be implemented and maintained for the life of the development to the satisfaction of the City of Nedlands.
19. Prior to occupation, all communal and private open space areas shall include a tap connected to an adequate water supply for the purpose of irrigation.

#### Vehicle Access and Parking

20. All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, car stackers, vehicle ramps, crossovers and driveways shall comply with Australian Standard 2890.1-2004 - Off-street car parking

and Australian Standard 2890.6:2009 - Off-street parking for people with disabilities (where applicable), and Australian Standard 5124:2017 to the satisfaction of the City of Nedlands.

21. 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.
22. Prior to occupation, all bicycle parking spaces shall be installed, and all car parking bays designated for visitors/staff shall be clearly marked or signage provided, to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.
23. Prior to the issue of a building permit, plans for a traffic management system for the single lane ramp shall be submitted and approved by the City of Nedlands. Prior to occupation, the approved traffic management system is to be implemented and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.
24. Prior to occupation, the existing crossovers are to be modified or removed (as appropriate) and verge and kerb reinstated at the applicant's cost and to the satisfaction of the City of Nedlands.

#### Sustainability

25. Prior to occupation, a report by a suitably qualified assessor is to be provided to the City demonstrating that the development meets the 5 star Green Star energy efficiency requirements to the satisfaction of the City of Nedlands.
26. Prior to the issue of a building permit, a report by a suitably qualified assessor is to be provided to the City demonstrating that the development meets an average 7 star NatHERS rating to the satisfaction of the City of Nedlands.
27. Prior to occupation, all photovoltaic cells shown on the roof plan of the development shall be installed to the satisfaction of the City of Nedlands and maintained for the lifetime of the development.
28. Prior to issue of a building permit, plans are to identify 16 electric vehicle charging bays. Prior to occupation of the development, the electric vehicle charging infrastructure is to be installed and maintained for the life of the development to the satisfaction of the City of Nedlands.

#### Legal

29. Prior to occupation of any part of the development, the landowner(s) shall enter into a Deed of Indemnity with the City, which indemnifies both the City and its waste collection contractors from claims relating to any damage, injuries or death that may be caused as a result of the on-site waste collection process.

30. Prior to the occupation, documentation is to be provided to the City of Nedlands demonstrating that the units on level 1 form part of the National Rental Affordability Scheme or an equivalent affordability scheme to the satisfaction of the City of Nedlands.

## Purpose

The purpose of this report is for Council to consider a development application for a Mixed-use development over 7 storeys comprising 11 Multiple Dwellings, 12 Holiday Accommodation (short stay dwellings), 3 Offices and one Café located at No. 24 Leura Street, Nedlands.

## Voting Requirement

Simple Majority.

## Background

### Land Details

<b>Metropolitan Region Scheme Zone</b>	Urban
<b>Local Planning Scheme Zone</b>	Residential
<b>R-Code</b>	Mixed Use R-AC3
<b>Land area</b>	953 m <sup>2</sup>
<b>Land Use</b>	Residential – Multiple Dwellings Holiday Accommodation (short stay dwellings) Office Restaurant/Cafe
<b>Use Class</b>	Multiple Dwellings, Office and Restaurant/Café are 'P' (Permitted Uses) Holiday Accommodation is 'D' (Discretionary Use)

This application was first considered by the Panel on 1 February 2022, at which it was resolved to defer the application for 120 days to allow a number of matters to be addressed. The application in a modified form is now tabled for further consideration.

### History

At the 1 February 2022 JDAP meeting, the Metro Inner-North JDAP resolved to:

**Defer** DAP Application reference DAP/21/02103 and accompanying plans date stamped 21 December 2021 (Attachment 2) for a period of up to 120 days in accordance with section 5.10.1a of the DAP Standing Orders 2020, for the following reasons:

- a. To enable modifications to be undertaken to make the development more in keeping with the bulk, scale and character of the area.



- b. To enable modifications to improve landscaping and onsite car parking provision, or reduce car parking demand

**REASON:** To enable the applicant sufficient timeframe to provide further information on various elements of bulk, form, and scale of the proposal in the context and character of the area and address parking associated with the mix of uses and onsite configuration of parking.

