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***Minutes***

***Special Council Meeting***

***19 October 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.

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**City of Nedlands**

**Minutes of a special meeting of Council to be held in the Council chambers, Nedlands on Tuesday 19 October 2021 at 7pm for the purpose of:**

1. **Election of Deputy Mayor.**
2. **Establishment & Appointment of Council Members to Audit & Risk Committee and the Committee of the Whole of Council.**
3. **Consideration of Responsible Authority Report for Child Care Premises and 6 Aged and Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont.**
4. **Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands.**

# Declaration of Opening

The Presiding Member declared the meeting open at 7pm 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 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 4 members of the public present and 3 online.

**Press** The Post Newspaper representative.

**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 have completed Public Address Session Forms to be made at this point.

Mr Brendan O’Toole, Dalkeith Item 9

(spoke in opposition to the recommendation)

Mrs Martina Bovell Item 9

(spoke in opposition to the recommendation)

Mr Alessandro Stagno Item 9

(spoke in support of the recommendation)

# 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 Coghlan – Item 9 - Consideration Responsible Authority Report for Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont

Councillor Coghlan disclosed an impartiality interest in Item 9 - Consideration Responsible Authority Report for Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont 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 1 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 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 she 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 Coghlan – 10 - Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands

Councillor Coghlan disclosed an impartiality interest in Item 10 - Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands 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 1 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 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 she 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 Bennett – Item 9 - Consideration Responsible Authority Report for Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont

Councillor Bennett disclosed an impartiality interest in Item 9 - Consideration Responsible Authority Report for Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont Councillor Bennett disclosed that he is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 1 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 Bennett advised that he would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate he 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 Bennett – 10 - Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands

Councillor Bennett disclosed an impartiality interest in Item 10 - Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands Councillor Bennett disclosed that he is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 1 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 Bennett advised that he would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate he 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.

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

Nil.

# Election of the Deputy Mayor

|  |  |
| --- | --- |
| **Council** | 19 October 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. |

Please Note: Council Members wishing to nominate for the position of Deputy Mayor will be given 5 minutes to promote themselves to their fellow Council Members prior to the vote.

The election of a Deputy Mayor is based on First Past the Post and is to be conducted in accordance with the Local Government Act 1995, section 2.15, schedule 2.3 clauses 4, 7 and 8 of the Local Government Act 1995 and voting will be by secret ballot. NOTE: There is no provision for proxy voting. The Chief Executive Officer (CEO) will be the Returning Officer for this election.

Local Government Act 1995, Schedule 2.3 states:

**8. How deputy mayor or deputy president is elected**

1. The council is to elect a councillor (other than the mayor or president) to fill the office.
2. The election is to be conducted in accordance with the procedure prescribed by the mayor or president, or if he or she is not present, by the CEO.
3. Nominations for the office are to be given to the person conducting the election in writing before the meeting or during the meeting before the close of nominations.

(3a) Nominations close at the meeting at a time announced by the person conducting the election, which is to be a sufficient time after the announcement by that person that nominations are about to close to allow for any nominations made to be dealt with.

1. If a councillor is nominated by another councillor the person conducting the election is not to accept the nomination unless the nominee has advised the person conducting the election, orally or in writing, that he or she is willing to be nominated for the office.
2. The council members are to vote on the matter by secret ballot as if they were electors voting at an election.
3. Subject to clause 9(1) the votes cast under subclause (5) are to be counted, and the successful candidate determined, in accordance with Schedule 4.1 as if those votes were votes cast at an election.
4. As soon as is practicable after the result of the election is known, the person conducting the election is to declare and give notice of the result in accordance with regulations, if any.

**9. Votes may be cast a second time**

1. If, when the votes cast under clause 8(5) are counted, there is an equality of votes between 2 or more candidates who are the only candidates in, or remaining in, the count, the count is to be discontinued and, not more than 7 days later, a special meeting of the council is to be held.
2. Any nomination for the office may be withdrawn, and further nominations may be made, before or when the special meeting is held.
3. When the special meeting is held the council members are to vote again on the matter by secret ballot as if they were voting at an election.
4. The votes cast under subclause (3) are to be counted, and the successful candidate determined, under Schedule 4.1 as if those votes were votes cast at an election.

**Ballot Result**

**Following the ballot result, the successful Councillor will be appointed and sworn into the position of Deputy Mayor for a term ending immediately prior to the next Local Government Election in October 2023.**

The Mayor appointed Chief Executive Bill Parker as the Returning Officer for the Election of the Deputy Mayor.

The Chief Executive Officer received Councillor Smyth’s nomination via email prior to the meeting.

The Chief Executive Officer received Councillor Bennett’s nomination via email prior to the meeting. Councillor Bennett withdrew his nomination at the meeting.

Councillor McManus was nominated by Councillor Hodsdon and Councillor McManus accepted the nomination.

Councillor Bennett left the meeting at 7.19pm and returned at 7.21pm.

Moved – Councillor Wetherall

Seconded – Councillor Hodsdon

**That standing order 9.5 be suspended to allow Deputy Mayor Candidates 5 minutes to promote themselves to their follow Council Members prior to voting.**

**CARRIED 12/1**

**(Against: Cr. Mangano)**

Councillor Smyth followed by Councillor McManus gave a speech to present themselves to their fellow Council Members as to why they should vote for them as Deputy Mayor.

Following speeches, the Mayor called for the vote.

Councillor Mangano left the meeting at 7.31pm.

**A secret ballot was conducted and following counting of the votes the Returning Officer, Bill Parker, CEO declared Councillor McManus the Councillor elected as the Deputy mayor for a two-year term ending 14 October 2023.**

Councillor McManus was sworn in by the Presiding Member.

Moved – Councillor Hodsdon

Seconded – Councillor Wetherall

**That Standing Order 9.5 now resume.**

**CARRIED UNANIMOUSLY 12/-**

# Committee of the Whole of Council (Council Committee) – Appointment of Members

|  |  |
| --- | --- |
| **Council** | 19 October 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. |

Councillor Mangano returned to the meeting at 7.28 pm.

**Regulation 11(da) – Not Applicable – Minor addition to clause 1.**

Moved – Councillor Wetherall

Seconded – Councillor Hodsdon

**That the Recommendation to Council be adopted subject to the words “or earlier, when Council adopts a new Governance Framework” being added to clause 1 after the “2023”.**

Amendment

Moved - Councillor Smyth

Seconded - Councillor Youngman

That the words “Deputy Mayor” be removed from clause 1; and

Amends the Terms of Reference to remove the paragraph titled “Delegations”.

The AMENDMENT was PUT and was

Lost 9/4

(Against: Mayor Argyle Crs. Brackenridge Senathirajah Amiry McManus Mangano Combes Hodsdon Wetherall)

**The Substantive was PUT and was**

**CARRIED 10/3**

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

**Council Resolution**

**Council:**

1. **appoints the Mayor, Deputy Mayor and all Councillors to the Committee of the Whole of Council (Council Committee) for a period ending immediately prior to the next Local Government Elections in 2023.**
2. **adopts the Terms of Reference of the Committee of the whole Council (Council Committee) as below.**

Recommendation to Council

Council:

1. appoints the Mayor, Deputy Mayor and all Councillors to the Committee of the Whole of Council (Council Committee) for a period ending immediately prior to the next Local Government Elections in 2023.
2. adopts the Terms of Reference of the Committee of the whole Council (Council Committee) as below.

**Executive Summary**

The purpose of this Report is to appoint members of the Committee of the Whole of Council (Council Committee) and adopt the terms of reference.

**Voting Requirements**

Absolute Majority Required.

**Discussion/Overview**

**Background**

The committee of the Whole of Council (Council Committee) consists of all Councillors and meetings on the Second Tuesday of every Month.

The Council resolved in September 2021 to review the City’s Governance Framework. This was set as one of 5 Key Responsibility Areas (KRAs) for the Interim Chief Executive Officer.

The Chief Executive Officer is currently reviewing the existing framework that includes this committee. Should Council decide on a new Governance Framework, this committee may be removed in preference of a more contemporary model.

It is not anticipated that any changes will occur to the existing structure until 2022.

**Terms of Reference for the Committee of the Whole of Council (Council Committee)**

**Purpose**

The Committee of the Whole of Council will consider matters presented to it by the Council administration and only make recommendations to Council to enable the necessary or convenient proper management of the Council functions of the Local Government Act 1995, the Planning and Development Act 2005 and other relevant legislation as amended from time to time.

**Scope**

1. This Committee is established by Council in accordance with the Local Government Act 1995, section 5.8.

2. Clause 3.2(4) of Council’s Standing Orders further states:

“Unless stated otherwise in the Terms of Reference of that Committee, the procedure for meetings of Committees and the order of business shall be the same as the procedure and the order of business for Council meetings”.

**Under these Terms of Reference**

* + - 1. The Presiding Member may invite any members of the public who have prior to the meeting commencing requested, as required under Clause 3.4 of Council’s Standing Orders, to address the Committee on a particular item just prior to the item being considered by Committee. If the Presiding Member invites the speaker/s forward to address the Committee, then it must also be before the item has been moved and seconded.
      2. Committee members and Staff are not required to rise when speaking in a Committee meeting; and
      3. A Committee member may speak more than once on a matter, but no more than twice on a matter, unless so agreed to by the Presiding member.

**Membership**

1. The Mayor, Deputy Mayor and all Councillors will be members of the Council Committee.
2. Meetings of the Committee shall be open to the public, except where the Committee decides by resolution to conduct its business or any specified part thereof behind closed doors, in which case provisions of clause 3.12 inclusive of Council Standing Orders apply.

**Meetings**

1. The Council Committee operates under Council’s Standing Orders Local Law.
2. The Council Committee will meet on the second Tuesday of each month, except for December when the meeting will be held on the first Tuesday of the month, in January when no meeting will be held, or as otherwise determined by Council.
3. The quorum for a meeting will be 50% of the offices of the Council Committee as per section 5.19 of the Local Government Act 1995.

**Delegations**

1. Council Committee is delegated decision making to determine:
   1. The Council position on development applications to a Joint Development Assessment Panel;
   2. Representation and presentation to a Joint Development Assessment Panel on Council’s position, where the Mayor and Deputy Mayor decide not to speak for Council;
   3. The need for professional support for preparation and representation to a Joint Development Assessment Panel and expenditure within existing budget in relation to performance of this delegation.

# Audit & Risk Committee – Appointment of Members

|  |  |
| --- | --- |
| **Council** | 19 October 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. |

**Regulation 11(da) – Not Applicable – Minor addition to appoint Deputy voting members as per the Terms of Reference.**

Moved – Councillor Hodsdon

Seconded – Councillor McManus

**Council:**

1. **appoints the Mayor and Councillors Combes, Senathirajah, McManus and Mangano to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2023;**
2. **appoints the following Councillors Amiry, Hodsdon, Bennett and Brackenridge as Deputies to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2023;**
3. **instructs the CEO to call for expressions of interest from the Community for the Community Member; and**
4. **adopts the Terms of Reference of the Audit & Risk Committee per as below.**

Amendment

Moved - Councillor Smyth

Seconded - Councillor Wetherall

**That the Terms of Reference be amended as follows:**

**Under “Membership” that a new clause 4 be added as follows:**

**(4) The ward deputy will be invited to attend the Committee as a voting member if the primary ward member is absent, an apology, on leave or has resigned.**

**The AMENDMENT was PUT and was**

**CARRIED UNANIMOUSLY 13/-**

**The Substantive Motion was PUT and was**

**CARRIED UNANIMOUSLY 13/-**

**Council Resolution**

**Council:**

1. **appoints the Mayor and Councillors Combes, Senathirajah, McManus and Mangano to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2023;**
2. **appoints the following Councillors Amiry, Hodsdon, Bennett and Brackenridge as Deputies to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2023;**
3. **instructs the CEO to call for expressions of interest from the Community for the Community Member;**
4. **adopts the Terms of Reference of the Audit & Risk Committee per as below; and**
5. **That the Terms of Reference be amended as follows:**

**Under “Membership” that a new clause 4 be added as follows:**

**(4) The ward deputy will be invited to attend the Committee as a voting member if the primary ward member is absent, an apology, on leave or has resigned.**

Recommendation to Council

Council:

1. appoints the Mayor and Councillors (four - one from each Ward) to the Audit & Risk Committee for the period ending immediately prior to the next Local Government elections in 2023;
2. instructs the CEO to call for expressions of interest from the Community for the Community Member; and
3. adopts the Terms of Reference of the Audit & Risk Committee per as below.

**Executive Summary**

The purpose of this report is to appoint Council members to the Audit and Risk Committee and adopt the terms of reference. Nominations for Community Members will be advertised and will be presented to the Committee and Council for consideration.

**Voting Requirement**

Absolute majority required.

**Discussion/Overview**

**Background**

The Audit & Risk Committee meets from time to time on an as required basis. Previous members for the period ending October 2020 were the Mayor and Councillors McManus, Mangano, Poliwka and Senathirajah with Councillors Smyth, Bennett, and Wetherall as deputies.

Mr Paul Setchell and Mr Stephen Foley and were appointed as Community Members, with Mr Setchell retiring from the Committee during 2021.

**Terms of Reference of Audit & Risk Management Committee**

**Purpose**

This Committee is established by Council in accordance with the Local Government Act 1995, part 7, to assist the Council under Regulation 16 of the Local Government (Audit) Regulations 1995 to discharge its responsibilities with regard to the exercise of due care, diligence and skill in relation to:

* The reporting of financial information, the application of accounting policies, and the management of the financial affairs of the City,
* The assessment of the adequacy of the management of Risk.