Amended plans were submitted on 19 April and 9 May 2022 including the following changes:

- Deletion of one of the 3-bedroom units on Level 7 and a consequent reconfiguration of the level;
- Consolidation of ground floor commercial tenancies and reconfiguration of internal layout;
- General increase in setbacks to the north, south and west on all levels;
- Corner cut out in the southeast corner of the ground floor to allow more green space, deep soil area, and root zones for the planned trees;
- Increased on-structure landscaping and general increase in the dimensions of on-structure planter boxes;
- Reconfiguration of the communal spaces on Level 1 and 6;
- 11 bay increase in onsite car parking provision; and
- Overall reduction in plot ratio from 2.8 (2,697m<sup>2</sup>) to 2.5 (2,427 m<sup>2</sup>).

### **Application Details**

The original application consisted of 14 Multiple Dwellings, 10 Holiday Accommodation (short stay), 4 Offices and Café). The amended development now seeks approval for 11 Multiple Dwellings, 12 Holiday Accommodation (short stay), 3 Offices and one Café.

## **Discussion**

### **Assessment of Statutory Provisions**

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

- Height;
- Parking;
- Traffic;
- Visual privacy;
- Setbacks;
- Landscaping;
- Plot Ratio;
- Solar access
- Design; and
- Land use.

The original plan did not meet the Element Objectives of the R-Codes, particularly for height, plot ratio, car parking and landscaping. The application was deferred on the basis that the totality of departures from the Element Objectives resulted in a bulk and scale of development that was not in keeping with the amenity of the locality of the expected future built form. The amended plans responded to the JDAP reasons for deferral and the development now meets the Element Objectives.

## Consultation

The application was originally advertised for 28 days from 29 October to 26 November 2021 by the following:

- Letters posted to all landowners and occupiers (including City of Perth residents on the eastern side of Hampden Road) 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;
- Notice placed in the "Post" local newspaper;
- Posted on the City's social media platforms;
- Notice on the Noticeboard at the City's Administration Office; and
- Community information session held on Wednesday 17 November.

Upon conclusion of advertising, a total of 12 responses were received, comprising 11 objections and one statement of non-objection but including comments. The key concerns in the objections related to:

- Height
- Plot ratio
- Traffic and car parking
- Landscaping
- Visual privacy
- Solar access
- Land use

These matters have been addressed within the Responsible Authority Report. All submissions on this proposal have been given due regard in this assessment in accordance with Clause 67(y) of the Planning and Development (Local Planning Schemes Regulations) 2015.

The amended plans were not re-advertised but have been uploaded to the City's Your Voice website for public viewing.

## Design Review Panel

The development was presented to the City's Design Review Panel (DRP) three times. The final recommendations are summarised below and included in full as Attachment 5 within the RAR:

3	Supported		
2	Supported with conditions / Further Information required		
1	Not supported		
	<u>Original</u> 21 June 2021	<u>Amendment 1</u> 2 August 2021	<u>Amendment 2</u> 1 November 2021
Principle 1 – Context & Character			
Principle 2 – Landscape Quality			
Principle 3 – Built Form & Scale			
Principle 4 – Functionality & Build Quality			
Principle 5 - Sustainability	None submitted		
Principle 6 – Amenity			
Principle 7 – Legibility			
Principle 8 – Safety			
Principle 9 – Community			
Principle 10 – Aesthetics	Not enough info		

The 19 April 2022 plans were not referred back to the DRP for comment. However, they have addressed the final DRP comments in the following ways:

- Increased parking provision, on-structure landscaping, and deep soil provision across the site;
- Reduction in bulk and scale through deletion of a Level 6 unit, reconfiguration of Level 6, and increased lot boundary setbacks to north, south and west elevations; and
- Removal of the window between the Level 1 unit and the common space, thereby eliminating internal privacy issues.

## Strategic Implications

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

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

**Values** **Great Natural and Built Environment**  
We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

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

## **Budget/Financial Implications**

N/A

## **Legislative and Policy Implications**

Council is requested to make a recommendation to the JDAP in accordance with Regulation 12(5) of the [Planning and Development \(Development Assessment Panels\) Regulations 2011](#). Council may recommend to approve, refuse or defer the application.