**Scope**

**Local Government (Audit) Regulations 1995**

**Regulation 16 - Functions of audit committee**

An audit committee has the following functions —

(a) to guide and assist the local government in carrying out —

(i) its functions under Part 6 of the Act; and

(ii) its functions relating to other audits and other matters related to financial management;

(b) to guide and assist the local government in carrying out the local government’s functions in relation to audits conducted under Part 7 of the Act;

(c) to review a report given to it by the CEO under regulation 17(3) (the ***CEO’s Report***)and is to —

(i) report to the council the results of that review; and

(ii) give a copy of the CEO’s report to the council;

(d) to monitor and advise the CEO when the CEO is carrying out functions in relation to a review under —

(i) regulation 17(1); and

(ii) the *Local Government (Financial Management) Regulations 1996* regulation 5(2)(c);

(e) to support the auditor of the local government to conduct an audit and carry out the auditor’s other duties under the Act in respect of the local government;

(f) to oversee the implementation of any action that the local government —

(i) is required to take by section 7.12A(3); and

(ii) has stated it has taken or intends to take in a report prepared under section 7.12A(4)(a); and

(iii) has accepted should be taken following receipt of a report of a review conducted under regulation 17(1); and

(iv) has accepted should be taken following receipt of a report of a review conducted under the *Local Government (Financial Management) Regulations 1996* regulation 5(2)(c);

(g) to perform any other function conferred on the audit committee by these regulations or another written law.

The committee shall have as its primary duties and responsibilities the following tasks:

**Audit**

1. To consider and approve the brief for the provision of audit services;

2. To evaluate the responses to the request for the provision of audit services and to make a recommendation to Council on the appointment of an auditor;

3. To meet with Council’s external auditors and review the Audit Plan prior to the conduct of the interim audit each year;

4. To ensure that the audit is being conducted in accordance with the brief and the terms of appointment and that matters of concern to the Council and/or the Committee are being addressed;

5. Ensure that the Council’s financial affairs and systems and processes are being managed and reported in accordance with statutory requirements and Australian Accounting Standards;

6. Ensure that relevant financial information is reported to Council in a form that meets the needs and expectations of Council, clearly setting out the key relevant financial data, such that the Council can confidently understand the financial performance of the Council’s affairs;

7. Review the audit report and make appropriate recommendations to Council; and

8. Where appropriate and with the approval of Council seek advice and/or assistance in relation to matters pertaining to the audit or financial affairs of the City.

9. Monitor the implementation of the Audit Management Plan.

**Risk Management**

Twice yearly consider a report in relation to the management of risk within the City of Nedlands and satisfy itself that appropriate controls and processes are in operation and are adequate for dealing with the risks that impact on the City.

To address any specific requests referred to it from Council in relation to issues of risk and risk management.

Monitor the implementation of the Strategic Risk Management Plan.

**Membership**

1. The membership of the committee shall comprise the Mayor and one Councillor from each ward with the Councillors being determined by nomination and if necessary, a ballot conducted at a Council Meeting and up to two non-Councillor Members, being residents of The City of Nedlands.
2. Council will appoint one Councillor from each ward as deputy members of the committee.
3. If a vacancy on the committee occurs for whatever reason, then Council shall appoint a replacement in accordance with the same arrangements as for the original appointment.
4. The term of the presiding member and committee members will expire immediately prior to the next ordinary Council election.
5. The presiding member shall be determined by election amongst the members of the committee. The election will take place at the first meeting following the reconstitution of the committee after each ordinary Council election. The Mayor is eligible to vote for a presiding member but is not eligible to sit as the presiding member.
6. Should the elected presiding member not be present during a meeting of the committee then a temporary presiding member shall be elected in accordance with 5 above.
7. Community members shall have appropriate qualifications in Audit and / or Risk Management.
8. If a Committee member is unable to attend a meeting, an apology or an approved leave of absence is required. The Committee may resolve to relinquish membership after three or more unexcused absences.

**Staff**

The following staff will attend committee meetings to provide technical support and advice:

* Chief Executive Officer
* Director of Corporate & Strategy
* Manager Financial Services

Other staff may attend committee meetings when requested by the Committee through the Chief Executive Officer.

**Invitees/Attendees**

The Committee may invite relevant persons to attend and address or advise the committee, within the ambit of its scope and where necessary with the approval of Council (e.g., if authorisation of funding is required), as it sees fit including but not limited to:

* The external auditor or his/her representative
* Internal auditors
* Relevant consultants

**Meetings**

1. The Council Committee operates under the Council’s Standing Orders Local Law.
2. The Committee shall formally meet at least quarterly. A schedule of meetings will be developed and agreed to by the members. Additional meetings may be called by the Presiding member. It is the responsibility of the presiding member to call the meetings of the committee.
3. The quorum for a meeting will be 50% of the offices of the Audit & Risk Committee as per section 5.19 of the Local Government Act 1995.

**Reporting**

The Committee shall report quarterly to the Council summarising its activities during the previous financial year.

**Delegated Authority**

The Audit and Risk Committee will have delegated authority to meet with the auditor in accordance with Section 7.12A(2) of the Local Government Act 1995.

# Consideration Responsible Authority Report for Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt Claremont

|  |  |
| --- | --- |
| **Council** | 19 October 2021 – Special Council Meeting |
| **Applicant** | Apex 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. 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 1 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 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 she 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 Bennett – Impartiality Interest**

Councillor Bennett disclosed that he is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 1 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 Bennett advised that he would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate he 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 Bennett left the meeting at 7.50pm.

Moved – Councillor McManus

Seconded – Councillor Wetherall

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont; included at Attachment 1;
2. subject to all statutory environmental approvals being obtained prior to any work being undertaken on the site;
3. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont; and
4. appoints Councillor McManus to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont.

Amendment

Moved - Councillor Smyth

Seconded - Councillor Youngman

That an additional clause be added as follows:

Council requests the MINJDAP, should they approve the application, to:

MINJDAP defer their decision for 60 days to allow for:

1. Formation of a condition on the re-location of vegetation that is part of the endangered and protected bushland.
2. An independent traffic report on the introduction of driveways on the otherwise restricted access carriageway along Montgomery Avenue.