## **Decision Implications**

Council's recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat by 20 May 2022. The recommendation noted above is the officer recommendation that is also included in the RAR. In the event that Council does not adopt the officer recommendation, Council's recommendation will be located at the front of the RAR as the Responsible Authority Recommendation and the officer recommendation will be contained in the rear of the report. In the event that Council does not make a recommendation, the RAR will be forwarded to DAP by 20 May 2022 with the Officer Recommendation only.

## **Conclusion**

The proposed development is generally visually acceptable and with good internal amenity, particularly regarding sunlight and ventilation to dwellings. The mix of dwelling sizes and the intended functionality of the proposal, in terms of providing housing and care for a range of household types, is generally supported. The proposed sustainability initiatives go well beyond the minimum recommendations and are commendable.

The amended plans have addressed the previous recommendation for refusal by increasing the car parking provisions, increasing deep soil areas and improving on-structure planting areas, increasing lot boundary and street setbacks. Though the proposal exceeds the recommended plot ratio and height, it does so in a way that is sympathetic to the nearby residential development and does not detrimentally impact the streetscape. The top floor will be largely unnoticeable except from longer approaches to the site, and even there it will be largely indistinguishable from the communal rooms. Overall, the development demonstrates well-considered design. The departures from the Acceptable Outcomes are supportable, especially considering the sustainability and universal access design proposed.

## Further Information

Nil.

**9. PD26.05.2022 Consideration of Responsible Authority Report for Amendments to Approved Development of 10 Multiple Dwellings at 20 Cooper Street, Nedlands**

<b>Meeting &amp; Date</b>	Special Council Meeting – 17 May 2022
<b>Applicant</b>	Peter Webb & Associates
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	The author, reviewers and authoriser of this report declare they have no financial or impartiality interest with this matter. There is no financial or personal relationship between City staff involved in the preparation of this report and the proponents or their consultants.
<b>Report Author</b>	Roy Winslow – Manager Urban Planning
<b>Director/CEO</b>	Tony Free – Director Planning and Development
<b>Attachments</b>	1. Responsible Authority Report and Attachments

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

Moved – Councillor Coghlan  
Seconded – Councillor Senathirajah

**That the Recommendation be adopted.**  
(Printed below for ease of reference)

**CARRIED 6/2**  
**(Against: Crs. Bennett & Mangano)**

**Council Resolution / Recommendation**

**That Council:**

**Adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the amendments to the approved development of 10 multiple dwellings at 20 Cooper Street, Nedlands as follows:**

**It is recommended that the Metro Inner-North JDAP resolves to:**

- 1. Accept that the DAP Application reference DAP/20/01780 as detailed on the DAP Form 2 dated 8 March 2022 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 14 March 2022 (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 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

14. Prior to the issue of a Building Permit, a revised Acoustic Report shall be submitted and approved to the satisfaction of the City. The report shall include assessment on the chosen mechanical plant equipment for the car stackers and air conditioning units, and the additional balconies, which demonstrates compliance with the requirements of the *Environmental Protection (Noise) Regulations 1997*.

All other conditions and requirements detailed on the previous approval dated 16 November 2021 shall remain unless altered by this application.

### Purpose

The purpose of this report is for Council to consider a Joint Development Assessment Panel (JDAP) application at 20 Cooper Street, Nedlands. Amendments are proposed to the previously approved development of 10 multiple dwellings at the subject site. The application proposes the addition of a balcony to Unit 4 and Unit 7, above the roof the car stackers along the eastern elevation.

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 18 May 2022.

Administration recommends Council adopt the Officer Recommendation for approval.

### Voting Requirement

Simple Majority.

### Background

#### Land Details

<b>Metropolitan Region Scheme Zone</b>	Urban
<b>Local Planning Scheme Zone</b>	Residential
<b>R-Code</b>	R60
<b>Land area</b>	911m <sup>2</sup>
<b>Land Use</b>	Multiple dwellings
<b>Use Class</b>	'P' – Permitted Use

## **Application Details**

This application proposes the addition of a balcony to Unit 4 and Unit 7, above the roof the car stackers along the eastern elevation.