The AMENDMENT was PUT and was

Lost 4/7

(Against: Mayor Argyle Crs. Senathirajah Amiry McManus Combes Hodsdon & Wetherall)

The Original Motion was PUT and was

Lost 5/6

(Against: Mayor Arygle Crs. Brackenridge Amiry

Smyth Mangano & Youngman)

**Regulation 11(da) – Reasons as listed in the resolution.**

Moved – Mayor Argyle

Seconded – Councillor Amiry

**Council Resolution**

**Council:**

1. **notes as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt. Claremont, included at Attachment 1;**
2. **instructs the CEO to incorporate Council’s Responsible Authority recommendation and rationale into the Responsible Authority Report for the development of the Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt. Claremont being;**

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

1. **Defer DAP Application reference DAP/21/02052 and accompanying plans date stamped 12 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 Clause No.16 of the City of Nedlands Local Planning Scheme No. 3, for the proposed Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt. Claremont on the basis of;**
2. **The development should receive Federal environmental approval under the Environmental Protection and Biodiversity Conservation Act prior to the planning approval being granted to ensure that a full assessment of the flora on the site is undertaken and assessed against the Federal environmental criteria.**
3. **appoints Mayor Argyle and Councillor Smyth to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the proposed Child Care Premises and 6 Aged or Dependent Persons Dwellings at 100 Montgomery Avenue, Mt. Claremont.**

**The basis for the deferral is that:**

**The application can be deferred until the Commonwealth Department reviews the proposal and vegetation on the site. The vegetation may be of national significant thus a Federal review is warranted. Once the Federal environmental process is finalised the proposal can then be reviewed and modified if necessarily. It could be argued that it is more appropriate that this occur prior to the development application being determined.**

**CARRIED 7/4**

**(Against: Crs. McManus Combes Hodsdon & Wetherall)**

Recommendation to Council

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont; included at Attachment 1;
2. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont; and
3. appoints Councillor (insert name) and Councillor (insert name) to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development of a child care premises and 6 aged or dependent persons dwellings at 100 Montgomery Avenue, Mt Claremont.

**1.0 Executive Summary**

The purpose of this report is for Council to consider a Joint Development Assessment Panel application at 100 Montgomery Avenue, Mt Claremont. 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 21 October 2021.

The application seeks development approval for a two-storey Child Care Premises (Early Learning Centre) and six (6) aged or dependent persons dwellings. The two storey child care premises will be located on the southern half of the site and will accommodate up to 93 children and 17 staff. The aged or dependent persons dwellings will be single storey and located on the northern half of the site. Separate access/egress points are proposed for both elements of the development.

**2.0 Background**

History

The aged or dependent persons dwellings component of this application was initially lodged for Council determination. Whilst the proposal was considered by the Council Committee on 13 July 2021, the application was withdrawn by the Applicant prior to determination by Council. The aged or dependent persons dwellings component of the application has been incorporated into the JDAP application alongside the child care premises. No significant changes to the aged or dependent persons dwellings have been undertaken between the two applications.

Site Description

The site is located north of the Mt Claremont Library and Community Centre. The site is zoned Residential R30 by Council’s Local Planning Scheme No.3 (the Scheme). The site is currently undeveloped and contains remnant vegetation with evidence of parkland clearing and firebreak construction. To the north of the site is land zoned Residential R30. To the west of the site is a residential lot located within the Town of Cambridge that is zoned Residential R30, beyond which is a remnant bushland reserve.

The site is 3,306m² in area and is currently subject to a subdivision to create two lots of 1,152m² and 1,154m² in area. The smaller lot will contain the aged or dependent persons dwellings and the second lot the child care premises. Access is only available to the site from Montgomery Avenue, as approved by the Western Australian Planning Commission.

**3.0 Application Details**

The development proposal is outlined in a series of attachments to the RAR (Attachment 1). There are two main components:

Aged or dependent persons dwellings:

A total of 6 single storey dwellings to be constructed in accordance with the aged or dependent persons dwellings design principles of the Residential Design Codes Volume 1 (R-Codes). These will be served by a central common property driveway with three dwellings on each side. Due to the slope of the site downwards from the road to the north western corner of the site, the finishes levels of the dwellings will be stepped downwards using both cut and fill. The dwellings are consistent with the majority of deemed-to-comply provisions of the R-Codes. However, assessment against the design principle pathway of approval is required for open space, siteworks and the aged or dependent persons dwellings elements of the R-Codes.

Childcare premises:

A two storey childcare premises building is proposed for the southern portion of the site. This will take the form of a contemporary ‘upside-down’ childcare premises with car parking contained in an under croft area with the majority of the care space located on the upper floor. The centre will accommodate up to 93 children 0-5 years and 17 staff. A total of 32 car parking spaces are proposed, which is a shortfall of 4 based on Council’s Parking Local Planning Policy. The proposal has been assessed against Council’s Child Care Premises Local Planning Policy. Discretion is required for hours of operation, noise and side and rear setbacks.

**4.0 Consultation**

Public Consultation

The application was advertised from 6 September 2021 until 11 October 2021. Advertising was conducted in accordance with Council’s Consultation of Planning Proposals Local Planning Policy.

At the close of advertising a total of 10 submissions were received, 7 being objections, 1 in support and 2 neither objecting or supporting. The issues raised in the submissions included:

* The area is primarily residential in nature with the proposed childcare centre inconsistent with this zoning.
* Remnant vegetation will be destroyed by the development, affecting federally protected banksia woodland and habitat to endangered fauna, including bees.
* Environmental approvals processes not being followed.
* Traffic impact on Montgomery Avenue.
* Operational concerns with the childcare centre.
* The childcare premises is better suited for non-residential sites.
* Parking during special events will impact on the adjacent community centre.

Further detail on each of these issues and how they are proposed to be addressed is included in the RAR. The concerns raised regarding environmental concerns are examined in the RAR. The conclusion is that the current development application is unfettered by any requirement for approval under environmental legislation. There is no impediment for the JDAP to consider this application, although the Applicant is advised to ensure all other relevant approvals have been obtained, including any necessary environmental approval.

In addition to the above submissions, the submissions received during the first round of advertising of the aged or dependent persons dwellings has been also considered.

**5.0 Recommendation to JDAP**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 21 October 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**

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

**Approve** DAP Application reference DAP/21/02052 and accompanying plans date stamped 12 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**

Conditions relating to the entire development

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 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. Prior to the occupation of the development, the car parking designated for visitors shall be clearly marked or signage provided to the specification and maintained thereafter by the landowner to the satisfaction of the City of Nedlands.
4. 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 so as not to be highly visible from beyond the boundaries of the development site to the satisfaction of the City of Nedlands.
5. 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.
6. All building works to be carried out under this development approval are required to be contained within the boundaries of the subject lot.
7. Prior to the issue of a Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.
8. The boundary to Reserve 43379 shall be fenced or otherwise demarcated prior to works commencing to prevent the clearing or use of the reserve during construction to the satisfaction of the City of Nedlands.
9. The submitted landscaping plans are to be implemented prior to occupation and maintained at all times with all species selections approved by the City of Nedlands are suitable in close proximity to native bushland.

Conditions relating to the aged or dependent persons dwellings component

1. Prior to occupation, the owner must execute and provide to the City a notification pursuant to Section 70A of the *Transfer of Land Act 1893* (as amended) to be registered on the Certificate of Title(s) advising prospective purchasers that the use of the land is subject to an Aged or Dependent Persons’ restriction. The notification shall read as follows:

*“This property is approved for use as an Aged or Dependent Persons’ Dwelling. The dwelling is restricted to be occupied by at least one person who:*

* 1. *Is aged 55 years or more; or*
  2. *Has a recognised form of disability requiring special accommodation for independent living or special care.”*

1. The Aged Persons’ dwelling internal design, external paths and car parking areas shall be constructed in accordance with Clause 5.5.2 of the Residential Design Codes and Australian Standard AS4299 – Adaptable Housing.
2. Prior to occupation of the development the finish of the parapet walls is to be finished externally to the same standard as the rest of the development or in:
3. Face brick;
4. Painted render;
5. Painted brickwork; or
6. Other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City.