## **Existing Approvals**

An application for the development of 10 multiple dwellings at this subject site was originally considered by the Joint Development Assessment Panel (JDAP) on 7 September 2020. The JDAP resolved to approve the application, subject to conditions. A copy of the determination and approved plans is included as Attachment 4 of the Responsible Authority Report.

Amendments to the approved plans were sought in 2021 as a “form 2” application. The application proposed changes to the height, landscaping and internal changes relating to the finished floor levels, storerooms and balconies. The application also proposed an increase in resident parking bays using car stackers. On 16 November 2021, the JDAP resolved to approve the amendments, subject to conditions. A copy of the determination and approved plans is included as Attachment 5 of the Responsible Authority Report.

A second amendment application has now been lodged and is the subject of this assessment. This application relates to the provisions of balconies for Units 4 and 7 above the car stacker garages. No other changes to the plans as approved are proposed.

## **Discussion**

### **Assessment of Statutory Provisions**

The proposal has been assessed against all relevant legislative requirements including Local Planning Scheme No.3 (LPS3), Residential Design Codes Volume 2 – Apartments (R-Codes) and Local Planning Policies. The side and rear setbacks and visual privacy are key considerations for the determination of this application.

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

## **Consultation**

The application was advertised for a period of 28 days from 25 March 2022 until 22 April 2022. The application was advertised in the following manner:

- Letters sent to all landowners and occupiers within a 200m radius of the subject site;
- A sign on site was installed at the site’s street frontage;
- A notice was published on the City’s website with all documents relevant to the application made available for viewing during the advertising period;
- A notice was placed in The Post newspaper published on 2 April 2022;
- A social media post was made on one of the City’s Social Media platforms; and



- A community information session was held at the City's Offices on 6 April 2022.

At the close of advertising, one submission was received objecting to the proposal. These matters have been addressed within the Responsible Authority Report. The submission on this proposal have been given due regard in this assessment in accordance with Clause 67(y) of the Planning and Development (Local Planning Schemes Regulations) 2015.

### **Design Review Panel**

Due to the minor nature and extent of the modifications proposed, the application was not reviewed by the Design Review Panel.

### **Strategic Implications**

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

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

**Values** **Great Natural and Built Environment**  
We protect our enhanced, engaging community spaces, heritage, the natural environment and our biodiversity through well-planned and managed development.

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

### **Budget/Financial Implications**

N/A

### **Legislative and Policy Implications**

Council is requested to make a recommendation to the JDAP in accordance with Regulation 17 of the [Planning and Development \(Development Assessment Panels\) Regulations 2011](#). Council may recommend to approve, refuse or defer the application.

### **Decision Implications**

Council's recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on the 18 May 2022. The recommendation noted above is the officer recommendation that is also included in the RAR. In the event that Council does not adopt the officer recommendation, Council's recommendation will be located at the front of the RAR as the Responsible Authority Recommendation and the officer recommendation will be contained in the rear of the report. In the event that Council

does not make a recommendation, the RAR will be forwarded to DAP on 18 May 2022 with the Officer Recommendation only.

## **Conclusion**

Council is requested to consider the proposed amendments to the approved development as the Responsible Authority. It is requested that Council makes a recommendation to the JDAP to either approve, refuse or defer the application.

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 appropriately addresses 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.

## **Further Information**

Nil.

## 10. CPS23.05.22 Response to Minister for Lands – Tawarri Hot Springs

<b>Meeting &amp; Date</b>	Special Council Meeting – 17 May 2022
<b>Applicant</b>	City of Nedlands
<b>Employee Disclosure under section 5.70 Local Government Act 1995</b>	Nil.
<b>Report Author</b>	David Thomason – Coordinator Land & Property
<b>Director/CEO</b>	Michael Cole – Director Corporate & Strategy
<b>Attachments</b>	<ol style="list-style-type: none"> <li>1. Letter to Minister for Lands RE Council decision on Tawarri dated 30 March 2022</li> <li>2. Letter from Minister for Lands dated 20 April 2022</li> <li>3. Letter from Department of Planning, Lands and Heritage dated 2 May 2022</li> <li>4. Letter from Mayor Argyle to Minister for Lands dated 3 May 2022</li> <li>5. Letter from Department of Planning, Lands and Heritage dated 9 May 2022</li> </ol>

### Closure of Meeting to the Public

Moved – Councillor Bennett

Seconded – Councillor Mangano

**That the meeting be closed to the public in accordance with Section 5.23 (d) of the Local Government Act 1995 to allow confidential discussion on the following items.**

**CARRIED UNANIMOUSLY 8/-**

The meeting was closed to the public at 8.22 pm.