Conditions relating to the childcare premises component

1. The maximum occupancy of the facility shall be 93 children and 17 staff at any one time.
2. The hours of operation of the facility shall be Weekdays 6:30am to 6:30pm and Weekends and Public Holidays 8:00am to 6:00pm.
3. Outdoor play shall not be permitted before 7:00am on weekdays.
4. The recommendations of sections 5.1 and 5.3 of the Environmental Noise Assessment prepared by Lloyd George Acoustics and dated 9 July 2021 are to be implemented to the satisfaction of the City of Nedlands prior to occupation.
5. A Noise Management Plan based on the recommended ‘best practices’ outlined in section 6 of the Environmental Noise Assessment prepared by Lloyd George Acoustics and dated 9 July 2021 is to be prepared and approved by the City of Nedlands prior to occupation and thereafter implemented at all times.
6. The Waste Management Plan prepared by Talis Consultants dated 9 July 2021 forms part of this development approval and shall be complied with at all times to the satisfaction of the City of Nedlands.
7. Suitable arrangements being made prior to issue of a building permit to ensure on-site rubbish collection by a 7.5m waste truck is provided, including sufficient manoeuvring space to enable forward-in, forward out travel and space to allow collection of bins.
8. 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.
9. A Parking Management Plan is to be prepared and approved by the City of Nedlands prior to occupation. The plan will address parking management matters raised in the relevant transport impact statement, environmental noise assessment and waste management plan as appropriate to ensure the effective management of parking on the site.
10. Prior to occupation, all bicycle parking spaces shall be provided in accordance with Australian Standard 2890.3 - 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.
11. All car parking dimensions (including associated wheel stops and headroom clearance), manoeuvring areas, crossovers and driveways shall comply with Australian Standard 2890.1 - Off-street car parking and Australian Standard 2890.6 - Off-street parking for people with disabilities (where applicable) to the satisfaction of the City of Nedlands.
12. 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.
13. External lighting shall comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.

**Advice Notes:**

General Advice

* + - 1. The applicant is advised that:
         1. The granting of development approval is not to be construed as approval under any relevant state or federal environmental legislation. The onus is on the applicant / landowner to ascertain whether further approvals are required prior to works commencing on the site.
         2. A Certified Building Permit must be obtained prior to construction and thereafter an Occupancy Permit must be obtained; the applicant and owner should liaise with the City's Building Services in this regard. (Building)
         3. Any public spaces within the development which are proposed for activities (temporary or permanent) that are deemed to be a public building under the Health (Public Buildings) Regulations 1992, will need to comply fully with those Regulations. (Environmental Health)

Landscaping Advice

* + - 1. The applicant is advised that:

1. The site is located in close proximity to remnant native bushland contained on Crown Land and unlikely to be developed. Species selection for the landscaping plans are recommended to be endemic species that will not introduce week species into these reserves. Further assistance in this regard can be provided by the City of Nedlands.
2. The contractor/developer shall protect the City’s street and public open space trees from any damage that may be caused by the scope of works covered by this contract for the duration of the contract. All work carried out under this contract is to comply with the City’s policies, guidelines and Australian Standards relating to the protection of trees on or adjacent to development sites (AS 4870- 2009). (Parks Services)
3. Prior to commencing landscaping of the nature strip / verge, refer to the City of Nedlands’ Nature Strip Improvement Guidelines to ascertain if there is a requirement to obtain a Nature Strip Improvement Permit. (Parks Services)

Construction Management Advice

* + - 1. In relation to the Construction Management Plan, the applicant is advised that the plan is to address but is not limited to the following matters:

1. hours of construction;
2. traffic management;
3. parking management;
4. access management;
5. management of loading and unloading of vehicles;
6. heavy vehicle access;
7. dust management;
8. waste management (where applicable);
9. protection of infrastructure and trees within the road and public open space reserve;
10. the need for a dilapidation report of adjoining properties;
11. if required, details of and reasons for construction work on the construction site that is likely to be carried out other than between 7.00 am and 7.00 pm on any day which is not a Sunday or public holiday;
12. if required, details of and duration of activities on the construction site likely to result in noise emissions that fail to comply with the standard prescribed under regulation 7 of the Environmental Protection (Noise) Regulations 1997;
13. predictions of noise emission on the construction site;
14. use of City car parking bays for construction related activities;
15. security fencing around construction sites;
16. gantries;
17. dewatering management plan;
18. contact details;
19. site offices;
20. details of measures to be implemented to control noise (including vibration) emissions;
21. complaint response procedure to be adopted;
22. details of how dust will be suppressed (e.g. by use of water tanker, independently powered water pumps, high volume hoses) or whether an approval from the Water Corporation for hydrant standpipe has been granted;
23. details of how dust and sand drift will be controlled in the event that the landscape remains bare for any period of time;
24. any other relevant matters. (Building / Environmental Health / Waste / Technical Services)
    * + 1. The applicant is advised that dust control measures are to be applied during construction in accordance with City of Nedlands Health Local Laws 2017 and Department of Water and Environmental Regulation requirements. (Environmental Health Services)

Noise Management Advice

* + - 1. The applicant is advised to consult the City’s Acoustic Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours. Prior to selecting a location for an air-conditioner, the applicant the applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as a guide to prevent noise affecting neighbouring properties. (Environmental Health Services)

Vehicle Access, Car and Bicycle Parking Advice

* + - 1. The applicant is advised that:

1. All works within the adjacent thoroughfare, i.e. road, kerbs, footpath, verge, crossover or right of way, also require a separate approval from the City of Nedlands prior to construction commencing. (Technical Services)
2. A new crossover or modification to an existing crossover will require a separate approval from the City of Nedlands prior to construction commencing. (Technical Services)
3. All redundant crossovers to be removed and the verge and kerbing reinstated prior to occupation of the development to the satisfaction of the City of Nedlands. (Technical Services)

Waste Management Advice

* + - 1. The applicant is advised that the responsible entity (strata/corporate body) shall be liable for all bin replacement costs and/or repair costs relating to damage caused as a result of the bin compaction process. (Waste Services)

Materials and Services Advice

* + - 1. The applicant is advised that:

1. All internal water closets and ensuites without fixed or permanent window access to outside air or which open onto a hall, passage, hobby or staircase, are to be serviced by a mechanical ventilation exhaust system which is ducted to outside air, with a minimum rate of air change equal to or greater than 25 litres / second.
2. Laundry facilities are to be provided in accordance with the Building Code of Australia, and adequately ventilated to reduce condensation, in accordance with AS1668.2 The use of mechanical ventilation and Airconditioning in buildings. (Environmental Health Services)

Stormwater Advice

* + - 1. The applicant is advised that:

1. All downpipes from guttering are to be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 100- year recurrent storm event. Soak-wells are to be a minimum capacity of 1.0m3 for every 80m2 of calculated surface area of the development. (Technical Services)
2. A sewage treatment and effluent disposal system or greywater reuse or treatment system is not to be installed unless an Approval to Construct or Install an Apparatus for the Treatment of Sewage has been issued by the City beforehand. (Technical Services)

Telecommunications Advice

* + - 1. The applicant is advised by the City’s Planning Services that developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, they need to contract a carrier to install telecommunications infrastructure in their new development. If you choose National Broadband Network (NBN) to service your development, you will need to enter into a developer agreement with NBN. The first step is to register the development via <http://www.NBNco.com.au/develop-or-plan-with-the-NBN/newdevelopments.html>, once registered NBN will be in contact to discuss the specific requirements for the development. NBN requires you to apply at least six months before the required service date. All telecommunications infrastructure should be built to NBN guidelines found at <http://www.NBNco.com.au/develop-or-plan-withthe-NBN/new-developments/builders-designers.html>.

Other Advice

* + - 1. The applicant is advised that the child care premises operator is to liaise with the City of Nedlands Community Services and Community Development sections when arranging special events where visitation to the facility may exceed car parking provision. This will ensure coordination with any events planned for the adjoining community centre to avoid parking and other conflicts.
      2. The applicant is advised that the City will liaise with the developer over a contribution to the upgrade of the footpath abutting the development site. The purpose of this upgrade is to link the development with the surrounding footpath network.

**6.0 Conclusion**

The application for 6 Aged or Dependant Persons’ Dwellings on 1,652m2 and an Early Learning Centre (Child Care Premises) accommodating up to 93 children and 17 staff, on the southern 1,654m2 portion of the site, has been presented for consideration.

The proposed Aged Persons Dwellings is considered to meet the key amenity related elements of R-Codes Volume 1 and as such is unlikely to have a significant adverse impact on the local amenity of the area. The proposal has been assessed and satisfies the design principles of the Residential Design Codes.

The proposed Early Learning Centre (Child Care Premises) is considered to comply with the City’s Child Care Premises Local Planning Policy and other relevant policies and is unlikely to have a significant adverse impact on the local amenity of the area.

Concerns raised in the submissions related primarily to the inappropriateness of approval on environmental grounds. Submissions raised concerns with remnant vegetation and native animal and insect habitat. The need for environmental consideration of the development is enshrined in state and federal legislation that sits outside of the scope of this planning assessment. The site has the appropriate zonings at regional and local level to warrant consideration of this application. Any development approval does not obviate the need for any other approval under any other legislation relevant to the site. Further, the issue of a development approval does not fetter any other authority acting under its legislation. The onus will remain on the landowner / developer to ensure all relevant approvals are in place prior to development taking place.

Accordingly, it is recommended that the application be approved, subject to recommended conditions.

# Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands

|  |  |
| --- | --- |
| **Council** | 19 October 2021 – Special Council Meeting |
| **Applicant** | Urbanista Town Planning |
| **Employee Disclosure under section 5.70 Local Government Act 1995 and section 10 of the City of Nedlands Code of Conduct for Impartiality** | 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 1 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 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 she 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 Bennett – Impartiality Interest**

Councillor Bennett disclosed an impartiality interest in Item 10 - Consideration of Responsible Authority Report for 10 Multiple Dwellings at 38 Portland Street, Nedlands Councillor Bennett disclosed that he is a Ministerial appointee and paid member of the MINJDAP that will be considering this item at a meeting scheduled for 1 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 Bennett advised that he would not stay in the room and debate the item or vote on the matter.

Please Note that although not participating in the debate he 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 McManus left the meeting at 8.49pm.

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

Moved – Councillor Combes

Seconded – Councillor Youngman

**Council Resolution**

**Council:**

1. **adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 10 Multiple Dwellings at No.38 Portland Street, 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 10 Multiple Dwellings at No.38 Portland Street, Nedlands.**

Councillor McManus returned to the meeting at 8.51pm.

Councillor Mangano left the meeting at 8.52pm and returned at 8.56pm.

**CARRIED 6/5**

**(Against: Crs. Senathirajah Amiry Smyth Mangano & Youngman)**

Recommendation to Council

Council:

1. adopts as the Responsible Authority the Officer Recommendation contained in the Responsible Authority Report for the development of 10 Multiple Dwellings at No.38 Portland Street, Nedlands included at Attachment 1;
2. instructs the CEO to incorporate Council’s Responsible Authority recommendation into the Responsible Authority Report for the development of 10 Multiple Dwellings at No.38 Portland Street, Nedlands; and
3. appoints Councillor (insert name) and Councillor (insert name) to coordinate Council’s submission and presentation to the Metro Inner-North JDAP for the development of 10 Multiple Dwellings at No.38 Portland Street, Nedlands.

**1.0 Executive Summary**

The purpose of this report is for Council to consider the Development Assessment Panel application that proposes 10 Multiple Dwellings 38 Portland Street, Nedlands. Council is requested to make its recommendation to the Metro Inner-North Joint Development Assessment Panel as the Responsible Authority. Council’s recommendation will be incorporated into the Responsible Authority Report and lodged with the DAP Secretariat on 20 October 2021.

Administration recommends Council adopt the Officer Recommendation for approval.

**2.0 Application Details**

The application is for a proposed two storey multiple dwelling development, comprising of 10 units at Lot 129 (No.38) Portland Street, Nedlands. This includes three (3) single bedroom apartments and seven (7) two-bedroom apartments.

**3.0 Consultation**

In accordance with the deemed provisions and the City’s Local Planning Policy - Consultation of Planning Proposals, the development was advertised for a period of 28 days, from 2 July 2021 to 30 July 2021.

Public consultation consisted of:

* 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 3 July 2021;
* 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 19 July 2021.

At the conclusion of the advertising period, the City received a total of 24 submissions. A total of 23 objections and 1 in support.

Amended plans for the proposal were submitted to the City on 28 September and 7 October 2021 that differ from the advertised plans in the following manner:

* New raised planter boxes added to the inside of balconies;
* Re-location of the internal staircase at ground level;
* New 600mm high wall between the communal outdoor living area and the street/driveway;
* Increase to the driveway width from 3m to 4m;
* Increase in width to the pedestrian path from 1.1m to 1.5m;
* Modification to the dwelling mix from 8, two-bedroom apartments and 2, one-bedroom apartments to 7, two-bedroom apartments and 3, one-bedroom apartments; and
* Increase to overall landscaping within the development.

The amendments made are not considered to trigger the need for formal re-advertising of the proposal. However, the amended plans were made available for public inspection on the City’s Your Voice website with a summary of changes proposed.