**Regulation 11(da) – Council agreed that it should seek an extension to 29<sup>th</sup> July rather than 2 months in the officer’s recommendation and for the Mayor to represent the Council’s position in these negotiations.**

Moved – Councillor Bennett

Seconded – Councillor Mangano

**That the Recommendation be adopted subject to:**

**That the words “his deadline for a period of 2-months to allow the City, if possible, time to recommence negotiations with the State of WA and Tawarri Hot Springs Pty Ltd.” be replaced with “the deadline until Friday 29th July 2022, to allow the City time to recommence negotiations with the State Government of Western Australia and that the Council’s position will be represented in these negotiations by the City of Nedlands Mayor.”**

**CARRIED UNANIMOUSLY 8/-**

Moved - Councillor Smyth  
Seconded – Mayor Argyle

**That the meeting be reopened to members of the public and the press.**

**CARRIED UNANIMOUSLY 8/-**

The meeting was reopened to members of the public at 8.30 pm.

In accordance with Standing Orders 12.7(3) the Presiding Member read out the motions passed by the Council whilst it was proceeding behind closed doors and the vote of the members to be recorded in the minutes under section 5.21 of the Local Government Act 1995.

### **Council Resolution**

**Council in response to the Minister for Lands' letter dated 20<sup>th</sup> April 2022, requests the Chief Executive Officer write to the Minister requesting an extension of the deadline until Friday 29<sup>th</sup> July 2022, to allow the City time to recommence negotiations with the State Government of Western Australia and that the Council's position will be represented in these negotiations by the City of Nedlands Mayor.**

### **Recommendation**

Council in response to the Minister for Lands' latter dated 20 April 2022, requests the Chief Executive Officer write to the Minister requesting an extension of his deadline for a period of 2-months to allow the City, if possible, time to recommence negotiations with the State of WA and Tawarri Hot Springs Pty Ltd.

### **Purpose**

On 29 March 2022, the City of Nedlands Council resolved not to proceed with the major land transaction for Lot 502 on Deposited Plan 418496, better known as the 'Tawarri Hot Springs' site (the 'Site').

Since then, various correspondence has been shared between the City of Nedlands and the Department of Planning, Lands and Heritage ('DPLH'), with the major discussion point being a formal notice from the Minister for Lands that the State of WA are going to proceed with the development and that the Site will be excised from the Class A Reserve.

This report is presented so elected members can consider a formal response to DPLH.

## Voting Requirement

Simple Majority.

## Background

On 29 March 2022, in accordance with section 3.59 of the *Local Government Act 1995*, the City of Nedlands Council resolved not to proceed with the major land transaction for Lot 502 on Deposited Plan 418496, better known as the 'Tawarri Hot Springs' site (the 'Site').

Since then, Council have resolved (26 April 2022) to establish a Tawarri Recommissioning Committee and requested the Administration undertake various remediation works at the Site.

Concurrently, various correspondence has also been shared between the City of Nedlands and the Department of Planning, Lands and Heritage ('DPLH'), with the major discussion point being a formal notice from the Minister for Lands that the State of WA are going to proceed with the development and that the Site will be excised from the Class A Reserve.

Each letter of correspondence as referred to above has been attached to this report and is briefly summarized below:

Attachment 1 - Letter from City of Nedlands to Minister for Lands dated 30 March 2022

- This letter was sent immediately after the Special Council Meeting of 29 March 2022 where the Council resolved not to proceed with the major land transaction. The letter formally advised the Minister of the City's decision and requested advice on the implications of this decision from the State's perspective.