The main concerns raised in the objections included, but are not limited to:

* Parking;
* Traffic;
* Noise;
* Setbacks;
* Landscaping;
* Plot Ratio;
* Solar access;
* Waste

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.*

**4.0 Design Review**

The application was referred to the City’s Design Review Panel on 12 July 2021. A copy of the minutes from the meeting are contained in Attachment – Design Review Panel Minutes. The application was assessed in accordance with State Planning Policy 7.0 – Design of the Built Environment (SPP 7.0). A summary of the review is provided in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| 1 | *Supported* | | |
| 2 | *Supported with conditions* | | |
| 3 | *Not supported* | | |
| 0 | *Additional information required* | | |
|  | | Original Plans – 4 June 2021 | Amended Plans – 28 September 2021 |
| Principle 1 – Context & Character | |  |  |
| Principle 2 – Landscape Quality | |  |  |
| Principle 3 – Built Form & Scale | |  |  |
| Principle 4 – Functionality & Built Quality | |  |  |
| Principle 5 - Sustainability | |  |  |
| Principle 6 – Amenity | |  |  |
| Principle 7 - Legibility | |  |  |
| Principle 8 – Safety | |  |  |
| Principle 9 – Community | |  |  |
| Principle 10 – Aesthetics | |  |  |

Since the original application was presented to the Design Review Panel, amended development plans and justification were submitted to the City on 28 September 2021. The City referred the applicant’s revised plans and justification through to the chair of the Design Review Panel for a secondary review on 4 October 2021 with the following comments provided:

“The proponent has responded positively and effectively to the comments and Recommendations of the DRP. In particular they have:

* Improved the design, landscaping and legibility of the entry pathway to the units;
* Improved the planning and amenity of the units internally including the private outdoor spaces;
* Improved the quality of the circulation and communal spaces; and
* Provided satisfactory detailed written justifications in response to DRP suggestions

Having considered the revised proposal against the DRP Comments and Recommendations the DRP Chair believes the proposal is now supportable.”

Principles 5 and 6 (Sustainability and Amenity) remain conditionally supported.

In relation to Principle 5 (Sustainability), an Environmental Sustainability Report, prepared by a suitably qualified consultant, is recommended as a condition of approval. The contents and recommendations of the report is to be implemented as recommended to the satisfaction of the City.

In relation to Principle 6 (Amenity), the R-Codes consider the amenity of the development proposal in the assessment against the Acceptable Outcomes and the Element Objectives. The development proposal is considered to satisfy these parts. Refer to the Planning Assessment section of this report.

**5.0 Recommendation to JDAP**

Council’s recommendation will be incorporated into the Responsible Authority Report (RAR) and lodged with the DAP Secretariat on 21 October 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**

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

1. **Approve** DAP Application reference DAP/21/0214 and accompanying plans (Attachment – Development Plans and Elevations) 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 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. The development, hereby approved, shall at all times comply with the requirements of a ‘Residential – Multiple Dwelling’ use, as defined in the City of Nedlands Local Planning Scheme No. 3.
4. The development shall at all times comply with the application and the approved plans, subject to any modifications required as a consequence of any condition(s) of this approval.

Noise

1. Prior to occupation of the development a notification pursuant to Section 70A of the *Transfer of Land Act 1893* shall be prepared or vetted by the City’s solicitors at the expense of the owner and registered against the Certificate of Title to the land the subject of the proposed development advising the owners and subsequent owners of the land of the following matter(s):

“This lot is situated in the vicinity of a transport corridor and is currently affected or may in the future be affected by transport noise. Additional planning and building requirements may apply to development on this land to achieve an acceptable level of noise reduction”.

1. 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 which demonstrates compliance with the requirements of the *Environmental Protection (Noise) Regulations 1997.*
2. Prior to the lodgement of a Building Permit, the applicant is to demonstrate compliance with the recommendations within the acoustic report to the satisfaction of the City satisfaction.
3. 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.
4. Prior to the issue of a building permit, a noise management plan is to be submitted detailing measures that will be undertaken to ensure noise levels are kept within levels prescribed in the *Environmental Protection (Noise) Regulations 1997*. The plan is to be prepared by a suitably qualified consultant and is to include:
5. sound proofing measures used in the design and construction of the development;
6. predictions of noise levels;
7. control measures to be undertaken (including monitoring procedures);
8. a complaint response procedure; and
9. demonstration of all dwellings exceeding the minimum requirements of the National Construction Code as it relates to acoustic management.

All sound attenuation measures, identified by the plan or as additionally required by the City, are to be implemented prior to occupancy of the development or as otherwise required by the City and the requirements of the plan are to be observed at all times.

Waste Management

1. The Waste Management Plan dated 6 October 2021 prepared by Talis Consults forms part of this development approval and shall be complied with at all times to the satisfaction of the City. Recommendations and requirements contained within the Waste Management Plan are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.

Design

1. Prior to the lodgement of a Building Permit, a schedule of finishes and materials shall be submitted and approved to the satisfaction of the City. The finishes and materials shall be retained and maintained 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 externally to the same standard as the rest of the development in:
4. face brick;
5. painted render;
6. painted brickwork; or
7. other clean material as specified on the approved plans and maintained thereafter to the satisfaction of the City of Nedlands.
8. Prior to occupation of the development, all major openings and balconies (as annotated on the approved plans), shall be screened in accordance with the Residential Design Codes by either:
9. fixed obscured glazing or translucent glass to a height of 1.60 metres above finished floor level;
10. timber screens, external blinds, window hoods and shutters to a height of 1.6m above finished floor level that are at least 75% obscure;
11. a minimum sill height of 1.60 metres as determined from the internal floor level; or
12. an alternative method of screening approved by the City of Nedlands.

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

1. Prior to occupation of the development, each dwelling unit shall be provided with mechanical clothes driers or alternatively shall have an adequate area provided for drying clothes. Any drying area shall be screened from view from any adjacent public of communal spaces, to the satisfaction of the City of Nedlands.
2. External lighting shall comply with the requirements of Australian Standard 4282 – Control of Obtrusive Effects of Outdoor Lighting.

Building

1. Prior to the lodgement of Building Permit, a Construction Management Plan shall be submitted and approved to the satisfaction of the City. The approved Construction Management Plan shall be observed at all times throughout the construction process to the satisfaction of the City. Adjoining landowners shall be notified in writing no less than 14 days prior to construction.
2. Prior to the occupation of the development, screen doors are to be provided on the entry doors for Units 1.1, 1.2, 1.3 and 1.4 to allow for cross ventilation in accordance with Element 4.2 of the Residential Design Codes and maintained for the lifetime of the development.
3. All stormwater generated on site is to be retained on site to the satisfaction of the City of Nedlands. No stormwater will be permitted to enter the City of Nedlands’s stormwater drainage system unless otherwise approved.
4. All building works to be carried out under this development approval are required to be contained within the site boundaries of the subject lot.
5. Prior to occupation, all photovoltaic cells shown on the roof plan of the development shall be installed to the satisfaction of the City and maintained for the lifetime of the development.
6. A minimum of 20% (2) units are to be designed at building permit stage to the Silver Level requirements as defined in the Liveable Housing Design Guidelines (Liveable Housing Australia) and implemented prior to occupation.