Attachment 2 - Letter from Minister for Lands to City of Nedlands dated 20 April 2022

- This letter formally advised the City of Nedlands that the State of WA was intent on proceeding with the development with a direct lease to Tawarri Hot Springs Pty Ltd. The letter also notified the City that documents had been lodged at Landgate to excise the Site from the Class A Reserve.

In conclusion, the letter requested the City advise the Minister by 20 May 2022 of how it foresees its inclusion an/or role, if any, in the development moving forward.

Attachment 3 - Letter from Department of Planning, Lands and Heritage to City of Nedlands dated 2 May 2022

- Following Council's resolution of 26 April 2022 to establish a Tawarri Recommissioning Committee and the approval to undertake various remediation works at the Site, this letter was sent to advise the City that the Site had been

excised from the Class A Reserve and the land was no longer under the care, control and management of the City.

The letter requested the City advise the Minister by 20 May 2022 of how it foresees its inclusion an/or role, if any, in the progression of the development

Attachment 4 - Letter from Mayor Argyle to the Minister for Lands dated 3 May 2022

- Noting the land was no longer under the care, control and management of the City, this letter advised the City had removed the temporary fencing and requested permission to enter the Site and remedy safety issues.

Attachment 5 - Letter from Department of Planning, Lands and Heritage to City of Nedlands dated 9 May 2022

- Responding on the Minister's behalf, the Department of Planning, Lands and Heritage ('DPLH') reminded the City that it had taken care, control and management of the Site and that it had secured the Site by re-erecting the temporary fencing. DPLH advised no further actions are required from the City with respect to the Site.

Throughout this period, the City has also sought legal advice to determine whether the City has any 'ownership' rights to the Site, or the building on the Site and whether the City is entitled to compensation. The advice received has shown that the City has no ownership rights and is highly unlikely to be awarded any form of compensation.

## Discussion

As a result of Council's decision not to proceed with the major land transaction for the Site, the Minister for Lands has used his power to excise the Site from the Class A Reserve.

In the letter dated 20 April 2022, the Minister for Lands requested the City advise by the 20 May 2022 of how it foresees its inclusion an/or role, if any, in the development moving forward.

Noting the unlikelihood of the Site being returned to the City for an alternate use and the fact legal advice sought has shown the City has no 'ownership' rights to the Site, the elected group has asked the Administration to draft this report recommending the Chief Executive Officer write to the Minister requesting an extension of his deadline for a period of 2-months to allow the City, if possible, time to recommence negotiations with the State of WA and Tawarri Hot Springs Pty Ltd.

## Consultation

No consultation has been undertaken.

## Strategic Implications

### 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.

#### **Great for Business**

Our City has a strong economic base with renowned Centres of Excellence and is attractive to entrepreneurs and start-ups.

## Budget/Financial Implications

Nil.

## Legislative and Policy Implications

Nil.

## Decision Implications

Should Council support this recommendation, the Chief Executive Officer would write to the Minister requesting an extension of time, if possible, to recommence negotiations with the State of WA and Tawarri Hot Springs Pty Ltd.

- In the event the Minister agreed to the extension request, elected members would need to consider whether any change in the Council's position would be commercially acceptable to both the State of WA and/or Tawarri Hot Springs Pty Ltd.
- Elected members would also need to consider implications under section 3.59 of the *Local Government Act 1995* which may include the revocation of a previous decision of Council and the re-advertising the major land transaction (if a significant change to the arrangement was agreed upon) to the community.

Should Council choose to not support this recommendation, the City's previous resolution of 29 March 2022 would stand, and the Chief Executive Officer would advise the Minister for Lands accordingly.

## **Conclusion**

The City of Nedlands Council have made a decision not to proceed with the major land transaction for the Tawarri Site.

The Minister for Lands has used his power to proceed with the development and has formally excised the Site from the Class A Reserve, resulting in the City being no longer in care, control and management of the Site.

Should elected members support the recommendation as contained within this report, the Chief Executive Officer would write to the Minister requesting an extension of time, if possible, to reignite negotiations with the State of WA and Tawarri Hot Springs Pty Ltd.

## **Further Details**

N/A.



## **10. Declaration of Closure**

There being no further business, the Presiding Member declared the meeting closed at 8.30pm.