Landscaping

1. Landscaping shall be installed and maintained in accordance with the approved Landscaping Plan prepared by TDL Beyond Green, received 7 October 2021. Any modifications to the plans are subject to approval by the City of Nedlands.
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.
3. 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

1. 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.
2. Prior to occupation, 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.
3. The visitor parking bay is to be clearly marked and made available to visitors at all times for the lifetime of the development, to the satisfaction of the City of Nedlands.

Sustainability

1. Prior to the issue of a Building Permit, a Sustainability Report prepared by a suitably qualified consultant shall be submitted and approved to the satisfaction of the City. Recommendations contained within the report are to be carried out and maintained for the lifetime of the development to the satisfaction of the City of Nedlands.

**Advice Notes:**

General Advice

The applicant is advised that:

1. A Certified Building Permit must be obtained prior to construction and thereafter an Occupancy Permit must be obtained; the applicant and owner should liaise with the City's Building Services in this regard. (Building)
2. Any public spaces within the development which are proposed for activities (temporary or permanent) that are deemed to be a public building under the Health (Public Buildings) Regulations 1992, will need to comply fully with those Regulations. (Environmental Health)

Construction and Dilapidation Management Advice

In relation to the Construction Management Plan, the applicant is advised that the plan is to address but is not limited to the following matters:

1. hours of construction;
2. traffic management;
3. parking management;
4. access management;
5. management of loading and unloading of vehicles;
6. heavy vehicle access;
7. dust management;
8. waste management (where applicable);
9. protection of infrastructure and street trees within the road reserve;
10. the need for a dilapidation report of adjoining properties;
11. if required, details of and reasons for construction work on the construction site that is likely to be carried out other than between 7.00 am and 7.00 pm on any day which is not a Sunday or public holiday;
12. if required, details of and duration of activities on the construction site likely to result in noise emissions that fail to comply with the standard prescribed under regulation 7 of the Environmental Protection (Noise) Regulations 1997;
13. predictions of noise emission on the construction site;
14. use of City car parking bays for construction related activities;
15. protection of infrastructure and street trees within the road reserve;
16. security fencing around construction sites;
17. gantries;
18. dewatering management plan;
19. contact details;
20. site offices;
21. details of measures to be implemented to control noise (including vibration) emissions; v. complaint response procedure to be adopted;
22. details of how dust will be suppressed (e.g. by use of water tanker, independently powered water pumps, high volume hoses) or whether an approval from the water corporation for hydrant standpipe has been granted;
23. details of how dust and sand drift will be controlled in the event that the landscape remains bare for any period of time after demolition;
24. any other relevant matters.

(Building / Environmental Health / Waste / Technical Services)

The applicant is advised that dust control measures are to be applied during construction in accordance with City of Nedlands Health Local Laws 2017 and Department of Water and Environmental Regulation requirements. (Environmental Health Services)

Noise Management Advice

The applicant is advised to consult the City’s Acoustic Advisory Information in relation to locating any mechanical equipment (e.g. air-conditioner, swimming pool or spa) such that noise, vibration impacts on neighbours are mitigated. The City does not recommend installing any equipment near a property boundary where it is likely that noise will intrude upon neighbours. Prior to selecting a location for an air-conditioner, the applicant the applicant is advised to consult the online fairair noise calculator at www.fairair.com.au and use this as a guide to prevent noise affecting neighbouring properties. (Environmental Health Services)

Landscaping Advice

The applicant is advised that:

1. The contractor/developer shall protect the City’s street trees from any damage that may be caused by the scope of works covered by this contract for the duration of the contract. All work carried out under this contract is to comply with the City’s policies, guidelines and Australian Standards relating to the protection of trees on or adjacent to development sites (AS 4870- 2009). (Parks Services)
2. The applicant is advised that all works within the verge including any landscaping will require a separate approval from the City of Nedlands prior to construction commencing. (Technical Services)

Waste Management Advice

The applicant is advised that:

1. The responsible entity (strata/corporate body) shall be liable for all bin replacement costs and/or repair costs relating to damage caused as a result of the bin compaction process. (Waste Services)
2. Recyclable waste stream waste bins shall not be compacted. (Waste Services)
3. As the proposal consists of more than 3 dwellings, the City’s Health Local Laws 2017 require an enclosure for the storage and cleaning of waste receptacles to be provided on the premises.

Stormwater Advice

The applicant is advised that:

1. All downpipes from guttering are to be connected so as to discharge into drains, which shall empty into a soak-well; and each soak-well shall be located at least 1.8m from any building, and at least 1.8m from the boundary of the block. Soak-wells of adequate capacity to contain runoff from a 100- year recurrent storm event. Soak-wells are to be a minimum capacity of 1.0m3 for every 80m2 of calculated surface area of the development. (Technical Services)
2. A sewage treatment and effluent disposal system or greywater reuse or treatment system is not to be installed unless an Approval to Construct or Install an Apparatus for the Treatment of Sewage has been issued by the City beforehand. (Technical Services)

Telecommunications Advice

The applicant is advised by the City’s Planning Services that developers are responsible for providing telecommunications infrastructure in their developments. To provide this infrastructure, they need to contract a carrier to install telecommunications infrastructure in their new development. If you choose National Broadband Network (NBN) to service your development, you will need to enter into a developer agreement with NBN. The first step is to register the development via http://www.NBNco.com.au/develop-or-plan-with-the-NBN/newdevelopments.html, once registered NBN will be in contact to discuss the specific requirements for the development. NBN requires you to apply at least six months before the required service date. All telecommunications infrastructure should be built to NBN guidelines found at <http://www.NBNco.com.au/develop-or-plan-withthe-NBN/new-developments/builders-designers.html>.

**6.0 Conclusion**

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

The application has been assessed in accordance with the planning framework and in instances where the proposal does not satisfy a provision or statute, a condition has been recommended to address the requirement.

This development has been assessed as generally consistent with the Scheme and the Element Objectives of the R-Codes. The key areas of discussion relate to the side and rear setbacks proposed. Given the height of the building is limited to 2 storeys, there is merit in considering reduced setbacks, subject to other related matters such as visual privacy.

The development is on balance able to be supported given that it is not seeking to maximise building height. The alternative to improve on the design regarding visual privacy and setbacks is for the development to increase to three storeys. Therefore, a trade-off between building height and setback provisions has been assessed and considered. On balance a two-storey building is the preferred option in reference to local context and character of Portland Street.

For the above reasons, it is recommended Council adopt the Officer Recommendation contained in the Responsible Authority Report to approve the development.

# Declaration of Closure

There being no further business, the Presiding Member will declare the meeting closed at 9pm.